
SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No: SB 1092 **Hearing Date:** 4/16/2024
Author: Blakespear
Version: 4/3/2024
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Coastal resources: multifamily housing development: coastal development permits: appeals: report

DIGEST: This bill requires the California Coastal Commission (CCC), on or before January 1, 2028, to provide a report to the Legislature that provides specified information regarding appeals filed after January 1, 2025 regarding coastal development permits for multifamily housing developments that are appealed, approved, or denied.

ANALYSIS:

Existing law:

- 1) Establishes the California Coastal Commission (CCC) in the California Natural Resources Agency.
- 2) Provides for the planning and regulation of development within the coastal zone.
 - a) A person planning to perform or undertake any development in the coastal zone is required to obtain a coastal development permit from the CCC or local government enforcing a local coastal program (LCP) certified by the CCC.
 - b) A LCP cannot be required to include housing programs and policies.
 - c) The coastal zone means the coastal land and waters of California, and includes the lands that extend inland generally 1,000 yards from the mean high tide line, as specified, with various exceptions including the San Francisco Bay.
 - d) Development means, among other things, the placement or erection of any solid material or structure on land or in water.

- 3) Provides that after certification of a local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the CCC only for the following types of developments:
 - a) Developments approved by the local government within a specified distance of the sea.
 - b) Developments approved by the local government in specified tidelands submerged lands, public trust lands, and within 100 feet of a wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff.
 - c) Developments approved by the local government located in a sensitive coastal resource area.
 - d) Any development approved by a coastal county not designated as the principal permitted use under the zoning ordinance or zoning district map.
 - e) A development which constitutes a major public works project or a major energy facility.

This bill:

- 1) Defines “multifamily housing development” as a development that proposes to construct two or more housing units on an urban infill site and meets all of the following conditions:
 - a) Results in a density of no fewer than 15 units per acre, as specified, excluding accessory dwelling units or junior accessory dwelling units.
 - b) The development will result in a net increase of housing units.
- 2) Defines “site” as a development and the site on which it is located that satisfies all of the following:
 - a) It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as specified.
 - b) At least 75% of the perimeter of the site adjoins parcels that are developed with urban uses.
 - c) A site that is at least two-thirds of the square footage of the development is designated for residential use and satisfies any of the following:
 - i) The site is zoned or has a general plan designation for residential use or residential mixed-use development.
 - ii) The site is zoned for office or retail commercial use.

- 3) Requires the CCC, on or before January 1, 2028, to provide a report to the Legislature that provides the following information regarding appeals filed after January 1, 2025:
 - a) Information on the percentage of coastal development permits for multifamily housing developments that are appealed, approved, or denied.
 - b) Summary statistics, including statistics that are calculated using mean, median, and standard deviation measures, on both of the following:
 - i) For appeals on multifamily housing developments that result in the CCC upholding the action of the local government, the number of working days between when the CCC first received an appeal and when the CCC upheld the local government action.
 - ii) For appeals on multifamily housing developments that result in the CCC overturning the action of the local government, the number of working days between when the CCC first received an appeal and when the CCC took final actions on the appeal.
- 4) Sunsets the provisions of this bill on January 1, 2032.

COMMENTS:

- 1) *Author's statement.* "California is in a housing crisis of unprecedented scale due to decades of underproduction and high costs of building housing. To increase housing productions, the Legislature has passed reforms to require government agencies responsible for processing housing development permits to improve their processes. Generally, these reforms have required these agencies to shorten permitting timelines and maximize the use of objective standards, which cuts down on the uncertainty and financing challenges developers face. Despite these reforms, affordable housing and market-rate developers report that they still experience uncertainty in the timelines for the Coastal Development Permit (CDP) process, which is required to develop in California's coastal zone. Closer analysis reveals that while there is relatively sufficient certainty on the timeline for initial decisions local governments make on CDPs, the timeline for the appeals process can be highly variable. In some cases, these appeals have taken years to be resolved. SB 1092 will direct the California Coastal Commission to study the timeline uncertainty developers have identified and provide a report to the Legislature on its findings. With this information, the Legislature can determine the extent of the problem and inform future reforms."

- 2) *California's housing and homelessness crisis.* California has the largest concentration of severely unaffordable housing markets in the nation; the typical home value in California reached \$747,400 in September 2023, a one percent decrease from the same month last year, but still far exceeding the national typical home value of \$349,500. The lack of supply is the primary factor underlying California's housing crunch. The state Department of Housing and Community Development (HCD) estimates that California needs to build 220,000 new homes a year to keep up with current population growth.

To keep up with demand, HCD estimates that California must plan for the development of more than 2.5 million homes over the next eight years, and no less than one million of those homes must meet the needs of lower-income households (more than 640,000 very low-income and 385,000 low-income units are needed). Additionally, the lack of affordable housing is the single biggest contributor to homelessness. This is because as housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30% of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness.

- 3) *Housing permitting generally.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built throughout a jurisdiction. Before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, and/or county board of supervisors. Most housing projects that require discretionary review and approval are subject to review under CEQA, while projects permitted ministerially generally are not. Development opponents can appeal many individual decisions related to the CEQA review to the planning commission and to the city council or board of supervisors. Finally, litigation over approvals is also common. The building industry points to environmental reviews and other permitting hurdles as a hindrance to housing development. They argue that the high cost of building and delays in the approval process reduce builders' incentives to develop housing.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially (*i.e.*, "by right") require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. In contrast, ministerial approval, a form of housing streamlining, in addition to

bypassing the CEQA process and the potential for litigation, provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources.

- 4) *Need for certainty in the permitting process.* A variety of causes have contributed to the lack of housing production, including restrictive zoning ordinances, local permitting processes that provide multiple avenues to stop a project, and fiscal incentives associated with development decisions. These issues pose challenges to constructing market-rate and affordable housing developments alike. Given the complexities of developing housing in California, and in particular multifamily housing, the Legislature and Governor have passed over 150 bills since 2016 in an effort to facilitate more housing production. One such set of reforms have included expediting and simplifying the approval process at the pre-entitlement, entitlement, and post-entitlement phases, including creating multiple pathways for by right approvals for ADUs, deed-restricted affordable housing, and market-rate housing. In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree developers – and in particular affordable housing developers – have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects all together. Streamlining unlocks more land opportunities, particularly in higher-resource, unfriendly housing cities.

Streamlined approval process changes have started to show results. For example, ADU construction has exponentially grown from a handful each year statewide to over 10,000. In the past few years, affordable housing development has approached 20,000 units per year, doubling previous totals. And the adoption of local Housing Elements around the state has pushed cities to rethink how much housing they permit, where it is allowed, and establish new, creative programs to help local homeowners shorten the entitlement process.

Streamlined approval processes, such as those for infill housing developments through SB 35 (Wiener, Chapter 366, Statutes of 2017) are also yielding results. According to data provided by local governments in their annual progress reports (APRs) between 2018 and 2021¹ statewide, SB 35 has resulted in 19,239 units, 60% of which are affordable to lower-income households. This is likely an undercount, as some cities have shared with the committee that more projects have been approved than HCD has data. For example, San Francisco has received 26 total SB 35 project applications, for a total of 3,404 units, 2,970 of which are affordable. One affordable housing developer, Related, testified in a joint oversight hearing of the Senate Housing Committee and Assembly Housing and Community Development Committee on February 28, 2023 that they have entitled 818 units in seven projects, with another 1176 in process — some just months away. In the same hearing, a representative of San Francisco testified that SB 35 has reduced housing permitting times in San Francisco by four times (three to six months versus 18-24 months). The Senate Housing Committee received examples from a regional affordable housing group that their members reduced approval timelines between six and 24 months, depending on the jurisdiction. Clear timelines for affordable housing permitting is particularly critical as affordable developers often require between eight and 12 different sources of funding to make an affordable housing development pencil financially, and any delays risk the loss of available public funds.

- 5) *Restrictive Zoning Limits Housing Density.* California’s high—and rising—land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density with rising land costs. In a 2016 analysis, the Legislative Analyst’s Office (LAO) found that the housing density of a typical neighborhood in California’s coastal metropolitan areas increased only by four percent during the 2000s. The LAO also compared California’s coastal areas to similar metropolitan areas across the country and found that new housing constructed during the 2000s in California’s coastal cities was nearly 30% less dense on average than new housing in other comparable cities—10 units/acre in California compared to 14 units/acre in the other metropolitan areas. In addition, the pattern of development in California has changed in ways that limit new housing opportunities.

A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family

¹ 2022 APRs are not due to HCD until April 1, 2023, so 2022 data is not yet available.

housing. Specifically, construction of moderately-dense housing (2-49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades. Zoning ordinances add additional constraints that can reduce density: setbacks, floor-area ratios, lot coverage ratios, design requirements, dedications of land for parks or other public purposes, and other regulations can reduce the space on a lot that a building can occupy in ways that lower the number of units it is feasible to construct on a lot. Local governments also sometimes establish stringent zoning restrictions specifically to maintain discretion over development. This practice allows them to bargain more effectively with developers for contributions to services in order to overcome the fiscal effects of residential development or to simply provide more opportunities to deny projects.

The consequence of the above barriers is that housing production has not kept up with the increase in population in many parts of California. As a result, land use restrictions can have various negative consequences, such as increased displacement and segregation, as well as lower economic growth.

- 6) *Coastal Zone demographics.* California coastal communities are on average wealthier and less diverse than the state as a whole. Within 1km of coastal access, there are roughly 25% more white people, while at the same time there are 52% fewer Hispanic or Latino people, 60% fewer Black or African American people, 57% fewer American Indians, and 18% fewer households below the poverty line as compared to their population predicted by a proportionate distribution. Additionally, coastal residents earn on average 20% more than the state average income, and on average, people from low-income communities and communities of color must travel further to access the social, economic, scenic, and health benefits of the coast.

Given this correlation, increasing housing equity in the coastal zone is essential to fulfilling the Coastal Act's goal of maximizing public access to and along the coast, as well as the State's goal of advancing environmental justice and equality.

- 7) *Developing in the coastal zone.* The Coastal Act outlines standards for development in the coastal zone including specific policies addressing shoreline public access, recreation, protection of habitats, development design, among other things. Local governments within the coastal zone can adopt a local coastal plan (LCP). LCPs generally contain the rules for development and protection of coastal resources and basic planning tools used by the local government. Each LCP contains a land use plan and implementing measures (such as zoning and maps), some of which are subjective standards (such as

requirements around design or community character), some of which are objective standards.

In order for the local government to have primary jurisdiction over development permitting in the coastal zone, however, the LCP must be approved by the California Coastal Commission (CCC). Once the LCP is approved by the CCC, the local government assumes permitting authority over local developments, including housing, and the LCP is considered to be an extension of the Coastal Act. About 73% of local jurisdictions in the coastal zone have approved LCPs. In the remaining jurisdictions (*i.e.*, those that do not have an approved LCP), coastal development permits (CDPs) are issued by the CCC directly. Additionally, permitting decisions made by a local government with an approved LCP can be appealed directly to the CCC under specified circumstances. In reviewing the permit, CCC generally must defer to those standards outlined in the LCP.

- 8) *Coastal zone development challenges.* As noted above, certainty in the permitting process can be the key to success for a housing developer, and in particular for affordable housing development. Conversely, an uncertain timeline or risk of delays can mean increased costs or even the loss of state funding for affordable housing projects. In other words, delays – or even threats of delays – can kill projects entirely. According to the author and sponsors, uncertainty in this process has presented challenges for developers seeking to build denser, multifamily housing projects in the coastal zone. The committee has also heard from over a dozen housing developers – both for and non-profits alike – expressing longstanding challenges developing in the coastal zone. Some of the reasons include high land costs, few sites zoned for multifamily development, local opposition, and challenges with local approval processes; others, however, include the mere risk of project appeals to the CCC, delays in appellate review at the CCC, or in circumstances in which the CCC hold primary jurisdiction, the need to obtain an initial coastal development permit. As noted above, developers of 100% affordable housing projects are particularly risk adverse given the myriad of funding sources and regulatory processes they have to navigate to make a project “pencil-out.”

This bill would require the CCC, on or before January 1, 2028, to provide a report to the Legislature that provides specified information regarding appeals to multifamily housing projects filed after January 1, 2025. This report must include information on the percentage of coastal development permits for multifamily housing developments that are appealed, approved, or denied. This data can help inform the Legislature, the CCC, and interested stakeholders about where delays are occurring and identify the potential for reforms to

facilitate more desperately needed dense, multifamily, and affordable housing that will facilitate more equitable development in the coastal zone.

- 9) *Gutted*. This bill was gut and amended on April 3rd from a bill that required the CCC to comply with specified appeal procedures when reviewing an appeal related to specified multifamily housing developments.
- 10) *Opposition*. Neighborhood homeowner groups were opposed to a prior version of this bill for “limit[ing] the commission’s review to whether the local government abused its discretion in approving [a] project.” Environmental groups opposed to a prior version of this bill stating it “would limit the Coastal Commission’s ability to hear appeals of local approvals of multifamily housing projects within the Coastal Zone.” The CCC removed its opposition to the bill following the April 3rd amendments. This Committee was not able to independently verify if the amendments made on April 3rd changed the positions of any other opposition stakeholders.
- 11) *Double referral*. This bill was heard in the Senate Natural Resources and Water Committee on April 9, 2024 and passed on a vote of 10-0.

RELATED LEGISLATION:

SB 951 (Wiener, 2024) — makes changes to the California Coastal Act and clarifies that local coastal program updates, for local governments in the coastal zone, shall be completed in the same timeframes as required in the housing element. *This bill is being heard in the Senate Housing Committee at this same hearing.*

SB 1077 (Blakespear, 2024) — requires, by an unspecified date, the CCC to develop and provide guidance for local governments to facilitate the preparation of amendments to a local coastal program to clarify and simplify the permitting process for ADUs and junior accessory dwelling units within the coastal zone. *This bill is being heard in the Senate Housing Committee at this same hearing.*

SB 423 (Wiener, Chapter Statutes of 2023) — extended the sunset on SB 35 (Wiener, Chapter 366, Statutes of 2017) to January 1, 2036, and made other changes, including authorizing SB 35 to apply within the coastal zone, beginning January 1, 2025, consistent with the applicable local coastal plan or land use plan, except in areas that are environmentally sensitive or hazardous, as specified.

AB 686 (Santiago, Chapter 958, Statutes of 2018) — required a public agency to administer its programs and activities relating to housing and community

development in a manner to affirmatively further fair housing; also required local housing elements to affirmatively further fair housing.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, April 10, 2024.)

SUPPORT:

California Apartment Association
City of San Diego
CivicWell
East Bay YIMBY
Grow the Richmond
Housing Action Coalition
How to ADU
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
Streets for People
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

OPPOSITION:

Azul
Board of Supervisors President Aaron Peskin, County of San Francisco
California Cities for Local Control
California Coastal Protection Network
Clean Water Action

Coastal San Pedro Neighborhood Council
Eac of West Marin
Eco San Diego
Environment California
Green Foothills
Inland Empire Waterkeeper
Livable California
Natural Resources Defense Council
Orange County Coastkeeper
Sierra Club California
Surfrider Foundation
1 Individual

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