A Better Coastal Commission

How reforms can help the California Coastal Commission address affordability, residential segregation, and climate change

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Acknowledgments

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About Circulate San Diego

Circulate San Diego is a nonprofit think tank whose mission is to create excellent mobility choices and vibrant, healthy neighborhoods. Circulate promotes public transit, safe streets, and sustainable growth. Circulate has successfully led campaigns to transform empty parking lots into affordable homes, to implement free transfers for transit riders, and for local jurisdictions to adopt Vision Zero to end traffic fatalities and serious injuries.

For more information, visit www.circulatesd.org.
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Executive Summary

In recent years, the California Legislature has adopted a variety of new policies to encourage more affordable homes, reduce residential segregation, and fight climate change. Unfortunately, the California Coastal Commission has often undermined or ignored the adopted policy direction of the Legislature, and it needs reform.

The California Coastal Commission has an important and longstanding mission to preserve access to the coast for all Californians. The Legislature has granted the Coastal Commission authority under the Coastal Act to review and approve housing and transportation projects near the coast.

Housing reform legislation in recent years has largely focused on providing easier approval for projects that include deed-restricted affordable homes, especially in high opportunity areas. These policies serve multiple goals: increasing affordability, reducing residential segregation, and allowing people to reduce their impact on the climate by having to drive shorter distances or to drive less frequently.

A core example of that sort of legislation is California Density Bonus Law. Density Bonus Law precludes the denial of a housing development, and grants a variety of waivers and concessions, if a project includes a certain number of deed-restricted affordable homes. Existing legislation requires Density Bonus Law to be harmonized with the Coastal Act.

This report documents numerous examples where the Coastal Commission has resisted, opposed, and delayed the construction of deed-restricted affordable homes that use programs like Density Bonus Law. This is even true for projects on land that is already zoned for multi-family housing, in plans already approved by the Coastal Commission itself.

Similarly, this report documents examples where the Coastal Commission opposes projects that the Legislature encourages as a part of California’s efforts to combat climate change. Crosswalks, bicycle lanes, and infill development near transit are all goals of recent statewide legislation, yet the Coastal Commission opposes or delays many of these projects. Their decisions to prioritize car travel above all other modes is inconsistent with modern climate goals, as adopted by the Legislature.

This report recommends the following reforms for the Coastal Commission:

• Amend Density Bonus Law to require its implementation by the Coastal Commission, as proposed in AB 2560 (2024).
• Remove or narrow the special exemptions that keep housing reforms from applying to the coast.
• Mandate procedural reforms at the Coastal Commission.
• Apply transportation and climate policy to the Coastal Zone.
• Avoid creating, or narrowly draw, coastal exemptions to new housing legislation.
• Look skeptically on Coastal Commission requests for more authority.

The Legislature is the only body capable of fixing this problem. With reforms, the Legislature can create a better Coastal Commission.
California faces severe housing scarcity and ranks among the nation's highest in poverty due to exorbitant housing expenses.1 The Legislative Analyst's Office (LAO) noted that Californians at every level spend more of their income on housing than other Americans.2 The LAO went on to explain that the primary reason for the higher prices is the shortage of housing, “particularly in urban coastal communities.”3

The California housing crisis is even worse in the area where the Coastal Commission has authority, the Coastal Zone, compared to the rest of the state. A study in the Journal of Housing Economics showed that Coastal Act regulations as implemented and enforced by the Coastal Commission between 1970 and 2000 had raised prices for homes in the Coastal Zone by an average of 25% compared to neighborhoods just outside the Coastal Zone.4 At the same time, the Coastal Zone neighborhoods became more expensive compared to neighborhoods nearby by an average of 19%.5

This trend continues today, with the Legislative Analyst's Office showing California home prices statewide growing “substantially,” finding that “California homes are about twice as expensive as the typical US home.”6 The LAO noted that “housing costs in certain parts of the state – mostly in the coastal areas – are significantly higher than other areas.”

Exclusivity in coastal communities has helped exacerbate the housing crisis in the rest of California as well. In 2015, the Legislative Analyst's Office found that as coastal metro areas were adding very little housing, lower income households were moving inland from the coast.7 In 2023, the LAO found that this trend continues, with lack of housing along the coast driving people inland, inflating both demand and prices throughout the state.8

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1 Patricia Malagon and Caroline Danielson, California’s High Housing Costs Increase Poverty, Public Policy Institute of California (August 13, 2021), available at https://www.ppic.org/blog/californias-high-housing-costs-increase-poverty.
3 Id. at page 2.
5 Id. at page 274-275.
6 Legislative Analyst’s Office, California Housing Affordability Tracker (January 2024), available at https://lao.ca.gov/LAOEconTax/Article/Detail/793.
7 Legislative Analyst’s Office, Lower-Income Households Moving to Inland California from Coast (September 16, 2015), available at https://lao.ca.gov/LAOEconTax/Article/Detail/133.
As shown in the figure above, the housing costs in certain parts of the state – mostly in the coastal areas – are significantly higher than other areas.

Photo source: Legislative Analyst’s Office “California Housing Affordability Tracker (January 2024)
The California coast is more racially segregated than the rest of the state.

In addition to the lack of affordability, the Coastal Zone suffers from substantial residential segregation. According to research done by Nicholas Depsky, a climate change research consultant at the United Nations Development Programme, the population of the Coastal Zone is strikingly white – about double the percentage of the rest of the state.\textsuperscript{9}

The Coastal Commission itself has summed up the situation by saying “The shortage of affordable housing in the coastal zone exacerbates historical inequities and bars disadvantaged groups from access to coastal residential opportunities.”\textsuperscript{10}

California faces a housing crisis, and the coast is the beating heart of that crisis. That crisis is driven by the lack of production of affordable homes. As the coastal housing crisis worsens, the tools that the rest of California successfully uses to produce more homes are not being applied in the Coastal Zone.

\textsuperscript{9} Ben Christopher, “Fresh batch of YIMBY housing bills clash with coastal protections (again),” CalMatters, March 18, 2024, available at https://calmatters.org/housing/2024/03/california-coastal-commission-protections/.


The Coastal Zone has a higher share of non-hispanic white residents than the counties it cuts through - with some exceptions.

Photo source: Cal Matters
Statewide legislative reform has helped by taking away the discretion of local jurisdictions to stop new homes from being built.

Since 2017, California has passed many dozens of laws aimed at the housing crisis. These reforms include:

- Expansions of State Density Bonus Law,
- Accessory dwelling unit (ADU) reform,
- Reductions of parking mandates,
- Allowing homes on land zoned for retail and offices, and
- Reforms to streamline and clarify local permitting processes.\textsuperscript{11}

The theme running throughout these innovations is the Legislature’s recognition that to be effective, housing reforms must be implemented with clear and enforceable rules. Vague guidelines that are left to the discretion of a local jurisdiction do not work. This is especially true for agencies that are not enthusiastic about entitling more affordable homes.

Reducing permitting timelines and increasing certainty works, and it works quickly.\textsuperscript{12}

The Legislature adopted policies like Density Bonus Law to require permitting of affordable homes that meet objective criteria.

In California, cities and counties are required to adopt land use plans that identify what can be built where. A layperson might assume that if a proposed project is consistent with adopted land use plans, then it can be built. That is not what happens.

Instead, local governments often have broad discretionary authority to deny completely compliant projects. Many projects that ask for no variance or zone change and are entirely consistent with previously-adopted plans can still legally be denied by a planning commission, city council, or board of supervisors.

In recent years, the Legislature adopted a variety of policies that limit the discretionary authority of entitlement agencies to deny project approvals that conform to local zoning and development rules. The Housing Accountability Act limits the ability to deny projects that comply with zoning rules, except in relatively narrow circumstances.\textsuperscript{13} California Density Bonus law provides even more entitlement certainty, if projects set-aside a certain number of units that are permanently deed-restricted as affordable to low-, very-low- and moderate-income households.\textsuperscript{14}


\textsuperscript{12} See e.g. Ben Christopher, “Los Angeles’ one weird trick to build affordable housing at no public cost,” CalMatters, February 7, 2024 (adoption of certainty of accelerated timelines in Los Angeles led to fast expansion of affordable housing approvals), available at https://calmatters.org/housing/2024/02/affordable-housing-los-angeles.

\textsuperscript{13} Housing Accountability Act, Cal. Gov. Code § 65589.5.

\textsuperscript{14} California Density Bonus Law, Cal. Gov. Code § 65915.
Density Bonus Law goes beyond the Housing Accountability Act by granting not just development certainty, but also incentives and concessions from local development standards. Projects that choose to include affordable units can use Density Bonus Law to add more units overall, receive forgiveness from parking minimums, and make limited departures from development standards like height limits and setbacks. Entitlement agencies have limited discretion to deny these development incentives, and any denials must be backed up by making evidence-based findings that they would create a danger to health and safety.¹⁵

The name “Density Bonus,” is somewhat misleading, because the statute does not require a project to be denser than the underlying zoning would allow. Some projects include affordable units and use Density Bonus Law to secure development certainty, or concessions from local development standards, and do not build any added density to the project. The core purpose of Density Bonus Law is to create more deed-restricted affordable homes, and density is only one of several optional benefits offered by the statute to incentivize that affordable production.

Jurisdictions that implement density bonus policies in good faith have found substantial use by housing developers, leading to the production of many new deed-restricted and affordable homes.¹⁶ Density Bonus Law also tends to be used in high-opportunity areas and near high-performing public transit. This helps meet state and local climate goals, and combats California’s legacy of residential segregation.¹⁷

Before the Housing Accountability Act and Density Bonus Law were enacted, local governments could adopt land use rules, and then generally disregard them when actual projects were proposed. The politics of adopting broad land use rules are often easier than making policy decisions about individual projects.¹⁸ These two laws recognize that challenge, and force entitlement agencies to live up to their adopted land use policies, especially when it comes to the production of deed-restricted affordable homes.

**There is ambiguity about how the Coastal Commission must comply with Density Bonus Law.**

California’s Density Bonus Law was passed in 1979 to address the shortage of affordable housing in California.

In 2016 the California Court of Appeal, in a case named Kalnel Gardens LLC v. City of Los Angeles ruled that “the Density Bonus Act is subordinate to the Coastal Act.”¹⁹

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In response to Kalnel Gardens, the Legislature enacted AB 2797 in 2018 to address the tensions between Density Bonus Law and the Coastal Act. AB 2797 states that “The Legislature’s intent is that the two statutes be harmonized so as to achieve the goal of increasing the supply of affordable housing in the coastal zone while also protecting coastal resources and coastal access.”

That is where the relationship stands today, with the two statutes to be read in “harmony” with one another. As a practical matter, the Coastal Commission has nearly unfettered authority to decide what that “harmony” means. As discussed later in this report, the Commission’s approach to Density Bonus Law has not substantially changed since AB 2797 was passed, and reliable implementation of Density Bonus Law in the Coastal Zone remains a challenge.


La Jolla Cove
Photo source: Nicholas Anderson from Getty Images Via Canva.com
The Coastal Commission is governed by the Coastal Act, as adopted by the Legislature.

The California Coastal Commission was established by the voters in 1972 through Proposition 20, the Coastal Zone Conservation Act. Four years later, the Legislature continued the existence of the Commission by passing the California Coastal Act of 1976, which is now found beginning in Public Resources Code § 30000.

This is occasionally misunderstood to mean that the Coastal Act cannot be reformed without a public vote or initiative. The relevant portions of the Coastal Conservation Initiative effectively sunsetting in 1976 and the existing Coastal regime is generally found within the Coastal Act, which can be amended through the normal legislative process.

The original intent of the Coastal Act was to shape coastal land development, emphasizing public access, habitat preservation, and development clustering. It prioritizes coastal recreation and compatible commercial and industrial uses, while safeguarding constitutional property rights through orderly, balanced development.

The original Coastal Act made housing affordability near the coast one of its goals. In the early 1980s, the Legislature removed the Commission’s authority over housing affordability and granted much of that responsibility directly to local jurisdictions, where it resides today. As a result, the Commission does not have the authority to review determinations that local jurisdictions make regarding housing affordability.

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21 Coastal Zone Conservation Act, California Proposition 20 (1972). The original text of the proposition is available online at https://repository.ucdavis.edu/cgi/viewcontent.cgi?article=1770&context=ca_ballot_prop.
23 See Public Resources Code §§ 30000, 30001, 30001.2, 30001.3, and 30001.5.
24 Public Resources Code §§ 30007 and 30604.
26 Gov. Code § 65590(a) (“In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.”)
In 2016, the Legislature revised the Coastal Act to ensure civil rights, equity, and environmental justice are integral to Coastal Commission decision-making. They also introduced environmental justice criteria for a Commissioner appointment. In 2022, the Legislature revised the Act again to include considerations regarding sea level rise among the Commission’s mandates. That is where the mandate of the Commission stands today.

Despite its mission to preserve access for all Californians, Commission members are, by statute and practice, mostly from the coast.

The Coastal Commission is a panel of twelve voting members. The Coastal Act requires six of those members to be local representatives from coastal regions. As a practical matter, the other six representatives are usually closely tied to coastal communities. The result is that the Commission, which has the mandate to ensure coastal access for all Californians, is frequently in the group that already has the best access to the coast.

Coastal Commissioners are often selected from the most housing-resistant local jurisdictions – the ones near the coast. Commissioners are frequently elected officials from coastal regions. They are necessarily more sensitive to political pressures from their home-jurisdiction constituents than to residents in the rest of the state.

The effect of this is to structurally render the Coastal Commission something more akin to a large local jurisdiction responsive to its coastal constituents than to a statewide agency representing the interests of all Californians.

The Coastal Commission has long recognized that the Coast is unaffordable and segregated, that coastal access includes housing access, and that deed-restricted affordable homes are needed.

The Coastal Commission has long maintained that encouraging affordability is related to the other goals of the Coastal Act, such as encouraging coastal industries and tourism, since those would suffer if workers cannot live near their jobs.

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28 Public Resources Code § 30001.5(f).

29 Gov. Code 30301(e) (“Six representatives selected from six coastal regions. The Governor shall select one member from the north coast region and one member from the south central coast region. The Speaker of the Assembly shall select one member from the central coast region and one member from the San Diego coast region. The Senate Committee on Rules shall select one member from the north central coast region and one member from the south coast region.”)

The Coastal Commission’s 1981 “Affordable Housing Guidelines” described a broad goal for the agency to improve affordability on the coast:

“Meaningful access to the coast requires housing opportunities as well as other forms of coastal access… If the coast is not to exclude the less affluent members of society and become an exclusive enclave of the wealthy, affordable housing must be protected, encouraged, and, where feasible, provided.”

The Coastal Commission as far back as 1981, in its “General Interpretive Guideline on New Construction,” noted that density bonus policies would be an effective way to meet affordability goals, especially on smaller projects.

In 2022, the Coastal Commission published a report on the “Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns.” That report stated that the now-illegal methods of explicit red-lining and restrictive covenants still linger in our housing patterns today. Not stopping there, the Commission recognized that regulations that are still legal and in force in the Coastal Zone continue to reinforce residential segregation, saying “Single-use and single-family zoning institutionalized the discrimination that had been occurring in property deeds and covenants.”

In its earliest policy documents, the Coastal Commission took housing affordability seriously and recognized that affordable housing, and density bonuses to encourage affordable housing, were appropriate solutions in the Coastal Zone. In its more recent policy documents, the Coastal Commission has been admirably frank about the historical and ongoing policy causes of segregation.

Despite all of the Commission’s lofty policy documents, white papers, and good intentions, the Coastal Zone still lags the rest of the state in housing production. It also continues to lead the rest of the state in segregation and exclusivity. That is because – like many cities and counties that profess a commitment to affordability – the Coastal Commission’s actions do not live up to their claimed values when they are faced with an actual proposal to build affordable homes.

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34 Id. at pages 16-18.
35 Id. at page 15.
Overview of Coastal Commission Procedures

The next portion of this report will be an analysis of some permitting decisions that the Coastal Commission has made on particular projects in recent years. Those analyses will make more sense if the reader is familiar with some of the basic structure of the Commission’s role in land use entitlements.

Local Coastal Plans

By and large, the Coastal Commission does not directly permit projects in most of the Coastal Zone. Instead, the Commission certifies Local Coastal Plans (LCPs), submitted by the local governments within the Coastal Zone. A Local Coastal Plan includes the local government’s “(a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.”

Once the Commission certifies a Local Coastal Plan, the local jurisdiction does all the permitting within the area covered by the LCP. Amendments to Local Coastal Plans have to be approved by the Coastal Commission before they take effect.

Some local jurisdictions are located entirely within the Coastal Zone. State housing legislation that treats the Coastal Zone differently from the rest of the state can have the effect of shielding the entirety of some jurisdictions from those housing reforms.


Once a local jurisdiction issues a permit for a project, there is an appeal process that can put the project back in front of the Commission. Projects in the entire Coastal Zone are not necessarily appealable. Public Resources Code § 30603 sets out a specific region closer to the water where there is a right to appeal. (There are also other types of projects that are appealable but they are not generally at issue for the purposes of this report.) For the most part, the border of this appeal zone can be thought of as the area within 300 feet of the coast or coastal bluff, or within 100 feet of a wetland or stream.

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36 Public Resources Code § 30108.6.
37 Public Resources Code § 30519.
38 Public Resources Code § 30514.
39 Public Resources Code § 30603.
Importantly, an appeal can only be taken once a project has been approved by the local jurisdiction.\(^{40}\) The developer can never appeal a denial or other failure to issue a permit.\(^{41}\) Moreover, appeals can be initiated by “any person” with little regard for who they are, where they live, or their connection to the project, as long as they participated in the local permitting process.\(^{42}\) The Commission also functionally has the power to initiate appeals itself.

Once an appeal is made, the Commission has 49 working days from the filing of the appeal to determine whether the appeal raises a “substantial issue” for compliance with the LCP or Coastal Act.\(^{43}\)

For multifamily developments, this 49-day deadline for determining a “substantial issue” is illusory. Commission staff typically request that developers of multifamily projects waive this deadline in order to avoid a staff recommendation that the Commission find “substantial issue.” Developers almost always find it wiser to waive the deadline in hopes to negotiate a favorable recommendation from Commission staff.

Importantly, once the 49-day deadline is waived, there is no timeline required at all. Developers have requested waivers for 90 or 180 days and the Commission routinely responds that any waiver must be indefinite.

The costs of a finding of “substantial issue” are high, because it triggers a “de novo” review of the project. That means the Commission fully takes jurisdiction over the application, reopening all issues with no deference to the rulings of the local jurisdiction, nor limitations to the scope of the appeal. Per the Commission, “during the de novo phase all issues relating to conformance with LCP and Coastal Act public access and recreation policies are appropriate for consideration.”\(^{44}\)

This entire appeal process happens after the local jurisdiction has fully granted the final permit – a process that has usually already taken multiple years. Only the boldest developer would risk going before the Commission on an appeal with a negative staff recommendation. As a practical matter then, the appeals process functions as a negotiation between a developer and the Coastal Commission staff, limiting the role of the appointed members of the Coastal Commission itself. This process creates enormous power by the Coastal Commission staff to delay projects, impose ad hoc staff preferences, and extract concessions – even if the projects have already met the requirements of the Local Coastal Plan.

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\(^{40}\) Id.
\(^{41}\) There are some limited cases where a developer can appeal denials of energy projects, but those are not at issue here.
\(^{42}\) Public Resources Code §§ 30602 and 30603 (appeals may also be brought by any two Commissioners).
\(^{44}\) Id.
Recent Actions by the Coastal Commission to Deny or Delay Affordable Homes

As reviewed above, the Coastal Commission recognizes that its mission includes ensuring housing access to the coast. And it recognizes that affordable and market rate homes are both needed in a housing crisis. It even recognizes that the character of existing communities has baked in a legacy of discrimination and residential segregation from the past that it says it seeks to undo. In this light, the Commission claims that it has “a consistent record of supporting multi-family, affordable and workforce housing in the coastal zone.”

The Commission’s noble stated intentions are not reflected in its actions. This shows up in the Coastal Zone’s lagging production of affordable homes. This section reviews some recent examples where the Coastal Commission has denied, delayed, or otherwise deterred the production of deed-restricted affordable homes on the coast. All of these examples are situations where a development proposed to build new deed-restricted affordable homes using California’s Density Bonus Law.

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City of Los Angeles – 2308-2310 Pisani Place (February 2024)

On February 7, 2024, the Coastal Commission found “substantial issue” on an appeal of a permit in the Venice area of Los Angeles to use Density Bonus Law to build an eight-unit condominium. This project is a full mile away from the beach. Three of the proposed homes were to be deed-restricted affordable housing – one for very-low-income and two for low-income households.\(^{46}\)

Despite unanimous approval by the Los Angeles Planning Commission, the Coastal Commission followed the staff recommendation and found substantial issue on the grounds that the project “is not consistent with the community character of the surrounding area.”\(^{47}\) The Commission staff noted that the proposed building had a height of 41 feet, which was taller than the surrounding area. The proposal used an incentive allowed under Density Bonus Law to reach that height. The surrounding area, notably has the same zoning as the project, and is largely not built up to that zoning capacity. However, the Commission staff noted that the surrounding neighborhood “is characterized by one- and two-story single- and multi-family residences.”\(^{48}\)

The staff report went on to note “With a density bonus incentive to allow for an increased height of 41 ft. and reduced setback requirements in a largely one-story residential neighborhood with no buildings exceeding 30 feet, the City-approved project is significantly larger than the surrounding residences and is not consistent with the character of the area with respect to mass and scale.”\(^{49}\)

The City of Los Angeles had already decided to allow projects over one story, and incorporated that permission into its land use plans. The Coastal Commission made an ad hoc judgement that such local determination should not be followed, because other properties in the area had not already built to that allowed height. This is a sort of catch-22, where projects cannot take advantage of allowed heights, because too few other nearby projects had already taken similar advantage.


\(^{47}\) Id. at page 2.

\(^{48}\) Id. at page 2.

\(^{49}\) Id. at page 3.
The staff report also noted some objections to the City of Los Angeles’ determinations with respect to three replacement affordable units on the property. Since the Commission lacks the authority to revisit those local determinations, they were not the grounds for the finding of substantial issue. It should be noted, however, that the people who actually live in the predecessor units – who would be moving to the new units – wrote in in support of the project.

Even if the Coastal Commission eventually approves the application after the de novo review, this will add years to the project timeline, and jeopardize its financing. Granting a de novo review also gives the Commission leverage to demand concessions not accounted for in the law, and potentially render it infeasible. It also discourages other projects by eliminating the clarity that Density Bonus Law is designed to provide from any application in the Coastal Zone.

50 Id.
52 Correspondence regarding Appeal Number A-5-VEN-23-0044 (February 8, 2024), pages 31-33, available at https://documents.coastal.ca.gov/reports/2024/2/W14a/W14a-2-2024-corresp.pdf.
On May 5, 2021, the Coastal Commission received an appeal of a project in the Pacific Palisades area of Los Angeles. The project proposed to use Density Bonus Law to build 39 homes, four of which would be restricted for very-low-income households, and four for moderate-income households. The project would demolish and replace a vacant fast food restaurant. The proposal had been unanimously approved by the Los Angeles City Council in March 2021.  

The Commission requested that the developer waive the 49-day deadline for the Commission to determine the existence of a “substantial issue.” Not having much choice, the developer agreed. Staff did not bring the item before the Commission for 29 months. Finally, it heard the appeal on October 12, 2023.  

During the 29-month delay for this project, the Commission staff pursued a dialogue regarding tribal heritage matters which were outside the scope of the appeal, and which had been addressed by the local jurisdiction. The developer, to their credit, cooperated with this discussion and provided additional resource protection measures that went beyond those necessary under both the law and the requirements of the City of Los Angeles.  

The Commission ultimately found “no substantial issue” among all of the arguments that the appellants had raised in their appeal. However, even with no valid grounds raised in the appeal, this was effectively treated by Coastal Commission staff as a de novo review, examining issues outside of the scope of the appeal. The Commission took a fully approved project that used Density Bonus Law and added more than two years and costly additional requirements to the project timeline. Meanwhile, the neighborhood in question spent an additional two years with a vacant fast food restaurant at its heart.

54 Id. at page 1.
55 Id. at pages 9-11.
56 Id. at page 19.
The Coastal Commission’s actions frequently appear to prioritize parking for cars over housing and other forms of transportation.

Photo source: © Krailurk from Getty Images Via Canva.com

City of Santa Cruz – West Cliff Drive (July 2023)

In 2019, the City of Santa Cruz approved a permit for a mixed-use development on a surface parking lot. The project would have 89 residential condominiums. The proposal used Density Bonus Law, resulting in ten deed-restricted affordable homes.57

The Coastal Commission found that the appeal raised no substantial issue – but still took nearly four years to do so, not allowing the project to proceed until its ruling in July of 2023.58

Ironically, the Commission’s “2023 Year In Review” referenced this project as a win for housing.59 The Commission did nothing to aid this project, and instead its activities merely caused its delay for four years. When defenders of the Coastal Commission point to its history of approving affordable homes in the Coastal Zone, they often omit that those approvals are often long-delayed by the actions of the Coastal Commission itself.

More concerning is that the Commission’s staff report makes it clear that this delay, and future possible denials, are based on exactly the sort of subjective and vague standards that Density Bonus Law was written to avoid in the first place. The staff report states that, even before the Commission declares an appeal reviewable de novo “the burden is on the Applicant to show how exceptions to such standards do not impact coastal resources.”60 This is opposite from how the Density Bonus Law treats the burden or proof. Under Density Bonus Law, it is the responsibility of the city or county deciding on a project approval to show why an incentive of waiver requested by a developer should be denied.61

57 Coastal Commission Staff Report, Appeal Number A-3-STC-19-0208 (July 12, 2023), available at: https://documents.coastal.ca.gov/reports/2023/7/W15b/W15b-7-2023-report.pdf.
58 Id. at page 1.
The Coastal Commission staff report goes on to argue that “the relative impacts from exceptions to LCP standards might be more subjective, such as when they may result in visual and/or aesthetic impacts.” These subjective factors are clearly not permissible under the Density Bonus Law that other local jurisdictions have to follow. The Density Bonus statute requires a city or county to make findings that a waiver or incentive would create a danger to health or safety. The Coastal Commission ignores that requirement, and instead assumes for itself a seemingly unlimited ad hoc discretion over aesthetic considerations, even while Density Bonus Law explicitly limits those considerations. At a recent hearing of the Assembly Natural Resources Committee, Committee members expressed both surprise and concern that the Coastal Commission appeared to be exercising discretion about building design, apparently outside of its legislative mandate over environmental considerations.

**Los Angeles – 10 E Anchorage Street (March 2019)**

On December 19, 2018, The City of Los Angeles approved a permit in Venice for the conversion of a three-unit apartment into a five-unit apartment. The project had seven parking spaces. The Venice Land Use Plan would require 13 parking spaces for this size a project. The City of Los Angeles approved the use of Density Bonus Law to allow the lower parking requirement, in exchange for deed-restricting some of the units as affordable.

The Commission did not dispute the City’s finding that the project would be entitled to a reduction in parking under Density Bonus Law. The Commission found “substantial issue” specifically because of the reduction in parking granted by the use of Density Bonus Law.

The Legislature passed AB 2797 in 2018, stating that the Coastal Act and the Density Bonus law should be interpreted in “harmony” with one another. The Coastal Commission is the primary arbiter on what “harmonization” means. And here, two and a half months after AB 2797 became effective, the Coastal Commission flatly eliminated the benefit of Density Bonus Law for this project without even acknowledging the Legislature’s intent that the laws be harmonized.

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63 Gov. Code §§ 65915(d)(1)(B) and 65915(e)(1).
65 This is a Los Angeles-specific analogue similar to a Local Coastal Plan.
66 Coastal Commission Staff Report, Appeal Number A-5-Ven-190-0006, February 14, 2019, available at https://documents.coastal.ca.gov/reports/2019/3/W20b/W20b-3-2019-report.pdf. “The City-approved project does not conform with the policies of the certified Venice LUP because sufficient parking is not provided. However, the City made findings that the project, as approved with one “Restricted Affordable Unit”, is allowed incentives consistent with Government Code section 65915 (the State density bonus law), including exceptions from development standards for projects that provide long-term affordable housing.”
City of Santa Cruz – Riverfront Project (November 2021)

In 2021, the Santa Cruz Riverfront Project proposed to merge five parcels and replace existing commercial buildings and parking lots with a seven-story mixed-use development with 175 condos. Ten homes would be deed-restricted as affordable using Density Bonus Law. The project also included 11,498 square feet of new commercial space, and at-grade and underground parking. About one-third of the merged parcel would be in the Coastal Zone and appeal area.

This project was undertaken after the Santa Cruz Local Coastal Plan (LCP) amendment had been approved in 2018 to accommodate projects using Density Bonus Law. The Coastal Commission routinely cites Santa Cruz favorably as an example for how an amended LCP can successfully accommodate projects using Density Bonus Law.

The Coastal Commission’s reaction to this project in Santa Cruz demonstrates an unwillingness to abide by the LCP that it previously approved. The Commission staff objected to the project while it was still at the City Council. While the Coastal Commission had no formal role in that stage of the entitlement process, its criticisms about a pending project were doubtlessly understood as a preview of staff opposition in the event of a future appeal.

In a letter to the Santa Cruz City Council on November 10, 2020, the Coastal Commission staff conceded that “the Coastal Commission approved a City Local Coastal Program (LCP) amendment in 2018 that was in part meant to help facilitate the provision of such housing downtown, including specifically allowing increased height at the subject site so that such projects could better pencil out.”

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Commission staff opposed the Riverfront Project, even though it complied with the Local Coastal Program they had approved.

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Despite the clarity and predictability that the LCP was intended to provide, the Coastal Commission staff argued that new ad hoc considerations outside of the LCP should caution against approving the project. Coastal Commission correspondence to the City argued that:

“It appears that the proposed buildings may adversely impact visual resources if the already substantial design height and bulk allowed by the LCP are increased through the use of variances and exceptions, as discussed above. It is unclear how increasing the maximum building height permitted in the Downtown Plan’s ‘Additional Height Zone B’ area from 70 feet to the proposed 81 feet will protect visual resources, or if this proposed increase is even permissible by the LCP.”

The Coastal Commission’s letter went on to list a number of additional objections and concerns. The Santa Cruz City Council nonetheless approved the project at its January 12, 2021 meeting.

Several weeks later, when the Commission heard an appeal of the project, the Commission staff issued a report that recited many of the same objections. While those objections were sufficient to embolden staff to oppose the project at the city council two months earlier, they were insufficient to either support a recommendation of substantial issue, or even merit the typical demand for a waiver of the 49-day review deadline.

In support of the project, and in opposition to the Coastal Commission staff’s objections, Santa Cruz Assistant Director of Planning and Community Development Eric Marlatt told a local news publication, “Look at its location. It’s right across the street from literally the main transportation hub for the entire county.”

Instead of making a good faith effort to live by the LCP that the Coastal Commission had previously approved, Coastal Commission staff attempted to get the City of Santa Cruz to deny the project based on considerations outside of the scope of the LCP. This signals the Coastal Commission’s unwillingness to be bound even by its own approved LCP. It significantly undermines the reliability of LCPs generally as a mechanism for implementing Density Bonus Law and other housing reforms.

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69 Coastal Commission Staff, Letter to City of Santa Cruz re Front Street Riverfront Project EIR (December 16, 2019), page 2, available at https://s3.documentcloud.org/documents/20403928/front-striverfront-project-letter-to-city-council.pdf (The link directs to a November 10, 2020 letter from the Coastal Commission. The Commission’s earlier December 16, 2019 is attached thereto and starts at page 6 of the linked PDF.)

70 City of Santa Cruz, Council Meeting Agenda (January 12, 2021), available at https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Documents/ViewDocument/City_Council--Regular_Meeting_1601_Agenda_Packet_1_12_2021_1_00_00_PM.pdf?meetingId=1601&documentType=AgendaPacket&itemid=0&publishId=0&isSection=false.


72 Kara Meyberg Guzman, Coastal Commission, Santa Cruz staff clash on housing proposal, Santa Cruz Local, December 6, 2020, available at https://santacruzlocal.org/2020/12/06/coastal-commission-santa-cruz-staff-clash-on-housing-proposal/.
It is notable that the Coastal Commission staff communications to the City of Santa Cruz suggested that the proposed use of Density Bonus Law would subject the project to an appeal, delay, and potentially denial by the Coastal Commission. Yet when the Coastal Commission staff outlined its recommendation to the Coastal Commissioners themselves, it adopted a more modest and legally defensible commitment to its own adopted LCP. When communicating to an outside agency and local elected officials, Coastal Commission staff implied an inflated ability to derail the project. Yet when they articulated their concerns to the Commissioners, to whom they report, they exercised more restraint and accountability.73

In the five examples discussed above, the Commission opposed, delayed or killed projects on the basis of concerns about parking, neighborhood character, views, scale and massing, and other objections that are common in every local neighborhood planning debate. The Commission styles itself as a protector of the environment. The five examples have one glaring thing in common: none of the Commission’s objections were based on any factors that an ordinary person would characterize as an environmental concern.

73 Some of the actions by the Coastal Commission seem to be led by staff, as opposed to the officials appointed to serve as Coastal Commissioners. Still, Coastal Commission staff is accountable to the Commissioners, and should not be seen as operating entirely independently of direction or oversight. Similarly, the Commissioners themselves are appointed by elected officials, who are themselves directly accountable to their constituents. This report does not seek to lay blame on staff specifically, nor the Commissioners or appointing authorities. Instead the entire apparatus of the Coastal Commission itself should be considered in its totality when considering appropriate reforms.
Climate Change and Transportation in the Coastal Zone

The above section focused on a number of examples where the Coastal Commission has undermined or ignored the Legislature’s policies to reduce residential segregation, and to produce deed-restricted affordable homes. The Coastal Commission also plays an important role for reviewing, approving, and denying policies related to climate change and transportation within the Coastal Zone.

The Coastal Commission has a mandate to protect access to the coast, for Californians of all incomes. Many of its decisions focus on protecting the ease and convenience of car drivers. While certainly many people who access the coast wish to drive, driving is only one of many modes of transportation people can use to visit a beach or other coastal resource.

In recent years, there is a renewed focus among planners and transportation professionals about the inequities of prioritizing car travel above all other modes of transportation. Transit, safe streets, and walkable communities are essential both for equity and to address climate change. Transit riders are substantially more likely to be lower income or persons of color, as compared to the overall population. Data from the U.S. Census shows that commuters with the lowest levels of income are the most likely to rely on bicycles. The lowest-income households are substantially less likely to own a car. Prioritizing car travel above all other modes has a disproportionate negative impact to low-income people and communities of color.

If the Coastal Commission is to achieve its goals to promote coastal access and environmental justice, those who do not drive must be a key consideration. In recent years, there have been a number of examples where Coastal Commission actions related to transportation contradict other state policies to encourage safe transportation, and to combat climate change.

California Coastal Commission stalls bike lanes on deadly road in Point Loma

On Oct. 30, a 41-year-old woman was riding her bike on West Point Loma Boulevard when an SUV driver struck her from behind. She survived, but was hospitalized with a fractured pelvis. The collision took place on a stretch of the road where city officials had planned to install protected bike lanes earlier this month following a resurfacing project. But those plans hit a roadblock with the California Coastal Commission, a state regulatory agency tasked with preserving coastal access.

-KPBS, November 30, 2023

City of San Diego – West Point Loma Boulevard Bicycle Lane (2024)

In recent years, the Legislature adopted a number of policies to make it easier for local governments to build safe bicycle infrastructure. The goals from these policies are to improve road safety, and to encourage more climate-friendly transportation like with bicycles, e-bikes, and small electric vehicles like scooters.77

West Point Loma Boulevard in San Diego features a bicycle lane for most of its length. Suddenly, that lane disappears and cyclists are forced to merge into car traffic. The bicycle lane reappears again about a half-mile later. At its closest point, the affected area is more than a mile from the ocean.

This dangerous condition has resulted in multiple injuries. When the City of San Diego sought to stripe this short stretch of road with conforming bike lanes in accordance with the longstanding wishes of community groups, it was told by the California Coastal Commission that it could not. Instead it would have to apply for a revision to its Local Coastal Plan (LCP).79

A revision to an LCP can take months or years, and substantial investment from already stretched municipal staff. In this case, the City of San Diego chose to proceed with planned upgrades and forego restriping of the bike lane, maintaining the dangerous disappearing bike lane in order to comply with the Commission’s internal procedures.

79 Id.
In February of 2024, Circulate San Diego planning staff performed a walk audit of this area, to evaluate the safety challenges on the road as it is currently designed. A map of the area and its challenges is included with this report.

The Coastal Commission may not have clear statutory authority to approve a bicycle lane that is not included in an LCP. Legislation to empower the Coastal Commission to approve bicycle lanes without LCP amendments could help ensure road safety projects are not prevented or delayed in the Coastal Zone. Still, it is notable that when the Coastal Commission is facing questions about housing entitlement, it claims broad discretion to deny projects. Yet when they are asked to allow bicycle lanes, they claim limited discretion to approve or streamline projects.
Map of walk audit findings by Circulate San Diego planning staff and community volunteers.

Photo source: Circulate San Diego
City of Encinitas – Leucadia Streetscape Project (2018)

In 2018, the Coastal Commission staff recommended denial of an amendment to an LCP in the City of Encinitas to create safe bicycle and pedestrian infrastructure along one of its most vibrant commercial corridors. Coastal Commission staff argued that creating a bicycle lane would reduce access to the coast. The arguments sound like they are from another era, suggesting that a potential two-minute delay for car drivers is a more important consideration than climate friendly infrastructure and saving lives.

Fortunately, due to efforts by many elected officials and advocates, including Circulate San Diego, the Coastal Commission voted against their staff recommendations and approved the project.


City of Oceanside – Coast Highway Incentive District (2023)

Until recently, the California Environmental Quality Act (CEQA) required analysis of projects and plans based on the amount of traffic they would generate. That analysis was called “Level of Service.” Paradoxically for a statute intended to protect the environment, Level of Service considered the slowing of traffic - a mere inconvenience to drivers – to be an environmental impact that would often need to be mitigated by widening roads to allow for more driving. Level of Service analysis has been widely discredited because automobile emissions are the leading contributor to greenhouse gasses in California.\(^8^3\)

In 2013, the Legislature adopted SB 743, which began a process to prohibit the use of Level of Service analysis for CEQA.\(^8^4\) Level of Service would ultimately be abandoned for CEQA and replaced with a requirement to analyze ways to reduce the amount of vehicle miles traveled.

Recently the City of Oceanside prepared an amendment for its Local Coastal Plan to create a “Coast Highway Incentive District,” to encourage more infill and multifamily development. Infill is broadly understood by climate regulators as a key strategy for reducing vehicle miles traveled and associated greenhouse gas emissions.\(^8^5\)

In their formal report, Coastal Commission staff recommended that Oceanside change their proposed LCP amendment to add in the discredited Level of Service Analysis.\(^8^6\) This is not a case of the Coastal Commission directly defying state law, since SB 743 related to CEQA, not the Coastal Act. Still, the Legislature determined that Level of Service analysis was contrary to the state's goals on climate change and reducing vehicle miles traveled. Instead of choosing to align itself with the state's climate goals, the Coastal Commission chose to prioritize more driving. This is especially troubling given the Coastal Commission's mandate to steward California's environmental resources.

These examples point to a variety of ways in which the Coastal Commission's actions related to climate and transportation policy are often at odds with the directions set by the Legislature. They are inconsistent with a growing consensus in the environmental community toward the need for more climate action around transportation. These troubling examples point to a need for the Legislature to bring the Coastal Commission along with its goals to address street safety and climate change.


\(^8^6\) Coastal Commission Staff Report, City of Oceanside LCP Amendment No. LCP-6-OCN-23-0035-1 (September 28, 2023), available at https://documents.coastal.ca.gov/reports/2023/10/Th18a/Th18a-10-2023-report.pdf.
Recommendations for Reform

The Coastal Commission serves an important function to protect habitat and coastal access. These are entirely compatible with other goals established by the California Legislature. The Coastal Commission itself states its commitment to housing affordability, addressing segregation, and climate change, but unfortunately its actions do not always live up to its stated values.

The statewide housing reforms that have been the most successful are those that create clear rules for adopted land use plans, while limiting vague and discretionary processes for projects that are consistent with those plans. Policies like Density Bonus Law are an important example of a housing reform. When a developer chooses to dedicate some of their units as deed-restricted and permanently affordable, then cities and counties are not able to deny projects that meet the requirements of the plans they have already adopted.

While the Legislature requires that the Coastal Act be harmonized with Density Bonus Law, the examples in this report show that the Coastal Commission often ignores or undermines the Legislature’s goals for building deed-restricted affordable homes.

It is time to ensure that the Coastal Commission lives up to the same standards of predictability, coherence, and rationality for affordable housing that cities and counties must. Additionally, laws need to be updated and amended to ensure that the Coastal Commission is both empowered and required to treat its transportation policy choices in a manner that takes climate change seriously.

Below are some specific recommendations.

1. **Amend Density Bonus Law to require its implementation in the Coastal Zone.**

With AB 2797, the Legislature expressed its intent that the Coastal Commission “harmonize” Density Bonus Law and the Coastal Act. As this report demonstrates, Coastal Commission actions often disregard the text and goals of Density Bonus Law.

The Legislature needs to take a firmer approach. It should require the Coastal Commission to live up to the same standards and obligations as cities and counties when projects propose to use Density Bonus Law and comply with duly adopted land use plans.

Assembly Bill 2560 (2024) by Assemblymember Alvarez would accomplish this and help create new affordable homes where there is already appropriate zoning in the Coastal Zone.

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2. Remove or narrow the special exemptions that keep existing statewide housing reforms from applying at the coast.

The Legislature should remove other exemptions in statute that limit the application of statewide housing legislation in the Coastal Zone. It should start with those laws that are designed to encourage more affordable homes in already urban spaces. Density Bonus Law is one example, but others include policies around accessory dwelling units and the Housing Accountability Act.

One example is Senate Bill 1077 (2024), in the form originally introduced by Senator Blakespear. The original text of that bill would have limited the ability of the Coastal Commission to block the construction of accessory dwelling units, similar to the rules that already govern cities and counties. Under current practice, the Coastal Commission can undertake extremely burdensome reviews, including a recent example where the Commission staff report topped 120 pages in length.

3. Mandate procedural reforms at the Commission.

The Legislature should mandate reforms to the Commission’s internal processes. The Legislature requires a limited 49-day period for the Coastal Commission to determine whether appeals of Coastal Permits raise a “substantial issue,” but Commission staff routinely require applicants to waive that timeline. The Legislature should reaffirm its commitment to the 49-day period, and prohibit the Commission from requesting waivers from project applicants.

The initial draft of SB 1092 (2024), also authored by Senator Blakespear, attempted to pursue some of these goals. Unfortunately it was essentially gutted after substantial opposition from the Coastal Commission itself.

4. Apply transportation and climate policy to the Coastal Zone.

Recent reforms intended to encourage bicycle infrastructure and to move away from road widening should be applied to the Coastal Commission, just as it is to cities and counties. The Coastal Commission should be prohibited from requiring either road widening or the use of the discredited Level of Service analysis. It should also be required to evaluate street safety improvements as creating a positive contribution to coastal access.

The Coastal Commission should also be empowered to say yes to bicycle infrastructure, without requiring costly and time intensive updates to individual LCPs. Senate Bill 689 (2023-2024) from Senator Catherine Blakespear is pending in the Legislature at the time of this publication. It seeks to clarify that bicycle lanes in the Coastal Zone do not require amendments to LCPs.

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5. Avoid creating, or narrowly draw, Coastal Zone exemptions to new housing legislation.

The Legislature should stop providing exemptions to statewide housing legislation where sensitive environmental resources like wetlands are not at issue. Of the Commission’s many delays and denials discussed in this report, not one of them was primarily based on objections a layperson would characterize as “environmental.”

The Commission has typically interpreted its own mandate as broadly as possible. If the Legislature makes any exceptions to housing legislation for the coast, it must specify which types of environmental resources it means to protect, such as “wetlands and estuaries.” Vague categories of concerns like “coastal resources” may sound environmental, but the Commission has a history of interpreting those as subjective and exclusionary terms like “community character” or “scale and massing.”


The Legislature should take a skeptical view to any demands by the Coastal Commission for more authority over housing of any kind. The Commission has a proven track record of using its authority to impose additional burdens that prevent and delay affordable homes.
Conclusion

It is time for the Legislature to revisit its relationship with the Coastal Commission. While the Coastal Commission serves important functions in California, it does not always work in concert with the Legislature’s adopted goals for affordable housing, reducing segregation, and fighting climate change. Reasonable reforms can help align the activities in our coastal communities toward important and compatible state goals. With reforms, California can enjoy the fruits of a better Coastal Commission.

Photo source: Alfred Twu (2024)