SB 423: Streamlining Affordable Housing in California's Coastal Zone

Update: California Gavin Newsome signed Senate Bill 423 into law. Click here to read the update.

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Senate Bill 423 (SB 423 or "the Bill") is one of the latest reform efforts by California lawmakers aimed at facilitating the production of affordable housing throughout the state. If passed, SB 423 could dramatically change the affordable housing landscape of California's coast for years to come.

The Bill expands upon and extends California Senate Bill 35 (SB 35), a 2017 law that created a streamlined, ministerial approval process for qualifying multifamily and mixed-use affordable housing projects in localities that were struggling to meet their state-mandated housing goals, which law is set to sunset on January 1, 2026. Notably, in addition to extending the operation of SB 35 until January 1, 2036, the Bill, if enacted, would extend the same streamlined, ministerial review process created under SB 35 to the previously exempt "Coastal Zone" – an approximately 840-mile band on California's coast which is protected under California's Coastal Act (the "Coastal Act").

Currently, development in the Coastal Zone is regulated by the 12 voting members of the California Coastal Commission (CCC), a regulatory body established pursuant to the Coastal Act which is responsible for the protection of California's natural coastal resources. The CCC has the final say regarding development on the coast and operates with broad discretion, with the Coastal Zone historically being largely excluded or otherwise excepted from state housing reform efforts like SB 35. While SB 423 would not eliminate the role of the CCC, the Bill would limit the CCC's discretion over certain qualifying developments in the Coastal Zone by subjecting such developments to the ministerial and streamlined review provisions of SB 35, as further discussed below.

Ministerial Review

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SB 35 requires that local governments approve a proposed development if the development is consistent with certain objective local planning standards in effect at the time of application. While localities can apply their own set of objective, pre-defined criteria, SB 423 would prohibit localities from requiring special studies, tests, reports or other materials that are not necessary for, or directly relevant to, assessing compliance with the objective planning standards applicable to the development. Accordingly, many question how SB 423 may impact the applicability of the Coastal Act to these projects, which regulates development in the Coastal Zone through discretionary coastal development permits (CDP) issued by either the CCC or local governments with a local coastal plan (LCP) that has been approved by the CCC. Under the Bill, if a proposed development in the Coastal Zone is not otherwise exempt and is consistent with the objective zoning and design standards set by the locality, it should obtain a CDP. This effectively removes the CCC's ability to impose additional or discretionary conditions and procedures that may delay or burden the approval of otherwise qualified developments. The Bill may be particularly impactful in localities without a certified LCP – which would account for special, discretionary policies of the Coastal Act and the CCC – as approvals would be based on the objective, general planning standards then in effect, without additional consideration or discretionary review for consistency with the Coastal Act.

Streamlined Approval

SB 35 also caps the standardized, ministerial approval process at three to six months, depending on project size. Projects that qualify for ministerial review under SB 35 are exempt from excessive testing, lengthy hearings, and other discretionary processes imposed by local governmental entities that could extend the timeline for approval. Consequently, applying SB 35 to the Coastal Zone could greatly expedite permitting and, in turn, the development of affordable housing along the coast. While SB 35 currently still permits some form of public oversight and design review, any such oversight and review cannot inhibit or delay the

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ministerial process. Thus, under SB 423, the CCC may be required to waive more time-consuming information requests or procedural requirements. SB 423 would expand SB 35 by requiring all local governmental entities that are required to approve a development prior to entitlement to adhere to the SB 35 streamlining provisions, so the CCC review process, modified or not, would have to be completed within the specified time frames.

Conclusion

SB 35 has been viewed unfavorably by many California cities, who view it as unfairly wrestling local control of land use away from local governments. SB 423, if enacted, will likely be viewed in the same light. While the full extent of its impact remains to be seen, SB 423 directly challenges the CCC's longstanding control over California's Coastal Zone.

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