

# Chapter 8      Local Coastal Development Permit Appeal Process

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Certain local government actions on coastal development permit applications reviewed pursuant to a certified local coastal program (LCP) are appealable to the California Coastal Commission (CCC).

## 8.1 Application

A large majority of the Department's projects meeting the definition of "development" under the Coastal Act are also considered public works projects. Therefore, a local government's decision to approve or deny a coastal permit application on the Department's projects is appealable to the CCC irrespective of the project's location in the permit appeal area of a certified LCP.

## 8.2 Local Government Appeal Process

The coastal development appeals process begins with a local decision to approve a coastal development permit application or, in the case of public works projects, to approve or deny a coastal development permit. The initial decision-maker may be a planning director, zoning administrator, planning commission, or other entity, depending on the type of development proposed and the local review process. If the decision is appealable and an appeal is filed, the decision-making authority over the permit is elevated to a higher review body until: (1) there is no further local appeal of the decision (e.g., a decision by the planning commission on an appeal is not followed by an appeal to the city council or board of supervisors); or (2) there are no more local bodies to appeal to (e.g., the city council or board of supervisors renders a final decision on the application).

### 8.2.1 Final Local Action Notice and Appeal Period

Once a final decision is rendered on the permit application, the local government sends a notice of the final action to the appropriate CCC district office. If the local action is appealable to the CCC, then it is subject to a 10-working-day appeal period. However, if CCC staff does not receive a notice of final action or finds the notice of final action to be incomplete, the appeal period will not begin until the required information is received. CCC staff will notify the local government and applicant in writing of either the appeal period dates, or any deficiencies in the notice that require follow-up action to initiate the appeal period.

The 10-working-day CCC appeal period begins on the first working day following the day on which the CCC office receives the complete notice of the final action. An appeal must be submitted to the CCC office in writing by 5 p.m. of the tenth working day of the appeal period.

The appeal is typically made by completing a copy of the CCC's appeal application form, available on the [CCC's website](#) or from any of the CCC's offices, and may include additional information attached to that form.

### **8.2.2 Grounds for Appeal/Eligible Appellants**

Grounds for appealing projects acted on pursuant to a certified LCP are limited under the Coastal Act. The grounds for appeal of the approval of most appealable projects are limited to an allegation that the development does not conform to the standards set forth in the certified LCP and, for projects located between the shoreline and the first public road parallel to the shoreline, the public access policies of the Coastal Act.

The grounds for an appeal of a denied permit for a public works project or energy facility are limited to whether the project conforms to the requirements of the LCP or, for projects located between the shoreline and the first public road parallel to the shoreline, the public access policies of the Coastal Act.

An appeal of a local decision on a coastal permit can be filed by the project applicant, an aggrieved person, or two coastal commissioners. An “aggrieved person” is someone who, in person or through a representative, expresses concerns about an application or local government action by appearing at the local public hearing, or otherwise communicating concerns to the local government by other appropriate means prior to a hearing; or who for good cause was unable to do neither ([California Public Resources Code \(PRC\) Section 30801](#)). To qualify as an aggrieved person with appeal rights, the appellant must have exhausted the local appeals process, except in the following instances, when appeals can be made directly to the CCC:

1. The local government requires an appellant to appeal to more local appellate bodies than have been certified, as appellate bodies for permits in the coastal zone in the LCP implementing ordinances.
2. An appellant was denied the right of the initial local appeal by a local ordinance that restricts the class of persons who may appeal a local decision.
3. An appellant was denied the right of local appeal because local notice and hearing procedures did not comply with the notice and hearing provisions of the CCC's regulations.
4. The local government charges an appeal fee for the filing or processing of appeals.
5. Two commissioners appeal the final local action.

When an appeal to the CCC is submitted, CCC staff will determine if the appeal is valid, determine if the appellant has standing to appeal, and determine if grounds cited for appeal are

valid. CCC staff may contact local government staff to determine if the person filing the appeal participated in the local hearing process, and therefore exhausted the appeal process at the local level. Also, within 5 working days of receiving an appeal from any person other than members of the CCC or any public agency, the executive director of the CCC determines whether the appeal is patently frivolous. If such a determination is made, the appeal is not filed until a \$300 fee is deposited with the CCC within 5 working days of the receipt of this determination.

### **8.2.3 Substantial Issue Determination**

If the appeal is valid, CCC staff will immediately notify the local government and applicant in writing that issuance of the coastal permit is suspended pending resolution of the appeal. CCC staff will request the complete administrative record on the project from the local government, including environmental documents, staff reports, hearing minutes, and other supporting materials, to be sent to the CCC district office within 5 working days from the local government's receipt of the notice of appeal. If the CCC fails to receive the complete administrative record, it will set the matter for hearing and the hearing will be left open (no analysis on the appeal or project will be conducted and no action will be taken) until all relevant materials are received.

The CCC's review of the appeal is a two-step process. The CCC first determines whether the local action raises a "[substantial issue](#)" with respect only to the specific allowable grounds upon which the appeal was filed. That is, the CCC determines if the appellant's contentions that the project is consistent or inconsistent with applicable policies and processing procedures are valid. If the CCC finds "no substantial issue," the appeal is dismissed and the final action of the local government stands. The CCC will send written notice of the no substantial issue determination to the local government, and the local government may issue the permit.

### **8.2.4 De Novo Hearing Requirements and Procedures**

If the CCC finds that the appeal does raise a substantial issue, the final action of the local government on the coastal development permit is no longer in effect. The CCC sets the appeal for a "[de novo](#)" hearing and will act upon the appeal as a new project, approving, denying, or conditionally approving the coastal permit application. The CCC's action supersedes the local government's final action for the coastal development permit only. (The CCC action has no effect on other locally-issued discretionary permits.) Both the substantial issue and de novo hearing require a public hearing, and the CCC may take both steps at the same hearing. In these instances, CCC staff may issue a combined staff report for the substantial issue determination that also addresses the project's consistency with applicable coastal policies, with a recommendation to approve or deny the permit.

Coastal Act Section 30604(b) provides that, "After certification of the local coastal program a coastal development permit shall be issued if the issuing agency or the CCC on appeal finds that the proposed development is in conformity with the certified local coastal program." Therefore, if the CCC finds substantial issue and conducts a de novo hearing on the appealed permit application, the legal standard of review for project consistency is the policies of the certified

LCP. At the de novo hearing the CCC can consider all issues regarding compliance with the certified LCP policies, not only those raised in the appeal.

In addition, for projects located between the first public road and the sea or the shoreline of any body of water within the coastal zone, Section 30604(c) requires that a specific finding must be made by the approving agency (whether the local government or the CCC on appeal) that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access and recreation questions, during de novo review the CCC also considers if an appealed project is consistent with not only the certified LCP, but also the public access and recreation policies of Chapter 3 of the Coastal Act.