

**CALIFORNIA COASTAL COMMISSION**

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June 9, 2014

TO: Coastal Commissioners and Interested Parties

FROM: Charles Lester, Executive Director

SUBJECT: Briefing on the Commission's Coastal Development Permit Appeals Process,  
For Public Hearing Commission June 11-13, 2014 Meeting - **Discussion item only.**

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## I. Appeals of Local Government Coastal Development Permits

After the Coastal Commission certifies a Local Coastal Program (LCP) submitted by a local government, the authority to issue coastal development permits (CDPs) for new development not in the Commission's original permit jurisdiction is delegated to the local government.<sup>1</sup> Development authorized by a local CDP must be consistent with the policies and standards of the certified LCP and, for developments between the first public road and the sea, the public access and recreation policies of the Coastal Act.<sup>2</sup>

Although the Coastal Act delegates significant CDP authority to local government after LCP certification, the Commission also retains an important and on-going appellate oversight role over coastal developments in specific geographic areas and certain types of development to assure the effective implementation of LCPs with respect to issues of statewide concern under the Coastal Act. Certain local CDP decisions thus may be appealed to the Coastal Commission. Specifically, Coastal Act section 30603(a) provides:

*(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

*(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of*

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<sup>1</sup> Pursuant to Coastal Act § 30519, the Commission retains permitting jurisdiction over development on tidelands, submerged lands, and public trust lands. The Commission also retains CDP jurisdiction in any geographic areas of deferred certification (ADCs).

<sup>2</sup> Public Resources Code (PRC) § 30604.

*any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.*

*(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

*(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*

*(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

*(5) Any development which constitutes a major public works project or a major energy facility.*

Coastal Act section 30625 allows for the appeal of local CDPs to the Commission by a permit applicant, any aggrieved person, or any two members of the commission.<sup>3</sup> Pursuant to Coastal Act section 30603(b), the grounds for an appeal pursuant to section 30603(a) are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act. The grounds for an appeal of a *denial* of a permit for a major public works project or major energy facility are limited to allegations that the development conforms to the standards set forth in the certified local coastal program and the public access policies of the Act.

If an appeal is filed with the Commission, the operation and effect of the local CDP action is stayed pending a decision by the Commission on the appeal.<sup>4</sup> The Commission must schedule a hearing for an appeal within 49 days of it being filed with the Commission, unless the applicant waives this requirement.<sup>5</sup>

## **II. Commission Appeal Review Process<sup>6</sup>**

Coastal Act section 30625 states that the Commission may approve, modify, or deny a proposed development on appeal to the Commission. The Act also establishes a *presumption* that an appeal should be heard by the Commission unless the Commission determines that “no substantial issue exists” with respect to the grounds on which an appeal was filed:

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<sup>3</sup> Pursuant to the Commission’s regulations (14 CCR § 13006) and Coastal Act section 30801, an “aggrieved person” means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. “Aggrieved person” includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.

<sup>4</sup> PRC § 30623.

<sup>5</sup> PRC §§ 30621; 30625.

<sup>6</sup> For an overview of the process, see the [FAQ](#) on the appeals process posted on the Commission’s website.

. . . (b) *The commission shall hear an appeal unless it determines the following:*

*(2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.<sup>7</sup>*

The Commission’s regulations provide further direction on the appeal review process (see [Appendix A](#), attached). Title 14 of the California Code of Regulations (CCR) section 13111 specifies the information necessary to file an appeal, and restates the Coastal Act section 30603(c) requirement that appeals be filed with the Commission within 10 working days of the receipt of a notice by the Commission of the final local CDP decision. The Commission provides a standard appeal [form](#) for eligible appellants to use. 14 CCR 13112 specifies that upon receipt of a timely appeal by the Commission the effect of the local CDP decision is stayed, and that the local government shall, within 5 days of receiving notice of the appeal, provide to the Commission “all relevant documents and materials used by the local government in its consideration of the coastal development permit application.”

The Coastal Act’s presumption that appeals should be heard by the Commission is implemented by 14 CCR 13115 and by its historic hearing practices. The Executive Director makes “a recommendation to the commission as to whether the appeal raises a significant question” within the meaning of section 30625(b), which is the requirement that the Commission hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which it was filed under section 30603 (see above).<sup>8</sup> Pursuant to 14 CCR 13115(b), “[u]nless the Commission finds that the appeal raises no significant question . . . the Commission shall consider the application de novo” using the process established in its regulations for review of regular CDP applications. 14 CCR 13115(c) specifies that the Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to hear an appeal, and it states the requirement that “[a] majority vote of the members of the Commission present shall be required to determine that the Commission will not hear an appeal.” Finally, only the applicant, those who opposed the application before the local government, and the local government may testify in the Commission’s review of the appeal.<sup>9</sup> All other persons may submit comments in writing.<sup>10</sup>

### **A. The Process for “No Substantial Issue” Recommendations**

In practice, the Commission’s implementation of the appeal process pursuant to the Coastal Act and implementing regulations has taken one of two forms in its public hearings. When the Executive Director is recommending that the Commission find that an appeal does not raise a

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<sup>7</sup> PRC § 30625(b).

<sup>8</sup> 14 CCR 13115(a).

<sup>9</sup> 14 CCR 13117 states: “Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at any stage of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners . . . .”

<sup>10</sup> 14 CCR 13177.

substantial issue, there is a public hearing in which the staff recommendation is presented to the Commission, testimony is taken, and the Commission deliberates and decides whether the appeal raises a substantial issue.<sup>11</sup> In this hearing, staff makes its recommendation and presents evidence rebutting the statutory presumption that an appeal raises a substantial issue. In addition, when the Commission finds that no substantial issue exists on an appeal, it makes a quasi-judicial decision; therefore, it must support its decision with findings. In turn, these findings must be supported by substantial evidence in the record. Therefore, a staff report recommending that the Commission find that no substantial issue exists must include a discussion of the evidence presented with respect to that determination as well as a conclusion based upon that discussion. Because a finding of no substantial issue would mean that the Commission turns down the appeal and has no further proceedings on the matter, holding the hearing also provides the appellants, aggrieved persons, and the applicants with due process to make their cases to the Commission for consideration.

Though not specified in regulation, the Commission's practice for conducting a "no substantial issue" hearing is to hear the staff recommendation, take any ex parte communication reports from the Commission, and then generally provide 3 minutes of speaking time per side, with the appellant speaking first, followed by the applicant, and then allowing any other aggrieved persons (representing separately identified sides) to speak, followed by a Commission staff rebuttal.<sup>12</sup> Sometimes, in the discretion of the Chair, the Commission may hear 3 or more minutes from multiple appellants. The Commission then deliberates and makes a decision. Because the Coastal Act presumes a substantial issue, and requires a majority of Commissioners to decide otherwise, the standard motion is to move a finding of no substantial issue, and recommend a yes vote as follows:

*Staff recommends a YES vote on the following motion. Passage of this motion would result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission would not hear the application de novo and the local action would become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

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<sup>11</sup> The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. See *Hines v. California Coastal Commission* (2010) 186 Cal.App.4th 830 in which the Court of Appeal upheld the factors the Commission uses in determining whether an appeal raises a substantial issue.

<sup>12</sup> The Commission's agenda includes the following guidance:

*SUBSTANTIAL ISSUE. On the recommendation of staff or 3 members of the Commission, a public hearing will be held to determine whether the decision being appealed raises any substantial coastal issues. The time limits for this public hearing are: 3 minutes combined total per side to address the question of substantial issue.*

***Motion:** I move that the Commission determine that Appeal Number X-X-XXX-XX-XXXX raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution:** The Commission finds that Appeal Number X-X-XXX-XX-XXXX does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## **B. The Process for “Substantial Issue” Recommendations**

The hearing procedure in cases where the Executive Director is recommending that an appeal raises a substantial issue is somewhat different. Early in the implementation of the Coastal Act appeal process, the Commission established a procedure to provide for an expedited hearing process that also addressed the Coastal Act presumption that appeals should be heard de novo by the Commission unless a majority of Commissioners decide that they don’t raise a substantial issue. When the Executive Director is recommending that an appeal raises a substantial issue, the Chair has asked whether three or more Commissioners would like to discuss the question of substantial issue.<sup>13</sup> If three or Commissioners raise their hand, the Commission proceeds with a hearing to address whether the appeal raises a substantial issue, following the process described above. The main difference in such a case is the recommended NO vote on the motion. Unless a majority of Commissioners votes in the affirmative, substantial issue is found.

If three or more Commissioners do not indicate an interest in hearing the question of substantial issue, then the Commission is presumed to find substantial issue, and the de novo portion of the hearing either begins immediately, or is continued to a later date if the staff has not yet prepared a de novo recommendation. Unless three or more Commissioners request a hearing on whether the appeal raises a substantial issue, the Commission typically does not take public testimony on the presumptive finding of substantial issue because the subsequent de novo portion of the hearing will provide it, along with staff presentation of evidence and Commission deliberation, and decision.

Whether or not an appeal hearing includes both the substantial issue finding and the de novo hearing at the same Commission meeting often depends on whether the Commission has received the local government’s record and had adequate time to review the project and prepare adequate findings for a de novo recommendation. As summarized above, the Commission must

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<sup>13</sup> The origin of the “three or more Commissioners” practice is unclear, though it was used in the late 1970s pursuant to a Commission policy that provided for streamlining no substantial issue determinations and has been used by the Commission for SI determinations since at least 1985. One explanation for the number three is that this is the highest number that would not constitute a majority of the standard Commission quorum, which is seven commissioners when all twelve appointments are filled. The Commission’s regulations also include the “three or more” rule for other situations where the Executive Director is making a permit processing determination, including removing permits from the Consent calendar (13103), processing a CDP amendment as material instead of immaterial (13166(b)(2)), overriding the Executive Director’s extension of a CDP (13169), overriding the ED’s approval of an amendment to an exclusion order (13225), reviewing the ED’s interpretation of an exclusion (13231), and overriding the ED’s determination to waive a permit requirement (13250, 13252, 13253).

hear the question of substantial issue within 49 days of an appeal being filed unless this requirement is waived by the applicant. When it isn't waived, the Commission staff has very little time (sometimes as little as a few days) to review the appeal and prepare a recommendation. Often the staff has not even received the full administrative record from the local government prior to the time when staff reports must be published in time to meet 49-day requirements. That record may (or may not) substantiate the local decision, and the fact that it may not be available for review makes the process even more challenging.

But other times the local decision and record have failed to address certain questions or information that the Commission staff believe is necessary in order to evaluate the consistency of an application with the LCP or public access policies of the Coastal Act. In such cases, the staff will provide a substantial issue recommendation only, and if the Commission finds substantial issue, agendaize the de novo recommendation at a later date after the necessary information is received. Sometimes, though, an applicant is willing to waive the 49 day hearing rule to give the Commission staff more time to evaluate the appeal and/or to provide additional information for the Commission's consideration. In these cases the staff will typically bring a combined substantial issue/de novo staff recommendation to the Commission, proceeding immediately into the de novo portion of the hearing once substantial issue is found. In some instances, waiver of the 49 days allows staff time to analyze the development and determine that the appeal does not raise a substantial issue.

Pursuant to 14 CCR 13115(b), the de novo hearing for an appeal is conducted in the same manner as the hearing for a regular coastal development permit application in the Commission's jurisdiction. The staff makes its recommendation, the Commission reports ex partes, the applicant and interested parties testify, the staff provides a rebuttal, and the Commission deliberates and decides.<sup>14</sup>

### **III. Importance of the Commission's Appellate Role & Practical Concerns**

The Coastal Act CDP appeals process is an important implementation mechanism for the Commission's LCP planning and regulatory program. LCPs are intended to implement the statewide policies of the Coastal Act. The Commission is the statewide body tasked with assuring that local governments interpret and apply their LCPs consistent with the Coastal Act with respect to those critical geographic areas and types of development defined by the legislature to be of statewide concern (e.g., immediate shoreline, adjacent to wetlands and streams, conditional land uses). The importance of the Commission's role has been explained and upheld by the courts.<sup>15</sup> The Coastal Act itself states that appeal decisions of the Commission, where applicable, shall guide local governments or port governing bodies in their future actions under the Coastal Act.<sup>16</sup> Commission appellate review thus provides an important oversight

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<sup>14</sup> In the de novo stage, any interested person may testify, not only "aggrieved persons."

<sup>15</sup> "The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government... The Commission applies state law and policies to determine whether the development permit complies with the LCP." *Charles A. Pratt Construction Co. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1075-76 (internal citations omitted).

<sup>16</sup> *Ibid.*, PRC § 30625(c).

mechanism and backstop to local LCP implementation, and an important way for the public to continue to be involved in Coastal Act implementation. It provides a way for the Commission to assure that on-going implementation of the Coastal Act at the local level is dynamic and responsive to statewide policy concerns, changing conditions, and new information as may be identified by the Commission. It is also a critical mechanism for continued on-going collaboration between Commission and local government staff to achieve the goals of the Coastal Act through LCPs.

### **A. Commissioner Appellants**

Appeals are filed both by the general public and individual Commissioners. In practice, Commissioner appeals almost always originate with a recommendation to file an appeal from Commission staff to the individual Commissioners, based on the staff's understanding of the reported local decision, potential resource impacts, and the requirements of the relevant LCP and the public access policies of the Coastal Act. Reviewing local CDP decisions is one of the important responsibilities of Commission staff. As a practical matter, because individual Commissioners are part-time, they cannot monitor the many hundreds of local coastal development permit decision processes that happen over the course of a year, particularly given the very short time-frame for filing an appeal. Hence, they rely on the post-certification monitoring and oversight of local government decisions by the Commission staff in considering whether to sign on to an appeal.

Given the Commission's historic workload, it has also been difficult even for the Commission staff to be fully apprised of every on-going local CDP, and often there is very little time to complete the filing of a Commissioner appeal. Because of this, the Commission developed a practice to retain pre-signed Commissioner appeal forms to facilitate timely filing of an appeal. Although this practical process has been criticized at times, the Commission has been transparent about this process, and Commission staff is not aware of any instance when a Commissioner appeal was filed without the authorization of the individual Commissioners.

It is also important to recognize that the filing of a Commissioner appeal does not mean that the individual Commissioner appellants have reached a conclusion about whether or not a local coastal development permit decision should be upheld or not, or even whether an appeal raises a substantial issue. Rather, the Legislature created the Commissioner appeal process as a statutory mechanism to enable the Commission, through its staff and two individual Commissioner appellants, to bring forward local CDP decisions for additional review by the Commission as a whole from the perspective of the statewide oversight body charged with implementing the Coastal Act. An appeal is a set of *allegations* that aspects of a local CDP approval are not consistent with the LCP or the public access policies of the Coastal Act, based on staff's best understanding of the local decision and administrative record at the time. It is a way to allow for additional information to be developed, and for further analysis of LCP consistency to occur by the Commission itself, including through consideration of the Executive Director's recommendation on substantial issue and potentially a de novo review. No Commissioner appellant is bound by the allegations in a filed appeal to find substantial issue or take any particular action in a de novo review of an appealed action. In fact, at the time Commissioners file appeal forms, staff likely has not seen the entire record from the local government and

cannot provide the more complete assessment that occurs at the time of the substantial issue determination.

## **B. Options for Determining Substantial Issue**

Questions have been raised recently about the Commission procedure of presuming and finding substantial issue when the Executive Director so recommends, unless three or more Commissioners express a desire to have a hearing on the substantial issue question. As summarized above, the current procedure provides an expedited review process for implementing the statutory presumption of substantial issue and proceeding to a de novo review. If not even three Commissioners would like to hear the question of substantial issue, then it seems certain that a majority would not find otherwise.

However, it has been pointed out that this procedure as currently implemented does not provide a mechanism for the Commission to ask questions prior to deciding whether to hear an appeal, as is contemplated by the Commission's regulations, unless three or more Commissioners would like to hear the substantial issue question.<sup>17</sup> (When the Executive Director is recommending that an appeal does not raise a substantial issue, there is a hearing, and the opportunity for Commission questions is provided through this hearing.). Under this regulation, the Commission as a whole may ask questions prior to determining whether or not to hear an appeal. While the exact origin of the "3 or more" practice is unknown, it may have been a way of determining when enough Commissioners had questions so that the Commission as a whole had a process in place for asking such questions.<sup>18</sup> Currently, some commissioners have expressed an interest in changing this practice to enable individual commissioners to ask questions before determining whether or not to hear an appeal.

It is important that the Commission's hearing procedures are clear, consistent and predictable. The current procedure has been used effectively since at least the 1980s, and has been summarized and discussed in a court of appeal case that upheld the Commission's appeal process.<sup>19</sup> It provides a streamlined, legal process for hearing appeals when the Executive Director is recommending that the Commission find the appeal raises a substantial issue. It also implements the Coastal Act presumption that appeals raise a substantial issue unless a majority of Commissioners determine otherwise. On the other hand, as mentioned above, it defers a full hearing of the evidence to the de novo stage, and it does not specify a time for the Commission to ask questions prior to finding substantial issue, unless three or more Commissioners indicate a desire to discuss the question or the Executive Director is recommending no substantial issue.

There are other possible appeal hearing procedures that could be used consistent with the Coastal Act and its implementing regulations. One possibility would be to hold a full public hearing on

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<sup>17</sup> As discussed earlier, 14 CCR 13115(c) specifies that the Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to hear an appeal.

<sup>18</sup> See footnote 13 above.

<sup>19</sup> *Coronado Yacht Club v. California Coastal Commission* (1993) 13 Cal.App.4th 860. Numerous other court cases, both published and unpublished, have upheld the Commission's appeals and processes. *See also, Alberstone v. California Coastal Commission*, (2008) 169 Cal.App.4th 859; *McAllister v. California Coastal Commission*, (2008) 169 Cal. App. 4th 912



every appeal regarding whether the appeal raises a substantial issue, regardless of the staff recommendation. This would allow an opportunity for everyone eligible to participate to do so in a consistent and predictable format. It would allow for Commission questions after the staff recommendation is presented, ex partes disclosed and the participants have testified, and prior to Commission decision about whether to hear an appeal de novo. On the other hand, this approach could be considered contrary to the Legislature's presumption that an appeal raises a substantial issue and would entail more and longer appeal hearings (reduced streamlining), and thus use more of the Commission's limited meeting time. In instances when the staff is presenting a recommendation on both the substantial issue question and the de novo review, it would always potentially result in two rounds of presentations and public comment on the same agenda item, as sometimes occurs already when the staff is recommending both actions.

Another option would be to hold a full hearing regarding whether an appeal raises a substantial issue when only one Commissioner requests it, and allow for Commission questions through the ensuing public hearing. While this approach would be more accommodating of individual Commissioner desires to ask questions prior to decision on substantial issue, it would presumably lead to more substantial issue appeal hearings.

Finally, the Commission could use a hybrid approach, utilizing its current procedure, but after the staff report and disclosure of ex partes, the Chair could ask if any commissioners have questions. If three or more do, then the Commission would proceed to a full substantial issue hearing as is currently done. If only one or two Commissioners have questions, the Chair could ask about the nature and number of the questions, and if the questions seem to be only minor or clarifying in nature, have the commissioners ask their questions at that time. After those questions, the Chair could then ask again if three or more want to discuss and if so, move to the full substantial issue hearing. If not, substantial issue would be found and the de novo hearing continued or conducted.

An advantage to the hybrid approach is that it would provide for questions from one or two Commissioners prior to determining substantial issue while preserving the presumption of substantial issue. It also preserves the discretion of the Chair to be responsive to individual cases in the public hearing setting. On the downside, though, it may be difficult to consistently discern and apply the determination about the nature and extent questions and may result in public confusion about the process. If Commissioner questions are extensive and/or more probing of the evidence and analytic arguments, the Commission may effectively "back in" to a hearing on substantial issue, without first having had a full staff presentation, ex parte disclosures, and testimony by the appellant(s), applicant, and other aggrieved persons. The predictability and coherence of the hearing may thus be undermined.

## **APPENDIX A – Commission Appeal Regulations**

### **Subchapter 2. Appeals to State Commission**

#### **§ 13110. Commission Procedures Upon Receipt of Notice of Final Local Action.**

Within three (3) working days of receipt of notice of final local decision, the executive director of the Commission shall post a description of the development in a conspicuous location in the Commission office and the appropriate district office. The executive director shall at the same time mail notice of the local action to the members of the Commission. The ten working day appeal period shall be established from the date of receipt of the notice of the final local government action.

#### **§ 13111. Filing of Appeal.**

(a) An appeal of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two (2) members of the Commission. The appeal must contain the following information:

- (1) the name and address of the permit applicant and appellant;
- (2) the date of the local government action;
- (3) a description of the development;
- (4) the name of the governing body having jurisdiction over the project area;
- (5) the names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;
- (6) the names and addresses of all other persons known by the appellant to have an interest in the matter on appeal;
- (7) the specific grounds for appeal;
- (8) a statement of facts on which the appeal is based;
- (9) a summary of the significant question raised by the appeal.

The filing of the notice of appeal should also contain information which the local government has specifically requested or required.

(b) The appeal must be received in the Commission district office with jurisdiction over the local government on or before the tenth (10th) working day after receipt of the notice of the permit decision by the executive director.

(c) The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

#### **§ 13112. Effect of Appeal.**

(a) Upon receipt in the Commission office of a timely appeal by a qualified appellant, the executive director of the Commission shall notify the permit applicant and the affected local government that the operation and effect of the development permit has been stayed pending Commission action on the appeal by the Commission as required by Public Resources Code Section 30623. Upon receipt of a Notice of Appeal the local government shall refrain from issuing a development permit for the proposed development and shall, within five (5) working days, deliver to the executive director all relevant documents and materials used by the local government in its consideration of the coastal development permit application. If the Commission fails to receive the documents and materials, the Commission shall set the matter for hearing and the hearing shall be left open until all relevant materials are received.

#### **§ 13113. Grounds of Appeal.**

The grounds of appeal for any development appealable under Public Resources Code Section 30603(a) shall be limited to those specified in Public Resources Code Section 30603(b) and (c).

#### **§ 13114. De Novo Review.**

Where the appellant has exhausted local appeals a de novo review of the project by the Commission shall occur only after the local decision has become final.

#### **§ 13115. Substantial Issue Determination.**

(a) At the meeting next following the filing of an appeal with the Commission or as soon thereafter as practical, the executive director shall make a recommendation to the commission as to whether the appeal raises a significant question within the meaning of Section 30625(b).

(b) Unless the Commission finds that the appeal raises no significant question as to conformity with the certified local coastal program or, in the case of a permit application for a development between the sea and the first public road paralleling the sea (or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach) that there is no significant question with regard to the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976, the Commission shall consider the application de novo in accordance with the procedures set forth in Sections 13057-13096.

(c) The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to hear an appeal. A majority vote of the members of the Commission present shall be required to determine that the Commission will not hear an appeal.

**§ 13116. Withdrawal of Appeal.**

At any time before the Commission commences the roll call for a final vote on an appeal, the appellant may withdraw the appeal. The withdrawal must be in writing or stated on the record and does not require Commission concurrence. If the appellant withdraws the appeal, the action of the local government shall automatically become final unless the appeal period of Public Resources Code Section 30622 has not run.

**§ 13117. Qualifications to Testify Before Commission.**

Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at any stage of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners pursuant to Sections 13060-13061.

**§ 13118. Evidence.**

Evidence before the Commission includes, but is not limited to, the record before the local government. Except in unusual circumstances the record will not include a transcript of the local government proceedings unless provided by a party to the proceedings.

**§ 13119. Standard of Review.**

The standard of review for any appealable development shall be whether or not the development meets the requirements of Public Resources Code Sections 30604(b) and (c).

**§ 13120. Commission Notification of Final Action.**

Within ten (10) working days of a final Commission action on appeal from a local government decision, the Commission shall transmit notice of the action taken to the local government, the applicant and the appellant.