

Agriculture in the  
Coastal Zone:  
An Informational Guide for  
the Permitting of Agricultural  
Development

California Coastal Commission

September 29, 2017

*This guide is informational and not a regulatory document or legal standard of review for discretionary actions that the Commission or local governments may take under the Coastal Act. Such actions are subject to the applicable requirements of the Coastal Act, the Commission's regulations, the federal Coastal Zone Management Act, certified Local Coastal Programs, and other applicable laws and regulations as applied in the context of the evidence in the record for that action. Agricultural activities in the coastal zone are reviewed on a case-by-case basis by the relevant authority, either the local government or Coastal Commission.*

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# Introduction

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## 1.1 Coastal Agriculture

Agriculture is a \$47 billion industry in California, with over 400 crops grown on 76,400 farms, encompassing 25.5 million acres of land – equal to approximately a quarter of the total land area of California.<sup>1</sup> Foreign export of agricultural products accounts for nearly half of California’s agricultural income.<sup>2</sup> The remaining 53% of the state’s agricultural income is derived domestically, with over one-third of the country’s vegetables and two-thirds of the country’s fruits and nuts grown in California. In addition, many of California’s communities provide thriving local farmers’ markets, particularly where residents express interest in agricultural products that are organic, grown locally, or use socially responsible practices. Coastal agriculture includes both cultivated farmlands as well as ranchlands used for grazing or raising of livestock, poultry, bees, and dairy stock.

At the core of California’s strong agricultural economy is the land itself, and the farmers who continue to maintain agriculture in the face of increasing pressure to convert agricultural land to other uses. Coastal counties statewide have agricultural economies that are supported by the land use policies and regulations in their Local Coastal Programs (LCPs), which include provisions to help protect and promote agricultural productivity in the coastal zone, as required by the California Coastal Act.<sup>3</sup> The provisions of the Coastal Act relevant to agriculture are discussed in detail in Section 2.0, below.

The Coastal Act helps to protect the productivity of agricultural lands while also protecting and promoting other coastal resources and land uses in the coastal zone. The Coastal Act identifies coastal agriculture as one of several priority land uses (along with uses such as public access and recreational facilities, visitor-serving facilities, and commercial fishing) that require informed consideration and protection. The Coastal Act also helps to protect a range of coastal resources in addition to agriculture, including public access and recreation, lower-cost

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<sup>1</sup> California Agricultural Statistics Review 2014-2015, with updated information for 2015, available on the California Department of Food and Agriculture’s website, at <https://www.cdfa.ca.gov/>.

<sup>2</sup> California Agricultural Exports 2014-2015, available on the California Department of Food and Agriculture’s website, at <https://www.cdfa.ca.gov/>.

<sup>3</sup> California Coastal Act of 1976, Division 20 of the Public Resources Code, available on the Coastal Commission’s website at <https://www.coastal.ca.gov/laws/>.

visitor-serving facilities, terrestrial and aquatic habitats, scenic resources, natural landforms, and water quality.

The Coastal Act broadly defines development and requires all new development, including agricultural development, to be authorized by a Coastal Development Permit (CDP). However, the nature of permitting in the coastal zone can be complex, including as it relates to certain agricultural activities.

*A Coastal Development Permit (CDP) is required for new development within the coastal zone. CDPs ensure that development is carried out in accordance with coastal resource protection policies, as required by the Coastal Act. CDPs are issued by local governments with certified Local Coastal Programs (LCPs), or by the Coastal Commission for areas with no certified LCP and in areas where the Commission retains permitting jurisdiction.*

## 1.2 Use of this Guide

The following informational guide can assist Coastal Commission staff and local governments preparing LCPs, LCP Amendments, or LCP Updates, as well as farmers, landowners, and other interested members of the public in understanding when agricultural activities in the coastal zone constitute development that requires a Coastal Development Permit. The informational guide also outlines potential opportunities for improving the permitting process that would reduce the time and cost of any necessary permitting of agricultural development.

This guide provides detailed information regarding Coastal Commission processes and procedures as outlined in the Coastal Act and its companion regulations. While this guide explains the opportunities for processes and procedures that may be integrated into an LCP, it is beyond the scope of this document to examine the certified processes in each jurisdiction or to provide guidance on specific agricultural developments in jurisdictions with certified LCPs. Local landowners in jurisdictions with certified LCPs should consult the relevant local government for specific permitting information.

Section 2.0 of this guide provides a brief summary of Coastal Act policies related to agricultural protection in the coastal zone. Section 3.0 provides a flowchart of the regulatory processes that may apply to agricultural developments. Permit and exemption processes are further detailed in Section 4.0, including:

- The Coastal Act definition of development, including a reference to a particular agricultural activity not included within the definition of development;
- The ability of a person to have obtained a vested right in a development prior to the effective date of the Coastal Act;
- A summary of exemptions for activities that do not require a permit, such as specified improvements to existing agricultural development, and specified repair and maintenance activities;

- The requirements for Coastal Development Permits, which may be issued by the Coastal Commission or local governments; and
- The statutory criteria for when Coastal Development Permits are appealable to the Coastal Commission.

Lastly, Section 5.0 of this guide provides information on opportunities for streamlining local governments' permitting process, including a discussion of:

- Local Permit Waivers;
- Local Hearing Waivers;
- Categorical Exclusions (CatEx);
- Public Works Plans;
- General Consistency Determinations; and
- Consolidated Permits.

### **1.3 Purpose**

This document follows a previous Commission workshop held in May 2013 that was conducted to familiarize the Commission with current topics relevant to the protection of agricultural lands and to foster communication between agricultural parties and the public. This guide does not institute or adopt any regulations; instead, it provides summary information on existing regulatory processes that are already provided for under the Coastal Act. Specifically, this guide may help answer some of the questions the Commission frequently encounters related to the review of permits and the processing of LCP amendments. It may also help local governments consider options for expedited review of agricultural developments.

Additional information regarding the previous agricultural workshop is available on the Coastal Commission's website at: <https://documents.coastal.ca.gov/reports/2013/5/W3-5-2013.pdf>

# 2

## Background on Agricultural Protection Under the Coastal Act

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Agriculture in the coastal zone is both a coastal resource and a priority land use that is protected by a number of policies in the Coastal Act.<sup>4</sup> The Coastal Act addresses agriculture by:

- Protecting agricultural lands to safeguard the area’s agricultural economy;
- Limiting the conversion of coastal agricultural lands to nonagricultural uses;
- Protecting the long-term productivity of agricultural production;
- Promoting continued and renewed agricultural uses on lands suitable for agriculture; and
- Protecting coastal resources, including public access, habitats, water quality, and scenic views, from impacts that may be caused by agricultural development.

The Coastal Act sets a high bar for protecting agricultural lands, particularly the policies in Coastal Act Sections 30241 and 30242. These two policies require maintaining the maximum amount of prime agricultural land in agricultural production to assure the protection of an area’s agricultural economy and strictly limit the conversion of any agricultural land to nonagricultural uses. These policies also require minimization of conflicts between agricultural and urban land uses. Conversions of agricultural land to non-agricultural uses around the periphery of urban areas may only occur where the viability of agriculture is severely limited or where conversion would complete a logical boundary and contribute to a stable urban limit. The conversion of other lands that are suitable for agricultural use is prohibited, unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or appropriately concentrate development. Any such permitted conversion of agricultural land to non-agricultural uses is required to be compatible with continued agricultural use on surrounding lands.

For example, Section 30241 requires that “*the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas*”

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<sup>4</sup> The Coastal Act policies that address protection of agricultural lands include Definitions (Public Resources Code sections 30100.2, 30113, 30106) and Agricultural-related Policies (Public Resources Code sections 30222, 30241, 30241.5, 30242, 30243, and 30250), as well as other public access and resource protection policies that apply to projects on agricultural lands. <https://www.coastal.ca.gov/laws/>.



*agricultural economy.*”<sup>5</sup> When considering the maximum amount of prime agricultural land available for agricultural production, the footprint of a proposed new structure, for example, is examined in relation to the amount of land available for agriculture. In Marin County, for example, on land designated as Coastal Agriculture Production Zone, both the currently certified LCP and the recently approved LUP Update require that structures be clustered together and limited to 5% of the gross acreage of a property, with the remaining acreage retained in or available for agricultural production or open space.<sup>6 7</sup>

To assure protection of the local agricultural economy, Section 30241 sets forth criteria to limit the conversion of agricultural land at the urban rural boundary and ensure that conflicts between agricultural and urban land uses are minimized, including through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

Coastal Act Section 30241.5 also identifies specific findings that must be made in order to address the “viability” of agricultural lands around the periphery of urban areas that may be subject to conversion requests for non-agricultural uses. These findings include an assessment of gross revenues from agricultural products grown in the area and an analysis of operational expenses associated with such production. Subsection (b) specifically requires that such economic feasibility studies be submitted with any LCP or LCP amendment request.

Section 30242 of the Coastal Act also limits the conversion of agricultural lands. Section 30242 of the Coastal Act requires that:

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<sup>5</sup> Prime agricultural land is defined in Public Resource Code section 30113.

<sup>6</sup> Marin County LCP: Currently Certified Implementation Plan, Section 22.65.040d.  
<https://www.marincounty.org/depts/cd/divisions/planning/local-coastal-program/plans-and-docs>.

<sup>7</sup> Marin LUP Update Approved November 2016, Policy C-AG-7(A)

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

These requirements are implemented in order to protect an area's agricultural economy and concentrate urban development in and around existing developed areas, rather than in more rural and agricultural areas. A 1987 memorandum from Coastal Commission Chief Counsel Ralph Faust and staff attorney Mary Hudson to the Commission emphasized these points, noting both that the productivity of prime agricultural land is often a key factor in the overall agricultural viability of an area and that operations on non-prime land promote economies of scale and strengthen agricultural production on prime lands. The memorandum states:

*... non-prime lands often physically buffer the more valuable prime lands from conflicts with other uses. Thus protection of non-prime agricultural lands also serves to protect agricultural production on prime lands. Conversion and fragmentation of any agricultural land not only diminishes opportunities for economies of scale, but also increases the exposure of the remaining farm operations to conflicts with nearby urban users over such matters as noise, odor, pesticide use, smoke, and animals.*

*Under the Coastal Act, then, protecting prime agricultural land is not only an objective in itself, but is also the means of achieving the larger objective of protecting the agricultural economy. It is not, however, the only means to be used. The subparts of Section 30241 state several other standards which are to be applied to protect the agricultural economy and to further the other overriding objective of minimizing urban-agricultural conflicts. In terms of their sense as well as their wording, these standards – with one exception [subpart f] – apply to prime and non-prime lands alike.<sup>8</sup>*

Thus, conversions of agricultural lands to non-agricultural uses are allowed only under limited circumstances, such as when the lands are surrounded by urban uses. Conversions of agricultural lands around the periphery of urban areas may occur only where the viability of agriculture is severely limited, or where conversion would complete a logical and viable neighborhood and contribute to a stable urban limit. Conversions of other lands suitable for agricultural use are allowed only: (1) when continued or renewed agricultural use is infeasible; (2) when the conversion would preserve prime land; or (3) where the conversion would concentrate development.

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<sup>8</sup> “Faust, Ralph, and Mary Hudson. 1987. *Interpretation of Coastal Act Agricultural Policies in Relation to Proposed Conversion of Agricultural Lands Through Amendment of Mendocino County Land Use Plan*,”. Memo to the California Coastal Commission. May 1, 1987.

Coastal Act Section 30250, cited in Sections 30241 and 30242, also works to protect rural agricultural lands by directing that new development be located in existing developed areas, and by requiring that land divisions outside of urban areas maintain minimum parcel sizes. Section 30250 states that:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*
- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.*
- (c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

In addition, Section 30243 of the Coastal Act protects the long-term productivity of soils and timberlands. Long-term soil productivity is critical to the productive capacity of an agricultural site, as the presence of nutrients, minerals, organic matter, and microorganisms directly influence the ability of soil to support plant growth. Indeed, high soil productivity results in higher carbon storage and conversion to biomass. The protection of soil productivity helps maintain the long-term viability of farming, ranching, and grazing land in the coastal zone.

Finally, the Coastal Act includes numerous protections for coastal resources other than agriculture, including protections for public access and recreational resources, habitats, water quality, and scenic resources. All new development, including agricultural development, must conform to all applicable policies of the Coastal Act and/or relevant certified LCP policies, including agricultural protection policies as well as policies protecting other coastal resources. In other words, while agricultural land cannot be converted to non-agricultural uses unless the strict conversion criteria of sections 30241 and 30242 are satisfied, agricultural development must be undertaken consistent with the other coastal resource protections set forth in the Coastal Act.

*There is no definition of “coastal resources” in the Coastal Act; however, based on the Chapter 3 policies of the Coastal Act set forth in Coastal Act sections 30200-30265, the term “coastal resource” can include, but not be limited to:*

- *Agricultural production and agricultural lands*
- *Archaeological or paleontological resources*
- *Coastal water bodies (e.g., wetlands, estuaries, and lakes, etc.) and their related uplands*
- *Environmentally sensitive habitat areas, including rare habitats, wildlife corridors, and other areas that are especially valuable because of their special nature or role in an ecosystem*
- *Ground water resources*
- *Marine resources*
- *Native trees*
- *Natural landforms*
- *Public access and public access facilities and opportunities*
- *Recreation areas and recreational facilities and opportunities (including recreational water-oriented activities)*
- *Scenic public views and visual resources*
- *Shoreline processes/sand supply & transport*
- *Special communities*
- *Timberlands & soils*
- *Visitor-serving uses*
- *Watercourses (e.g., rivers, streams, and creeks, etc.) and their related corridors and uplands*
- *Wetlands*

## Development Review Flowchart

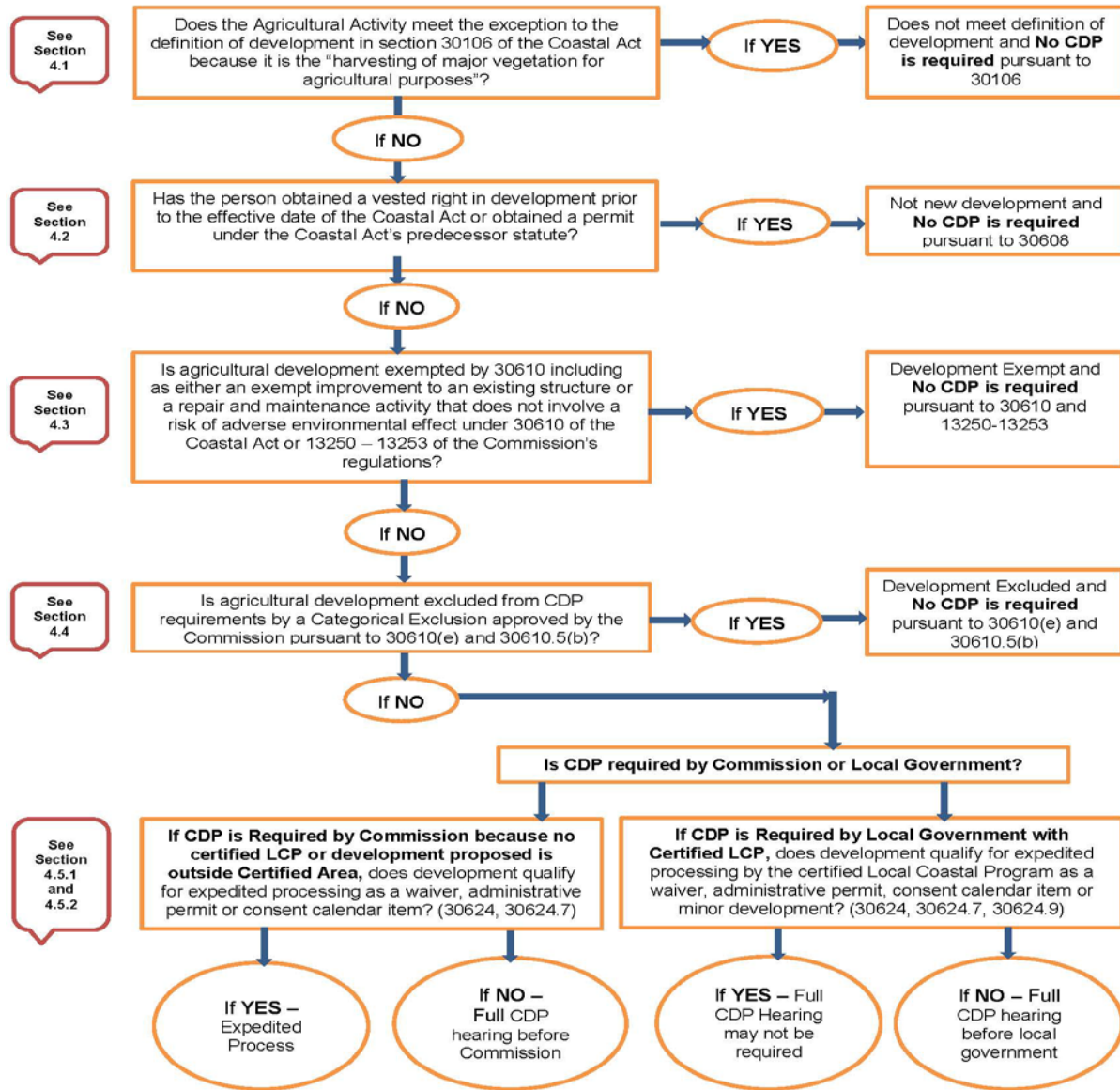
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The Coastal Act exempts some but not all coastal agriculture from permitting requirements. Thus, each proposed agricultural activity must be assessed on a case-by-case basis to determine whether a permit is required. There are specific requirements and exceptions applicable to permitting requirements for agricultural development in the coastal zone. These rules and exceptions are discussed in Section 4.0 of this guide, and follow the layout of the regulatory flowchart provided in this section.

The *Permitting Requirements for Agricultural Activities in the Coastal Zone* flowchart, below, illustrates the permit and exemption processes that may be applicable when an agricultural activity is proposed. Since the Coastal Act prescribes what development does and does not require a permit, Coastal Development Permit requirements and exemptions are the same throughout the coastal zone. The process for implementing permit requirements may vary among jurisdictions, however, including because local governments with delegated permit authority may have chosen not to include all available procedural mechanisms in their certified LCP.

Starting from the top left box, the flowchart is meant to be read from top to bottom. Each box asks a specific regulatory question pertaining to a specific permitting process and/or exemption. If the answer is *Yes* to a specific question, the agricultural development activity may be exempt from permitting requirements or subject to an expedited process. If the answer is *No* to a specific question, follow the arrow to the next box on the flowchart to determine if the agricultural development is exempted or excluded on a different basis until determining the applicable regulatory process for the subject agricultural activity. Section 4.0 of this guide provides additional detailed information and discussion to help answer each question on the flowchart. Along the left column of the flowchart there are also cross-references to the applicable Section 4.0 subsections in this guide.

**PERMITTING REQUIREMENTS FOR AGRICULTURAL ACTIVITIES IN THE COASTAL ZONE**



## 4

## Determining Whether a Coastal Development Permit is Required

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*Section 4.0 provides information on potential permit exemption opportunities, and should be reviewed in conjunction with the flowchart from Section 3.0.*

### 4.1 Definition of Development

Pursuant to the Coastal Act, development undertaken in the coastal zone generally requires a Coastal Development Permit. The first step in determining whether an agricultural activity requires a permit is to determine whether the activity meets the statutory definition of “development.” Coastal Act Section 30106 defines *development* as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).*

*As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.*

As seen from Section 30106, development is defined broadly to include not only typical land development activities such as construction of buildings, but also grading, as well as changes in the intensity of use of land or water, even where no other construction is involved. This same definition of *development* applies to certified LCPs as well.

The definition of development set forth in the Coastal Act excludes the “removal or harvesting of major vegetation for... agricultural purposes” but it does not define the term

“major vegetation,” nor does it specify what constitutes “removal or harvesting...for agricultural purposes.” Early in the implementation of the Coastal Act, the Commission addressed questions relating to this exclusion set forth in the definition of development because of reported instances of agricultural operations that resulted in removal of riparian and wetland vegetation. This led to a Commission-issued statement explaining that a Coastal Development Permit is required for “conversion of non-agricultural lands to agricultural uses and expansion of agricultural operations if such activities involve the removal of major vegetation.”<sup>9</sup> The March 19, 1981 staff report adopted by the Commission states that:

*The Commission hereby asserts permit jurisdiction over new or expanded agricultural operations that involve the removal of major vegetation in the coastal zone based on findings included in the March 2, 1981 Staff Recommendation, incorporated herein as Exhibit 1.* <sup>10</sup>Those March 2, 1981 findings expressly state that a CDP is required for “agricultural development which involves the removal of major vegetation to begin or expand agricultural croplands into areas not previously farmed.”<sup>11</sup> In addition, the March 19, 1981 staff report makes clear that other portions of Section 30106 may well require coastal permits for an agricultural activity even if that agricultural activity did not qualify as development based on another portion of the definition of development. The 1981 staff report adopted by the Commission states that:

*“Commission action on this portion of 30106 in no way affects the Commission’s regulatory authority under other portions of that section.... For example, expansion of agricultural activities into non-farmed areas may involve significant changes in the intensity of use of land or water and hence may be a development under the Coastal Act, even if it does not involve removal of major vegetation.”* <sup>12</sup>

Thus, regardless of the interpretation of “major vegetation,” the expansion of agricultural uses into areas of native vegetation or other undisturbed land constitutes a “change in the intensity of the use of land,” and is therefore considered development under the Coastal Act. Similarly, new agricultural operations are also a change in the intensity of the use of land and water for a variety of additional reasons, including because preparing land for new agricultural uses requires clearing the land of existing vegetation. However, to the extent that rotational crop farming or grazing has been part of a regular pattern of agricultural practices, rotational changes are not a change in the intensity of the use of the land, despite the fact that grazing and crop growing are occurring at different times on different plots of land.<sup>13</sup>

In addition, because the Coastal Act definition of development does not exclude grading for agricultural purposes (as it does exclude the removal of major vegetation for agricultural purposes), grading constitutes development requiring a Coastal Development Permit. Since neither the Coastal Act nor its implementing regulations define “grading,” the Coastal

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<sup>9</sup> *Commission Statement on Jurisdiction of Expansion of Agricultural Activities into Previously Non-Farmed Areas Containing Major Vegetation.* March 19, 1981. Staff Recommendation, adopted by California Coastal Commission on March 19, 1981, Exhibit 1, page 5.

<sup>10</sup> *Commission Statement on Jurisdiction of Expansion of Agricultural Activities into Previously Non-Farmed Areas Containing Major Vegetation.* March 19, 1981. Staff Recommendation, adopted by California Coastal Commission on March 19, 1981

<sup>11</sup> *Commission Statement on Jurisdiction of Expansion of Agricultural Activities into Previously Non-Farmed Areas Containing Major Vegetation.* March 19, 1981. Staff Recommendation, adopted by California Coastal Commission on March 19, 1981, Exhibit 1, page 1

<sup>12</sup> *Commission Statement on Jurisdiction of Expansion of Agricultural Activities into Previously Non-Farmed Areas Containing Major Vegetation.* March 19, 1981. Staff Recommendation, adopted by California Coastal Commission on March 19, 1981, page 4.

<sup>13</sup> Marin LCP Update Revised Findings Adopted July 14, 2017.



Commission and local governments evaluate project circumstances on a case-by-case basis, given specific site characteristics and unique project elements, to make a factual determination if an activity comprises grading.

Summary:

Many agricultural activities meet the definition of **development**, including but not limited to:

- New or expanded agricultural operations into previously non-farmed areas containing major vegetation;
- Conversion of non-agricultural lands to agricultural uses;
- Erection of new facilities or buildings;
- Installation of agricultural water wells;
- Removal of wetland vegetation or other vegetation in Environmental Sensitive Habitat Areas;
- The placement or erection of any structures; and
- New grading.

Some agricultural operations are not considered **development**, including:

- The harvesting of agricultural crops.

*If an agricultural activity is considered development, the next step is to determine whether the development requires a permit or is exempt from the permit process. See subsections 4.2 (Agricultural Operations Established Prior to the Coastal Act), 4.3 (Exemptions), and 4.4 (Categorical Exclusions), below, to determine if the agricultural development may potentially proceed without a permit.*

## **4.2 Vested Right in Agricultural Development Prior to the Coastal Act**

The Coastal Act does not require a person who has obtained either a vested right in a development prior to the effective date of the Coastal Act or a permit pursuant to the Coastal Act's predecessor statute to obtain a permit approval for development. The *Coastal Zone Conservation Act of 1972* (i.e., the predecessor to the Coastal Act) was approved by voters in 1972 and became effective on February 1, 1973. This was California's first comprehensive program for managing its 1,100-mile coastline. On January 1, 1977, the Coastal Zone Conservation Act was replaced with new, but similar, legislation entitled the *California Coastal Act of 1976* (Coastal Act). The Coastal Act defines the coastal zone differently than its predecessor statute, extending it beyond 1,000 yards of the mean high tide to up to several miles inland. Thus, the location of any particular agricultural operation weighs into permitting requirements.

Section 30608 of the Coastal Act states:

*No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be required to secure*

*approval for the development pursuant to this division. However, no substantial change may be made in the development without prior approval having been obtained under this division.*

**Summary:**

*If an agricultural activity constitutes development and a person has not obtained either a vested right in a development prior to the effective date of the Coastal Act or a permit pursuant to the Coastal Act's predecessor statute, the next step is to determine whether the development may be exempt from the permitting process under subsection 4.3 (Exemptions) or subsection 4.4 (Categorical Exclusions), below.*

### **4.3 Agricultural Development that may be Exempt from Permitting Requirements**

Section 30610 of the Coastal Act identifies certain types of development that are exempt from Coastal Development Permit requirements. Of the nine categories of development that may be exempt from permitting requirements under Coastal Act Section 30610, five are potentially applicable to agricultural development: (1) improvements to structures other than single-family residences or public works facilities; (2) repair and maintenance activities; (3) Categorical Exclusions pursuant to a Categorical Exclusion Order (as described in Section 4.4 of this guide); (4) utility hookups between an existing service facility and an approved development; and (5) replacement after a disaster. These categories are described in detail below.

#### **4.3.1 Improvements to an Existing Structure**

Section 30610(b) of the Coastal Act applies to certain developments that are improvements to an existing legally established structure (other than a single-family residence or public works facility). This category includes improvements to existing agricultural structures. Such improvements are exempt from the requirement to obtain a CDP, except when the improvement (1) involves a risk of adverse environmental effect, (2) adversely affects public access, or (3) involves a change in use contrary to a policy of the Coastal Act. Section 13253 of the Commission's regulations in the California Code of Regulations (CCR) identifies the specific circumstances in which these types of improvements will require a permit.<sup>14</sup>

This regulation requires a CDP for any improvements to structures that are located on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified Land Use Plan of the local government in which the development is situated; or within 50 feet of the edge of a coastal bluff.

For properties that do not fall within the aforementioned conditions, but involve (1) improvements located between the sea and the first public road paralleling the sea, (2) improvements within 300 feet of the beach (or 300 feet of the sea where there is no beach), or (3) within critical scenic resource areas, improvements that would cumulatively (over the life of the structure) result in an increase of 10 percent or more of internal floor area or height of the

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<sup>14</sup> California Code of Regulations (CCR), Title 14, Natural Resources, Division 5.5, California Coastal Commission, Sections 13252-13253. [https://govt.westlaw.com/calregs/Document/I0A760100D48811DEBC02831C6D6C108E?viewType=FullText&originationContext=documentto c&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I0A760100D48811DEBC02831C6D6C108E?viewType=FullText&originationContext=documentto c&transitionType=CategoryPageItem&contextData=(sc.Default))

existing structure, such improvements also require a CDP. Similarly, improvements to structures that (1) involve significant alteration of land forms (including the removal or placement of vegetation) or (2) are located on a beach or sand dune, in a wetland or stream, within 100 feet of the edge of a coastal bluff, in a highly scenic area, or in an environmentally sensitive habitat area, will also require a CDP. In certain cases, development that has high water consumption may require a permit in locations where the Commission has declared there is a critically short water supply.

#### 4.3.2 Repair and Maintenance

Section 30610(d) of the Coastal Act exempts certain repair and maintenance activities that do not involve a risk of substantial adverse environmental impact from the requirement of obtaining a Coastal Development Permit. Repair and maintenance activities do not include activities that result in an addition to, or enlargement or expansion of, the legally established object of those activities. The parameters for repair and maintenance are further enumerated in Section 13252 of the Commission’s regulations, which details the “extraordinary methods” of repair and maintenance activities that *do* require a CDP because they involve a risk of substantial adverse environmental impact.

Repair and maintenance activities are generally those actions that are necessary to preserve a development in its permitted configuration and condition. This includes routine actions typically associated with keeping such development in good condition to prevent its deterioration, as well as targeted corrective actions to restore the development to a working condition to continue to serve the permitted use. While many repair and maintenance activities are exempt from permitting requirements, such activities are not exempt if they (1) enlarge, expand, or add to the structure being repaired or maintained, (2) replace 50% or more of the structure, or (3) are a category of development identified in CCR Section 13252 as involving a risk of substantial adverse environmental impact.

Repair and maintenance activities that require a CDP also include (1) any repair or maintenance of shoreline protective devices (e.g., seawall revetments, bluff retaining walls, breakwaters, culverts, and groins), and (2) any repair or maintenance of facilities or structures located in an environmentally sensitive habitat area (ESHA), sand area, within 50 feet of the edge of a coastal bluff or ESHA, or within 20 feet of a coastal water or stream. For example, the repair of a 300-foot-long section of an existing agricultural levee in Humboldt County was subject to CDP requirements under Coastal Act Section 30610, as the project was considered an extraordinary method of repair and maintenance.<sup>15</sup> Though the repair did not constitute an addition or enlargement to the existing structure, the method of repair had the potential to impact coastal resources because the placement of construction materials and riprap in coastal waters and along the sides of the levees (both landward and seaward) could impact tidal wetlands and coastal waters adjacent to the project area.

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<sup>15</sup> CDP 1-13-010 CDP 1-13-010. <https://documents.coastal.ca.gov/reports/2013/9/Th9c-9-2013.pdf>.

### 4.3.3 Utility Hookup

Pursuant to Coastal Act Section 30610(f), the installation, testing, placement in service, or replacement of any necessary utility connection between an existing service facility and any development approved pursuant to the Coastal Act may be exempt from the requirement to obtain a CDP. However, the Commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources. The utility hook-up exclusion is intended to exempt utility agencies from obtaining permits for work to serve approved developments.

This means that the extension of a utility service (such as water pipes or electrical lines) from the nearest public utility connection to a structure may be exempt, if the approved development itself was permitted to have a water or electrical connection. For example, an electrical connection to a water well pump would not require a separate permit for the utility to extend to the pump because the electrical connection is integral to the approval of the pump itself and would have been evaluated as part of the pump application.

### 4.3.4 Replacement after a Disaster

Coastal Act Section 30610(g) allows for the replacement of any structure (other than a public works facility) without a permit if it was destroyed by a natural disaster. However, there are a number of criteria that must be met. The original structure must have been legally constructed pursuant to all necessary permits or authorizations required at the time of development. In addition, the replacement structure must: (1) be replaced in-kind; (2) conform to applicable existing zoning requirements; (3) be for the same uses as the destroyed structure; (4) not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent; and (5) be sited in the same location on the affected property as the destroyed structure. For example, a legally developed barn that is destroyed by a fire may be replaced without a permit by another barn of the same size and configuration in the same location, provided it conforms to current zoning requirements for such development.

### 4.3.5 Conclusion

Some development is exempt from permitting requirements under the Coastal Act and the Commission's implementing regulations. Development must be reviewed against the exemption language on a project-by-project basis because there are a number of exceptions specified in the statute and its implementing regulations which trigger permitting requirements. In addition, it should be noted that any of the exemptions described above may not apply if a prior permit involving the property included a restriction that specifically requires a CDP for future improvements.

#### Summary:

A proposed improvement to an agricultural structure may be exempt from permitting pursuant to Coastal Act Section 30610(b) and CCR Section 13253 if:

- The improvement is to an existing, legal structure and does not pose an adverse environmental risk or an impact to public access;

- The structure to be improved is not located in or adjacent to areas with certain sensitive coastal resources (such as beaches, wetlands, streams, or lakes), or between the shore and the first public road;
- The improvement does not occur in an area which the Commission has previously declared to have a critically short water supply;
- The improvement does not occur on a property located between the sea and the first public road (or within 300 feet of the beach or in significant scenic resource areas), and would result in a cumulative increase of less than 10 percent or more of internal floor area and/or height of the existing structure;
- The original Coastal Development Permit does not require that such improvement necessitates an additional Coastal Development Permit;
- The improvement to the structure does not change the intensity of use of the structure; and
- The structure is not a water well or septic system.

A proposed repair and maintenance activity to an agricultural structure may be exempt from permitting pursuant to Coastal Act Section 30610(d) and CCR Section 13252 if:

- The repair and maintenance activities do not enlarge the structure, do not replace 50% or more of the structure, do not involve substantial risk of adverse environmental impact, and the structure is not located in or adjacent to certain sensitive coastal resource areas.

Replacement of an agricultural structure destroyed by a natural disaster may be exempt from permitting pursuant to Coastal Act Section 30610(g) if:

- The original structure was legally developed (i.e., unpermitted structures or structures not built consistent with previous approvals are not subject to disaster replacement);
- The structure was destroyed by forces beyond the control of the property owner;
- The replacement is in-kind, increases by no more than 10 percent of the internal floor area and/or height of the existing structure, and is for the same use and in the same location; and
- The replacement is consistent with current zoning regulations.

*If an agricultural activity is not exempt from permitting requirements, the next step is to determine whether the activity is exempt from permitting under the following subsection on Categorical Exclusions.*

#### **4.4 Categorical Exclusions**

Coastal Act section 30610(e) allows certain Commission-authorized categories of development to be excluded from Coastal Development Permit requirements, provided that the category of development has no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access. These categories of development are known as “Categorical Exclusions,” and all such excluded categories must be approved by the Commission pursuant to a Categorical Exclusion (Cat Ex) Order. Some local jurisdictions currently have adopted Cat Ex Orders, while some have not.

Cat Ex Orders apply to specific types of development within identified geographical locations. For example, the Commission may approve a Categorical Exclusion for agricultural developments that would normally require a Coastal Development Permit (i.e., it is defined as development and is not exempt) because that specific development type in that specific geographic area can be demonstrated to not result in individual or cumulative impacts. Categorical Exclusions are prohibited from applying to: tide and submerged lands; beaches; lots immediately adjacent to the inland extent of any beach; lots immediately adjacent of the mean high tide line of the sea where there is no beach; and public trust lands.

Categorical Exclusions vary between jurisdictions, and may also vary between geographic locations within one local government's jurisdiction. For example, agricultural wells in a Northern California location with significant amounts of annual rainfall are more likely to be excluded than wells in a dry southern California location. The Categorical Exclusions also vary by jurisdiction because each local government develops categories to address specific locations, circumstances and need.

Not all Cat Ex Orders include Categorical Exclusions for agricultural development. When included, Categorical Exclusions related to agriculture have typically covered development such as basic structures and utilities used for agricultural purposes, including fences, barns, wells, storage tanks, water distribution lines, electric utility lines, and water pollution control facilities. In addition, these Categorical Exclusions apply to defined areas, and generally include additional restrictions to protect coastal resources. For example, the Categorical Exclusion may not apply (and therefore requires a permit) if the proposed agricultural development is located adjacent to environmentally sensitive habitat areas (ESHA) or within ESHA buffers. Or the agricultural development may only be exempt from permitting requirements if it meets certain size criteria and/or is clustered and located within prescribed agricultural zones.

The Commission's role is to approve the Cat Ex Order and to monitor local implementation. The local government is responsible for reviewing Categorical Exclusions for consistency with the Cat Ex Order and coordinating with the Commission by reporting exclusions approved pursuant to a specific Cat Ex Order. Therefore, interested parties should inquire with the local government about whether a relevant Cat Ex Order applies to the geographic area in which the proposed agricultural development is located. The counties of Del Norte, Humboldt, Sonoma, Marin, San Mateo, Santa Cruz, San Luis Obispo, and Ventura, for example, all have individual Categorical Exclusion Orders that were approved by the Commission in the 1980s after their LCPs were certified.<sup>16</sup>

For a more detailed description of Categorical Exclusions, see section 5.3 of this document.

Summary:

A proposed agricultural development activity may be exempt from permitting under a Categorical Exclusion Order if all of the following criteria are met:

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<sup>16</sup> Categorical Exclusions E-86-5, E-86-4, E-81-5, E-81-2 and E-81-6, E-81-1, E-82-4, E-89-1 and E-83-1, respectively.

- The Commission approved a Cat Ex Order for the particular type and location of development, and the local government accepted and ratified the Cat Ex Order;
- The development activity complies with any terms and conditions of the Cat Ex Order (e.g., size of development, zoning location, and density requirements), including such terms and conditions that necessitate that the development activity may be excluded only upon condition that proposed local government exclusions are reviewable by the Commission; and
- The Cat Ex Order has not been rescinded by the Commission, in whole or in part.

*If an agricultural development is not categorically excluded from permitting requirements, the next step is to determine whether such development qualifies for expedited processing, as a Waiver or Administrative Permit, as described under Section 4.5, below.*

## **4.5 Coastal Development Permits**

Coastal Development Permits (CDPs) are the regulatory mechanism by which proposed development activities in the coastal zone, including agricultural development, are evaluated and brought into compliance with the policies of the Coastal Act and certified LCPs. After the Commission certifies a local government's Local Coastal Program (LCP), most Coastal Development Permitting authority is delegated to the local government, with CDP applications then reviewed and acted on by the local government pursuant to the certified LCP. However, the Commission retains permanent permitting authority in certain geographic areas, such as in tidelands and public trust lands, as well as appellate authority in certain geographic areas, over certain types of developments in coastal counties and over major public works and energy facilities.

If a proposed agricultural activity does not meet the exception to the definition of development (see Section 4.1 of this guide); is not exempt from permitting because a vested right is unsubstantiated (see Section 4.2); is not exempt from permitting for other reasons (e.g., being an improvement, repair, or maintenance activity; (see Section 4.3); or is not categorically excluded from permitting requirements (see Section 4.4), then a Coastal Development Permit is required from either the Coastal Commission or the local government (with a certified LCP) in whose jurisdiction the agricultural development occurs. However, the development may qualify for expedited permit processing through either the Commission or the relevant local government, as discussed below.

### **4.5.1 Coastal Commission Development Review**

The Coastal Act is a land use planning and resource protection law that applies a specific set of land use planning principles and resource protection provisions to proposed development located within the coastal zone. Chapter 3 translates the Coastal Act's objectives into a series of policies that encourage specific priority land uses, protect coastal resources, and plan for new development in the context of development constraints (e.g., coastal hazards). New development must be consistent with the Chapter 3 policies of the Coastal Act.

Chapter 3 includes agricultural policies that regard agriculture as both a priority land use and a coastal resource (see Section 2.0 above). However, agriculture is just one of a number of resources and land uses that require protection under the Coastal Act. As a result, each

agricultural activity requiring a CDP must be reviewed on a case-by-case basis to assess the potential for adverse impacts to coastal resources. In addition, proposals to convert agricultural land to a non-agricultural use are strictly limited.

For those instances where a Coastal Development Permit is required for agricultural development, and the development falls under the jurisdiction of the Coastal Commission (either because the development occurs in an area of Commission-retained jurisdiction or because the local government does not have a certified LCP), the Coastal Act allows for certain procedures that streamline the permitting process for certain projects, such as waivers and administrative permits.

#### ***4.5.1.1 Commission-Issued Waivers***

The requirement to obtain a Coastal Development Permit may be waived under two different sections of Commission's regulations in the California Code of Regulations (CCR):<sup>17</sup>

- Waivers are authorized under CCR Section 13250(c) for certain single-family residences, Section 13252(e) for certain repair and maintenance activities, and Section 13253(c) for certain improvements to structures other than a single-family residence or public works projects; and
- De minimis waivers are authorized under CCR Sections 13238-13238.2.

The waiver process provides an opportunity for expedited review for development that does not require any special conditions to bring the project into conformance with the relevant Coastal Act standard.

The first type of waiver is related to Coastal Act Section 30610, subsections (a), (b), and (d). Section 4.3 of this guide, above, describes the potential categories of development that are exempt from Coastal Development Permitting requirements under Section 30610 of the Coastal Act. However, the companion regulations to Section 30610 identify categories of such development that require a permit because they involve a risk of adverse environmental effect. Two of these categories were discussed in detail in Sections 4.3.1 and 4.3.2 of this guide, as potentially related to agricultural activities: “improvements to structures other than residences and public works facilities,” and “repair and maintenance activities.” In both cases, even where a type of development is identified as requiring a permit, the Coastal Commission’s Executive Director may waive the requirement for a CDP where the Executive Director finds that the impact of the subject development on coastal resources, including public access, would be insignificant.

These types of waivers require a brief written description explaining the project and the reasons for the conclusion that the impact of the subject development on coastal resources is insignificant. Waivers must be reported to the Commission at a noticed public hearing to provide an opportunity for interested parties and commissioners to raise questions, or to object to the issuance of the waiver, but such objections have been rare. If three or more commissioners object to issuance of the waiver, the proposed development cannot be undertaken without a permit. In such cases, the development must undergo the full CDP process.

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<sup>17</sup> California Code of Regulations, Title 14, Division 5.5.



Similarly, Section 30624.7 of the Coastal Act grants the Coastal Commission's Executive Director the authority to waive the requirement for a Coastal Development Permit for any development that is *de minimis*. This second type of waiver, the *de minimis* waiver, is not limited to specific categories of development. It applies to any development that has no potential for any individual or cumulative adverse effect on coastal resources and that is consistent with all Chapter 3 policies of the Coastal Act. Individual adverse effects pertain to the specific impact an individual development project may have on coastal resources, while cumulative adverse impacts are the combined effects of known or probable future development activities on coastal resources.

In past actions, the Executive Director has waived permitting for the repair and replacement of agricultural fencing and the diversion of water supplies for livestock, for example. In the case of repair and replacement of agricultural fencing, a waiver was approved based on protective parameters built into the project description which ensured that the repair and replacement would be limited to a specific season and schedule, that erosion control barriers would be implemented, and disturbed soils mitigated.<sup>18</sup> Where the diversion of water supplies for livestock was waived, the development was found to be *de minimis* because the proposed tank, trough, solar panel and pump were sited on upland pasture areas outside of wetland and riparian habitats.<sup>19</sup> The applicant also applied for a Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), with the proposed water diversion set to use the best management practices available to protect fish and other aquatic species. The water diversion was determined not to result in any adverse impacts on ESHA, wetlands, and other coastal resources.

The discretionary authority in determining that the development has no potential for any individual or cumulative adverse effect on coastal resources resides with the Commission's Executive Director, though the waiver must be reported to the Commission. *De minimis* waivers do not take effect until they have been reported to the Commission at the regularly scheduled hearing following the issuance of the waivers by the Executive Director of the Commission. At the hearing, the Commissioners may request that the waiver not be effectuated. If the Commission makes such a request, a Coastal Development Permit is required.

The benefit of waivers is twofold. First, the fee for a waiver is significantly less than the fee required for an Administrative Permit or Coastal Development Permit. In addition, waivers may be processed significantly faster because the development is minor in nature, and the project will not be subject to special conditions since there is no potential to adversely impact coastal resources. The standard of review remains the same as all other development review processes in the Commission's jurisdiction (i.e., the project must be consistent with the Chapter 3 policies of the Coastal Act and/or the LCP).

#### ***4.5.1.2 Commission-Issued Administrative Permits***

Administrative Permits are staff-level Coastal Development Permits that are reported at a Coastal Commission hearing. Administrative permits may be issued for certain development

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<sup>18</sup> CDP De Minimis Waiver: 1-07-030-W.

<sup>19</sup> De minimis waiver 1-15-0688-W.

activities by the Commission's Executive Director. Specifically, Section 30624 of the Coastal Act allows for an administrative permit to be issued by the Executive Director of the Commission for certain non-emergency developments, including: improvements to any existing structures; any single-family dwelling; any development of four dwelling units or less within any incorporated area that does not require demolition; and any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land.<sup>20</sup>

One benefit of Administrative Permits is that the fee for an administrative permit is less than the fee required for a regular Coastal Development Permit. This is generally due to the more limited nature of the development and its associated review. The standard of review is the same for both Administrative Permits and regular CDPs. In both cases, the project must be consistent with the Chapter 3 policies of the Coastal Act. Given that projects are subject to the same standard of review, the same level of information and analysis is typically required for development under an Administrative Permit as required to evaluate a regular CDP. As with regular CDPs, the approval of an Administrative Permit may be subject to terms and conditions to ensure conformity with the Coastal Act.

A key difference between Administrative Permits that are issued by the Executive Director and become effective at a Commission hearing and regular CDPs that are approved by the Commission and issued after condition compliance is that administrative permits are not subject to "prior to issuance" special conditions like CDPs. If the Commissioners object to issuing the Administrative Permit, then the Administrative Permit does not become effective, and the development must be resubmitted as a regular CDP application and undergo the full CDP application process, including payment of all regular fees.

An example of an Administrative Permit that was issued by the Executive Director on agricultural lands allowed for the removal of a mobile home and construction of a single-family dwelling within the existing development footprint of a property in the rural residential agriculture zone of Humboldt County.<sup>21</sup> As with all Administrative Permits, the aforementioned Administrative Permit was reported to the Commission at the subsequent hearing following the issuance of the permit by the Executive Director to allow for potential issues to be raised by interested parties and objections by the Commission.<sup>22</sup> In this instance, there were no objections and the permit was effective following the hearing.

#### ***4.5.1.3 Commission-Issued Coastal Development Permits***

If the project constitutes development and a person has not obtained a vested right in development or the development does not qualify for an exemption or Categorical Exclusion, and cannot be processed as a waiver, or administrative permit, then a regular Coastal Development Permit is required. Coastal Act Section 30600 requires a Coastal Development Permit for new development in the Coastal Zone, and describes the circumstances for which the

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<sup>20</sup> Public Resources Code section 30624 also grants authority to the Executive Director of the Coastal Commission and designated local government staff with certified Local Coastal Programs (e.g., planning directors) to issue emergency permits. Moreover, section 30624 allows local governments with certified Local Coastal Programs to issue non-emergency permits for certain development improvements as well (see next subsection on Local Government-issued Coastal Development Permits).

<sup>21</sup> CDP: 1-11-002

<sup>22</sup> For a description of the Commission's regulations on Commission-issued Administrative Permits, see the Title 14 California Code of Regulations sections 13145 – 13153.

Coastal Commission has the responsibility for issuing CDPs. Within the Commission's jurisdiction, the CDP process is initiated by submittal of a CDP application to the relevant Commission District office, along with the application fee (see the fee schedule in Section 13055 of the Commission's regulations)<sup>23</sup>.

The review of a development for consistency with the Chapter 3 policies occurs during the CDP process and is provided in the form of a written staff report and recommendation that is made available to the applicant, Commission, and the general public prior to holding a public hearing on the matter.

The staff report includes a detailed project description, an analysis of potential impacts, findings of legal adequacy of the application to comply with the requirements of the Coastal Act, and a staff recommendation. Importantly, the staff report includes any terms and conditions that are necessary to ensure that development is carried out in a manner that is consistent with Coastal Act Chapter 3 policies.

Each CDP application is heard at a public Commission hearing. It may be scheduled on the Consent Calendar or the Regular Calendar of the Commission's agenda. Consent Calendar CDP applications are those projects that do not raise significant coastal resource issues, either *as submitted* or *as recommended to be conditioned* by Commission staff, and where the Applicant is in agreement with the staff recommendation. Although all Consent Calendar agenda items have their own individual staff reports, the Consent Calendar items for each District Office are considered by the Commission all at once. Public testimony can still be taken on a Consent Calendar CDP, and the CDP application may be removed by the Commission and then heard at a subsequent Commission hearing as a Regular Calendar agenda item. All other CDP applications are scheduled on the Regular Calendar agenda, including projects that generally have more complex issues and may be subject to circumstances such as other parties expressing interest in the outcome, issues of statewide importance, locally controversial development, and all cases where the applicant is not in agreement with the staff recommendation.

Summary:

A proposed agricultural development activity located within the Commission's jurisdiction may qualify for a waiver if:

- Even where the subject development is a type of development identified under 14 CCR Sections 13252 (for repair and maintenance activities) or 13253 (for improvements to structures other than a single family residence or public works projects) as requiring a permit, in the opinion of the Executive Director, the impact of the proposed development on coastal resources would be insignificant; or
- The development activity will be consistent with the policies of Chapter 3 and involves no potential for any individual or cumulative adverse effects on coastal resources, or in other words, is *de minimis*.

A proposed agricultural development activity located within the Commission's jurisdiction may qualify for an administrative permit if:

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<sup>23</sup> Title 14 California Code of Regulations section 13055.

- The development cost is under \$100,000; and
- The development activity constitutes a non-emergency development (e.g., an improvement to an existing structure) as specifically listed in Coastal Act Section 30264; and
- The applicant agrees to any terms and special conditions (contained within the Administrative Permit) imposed on the development activity to bring the project in compliance with the Coastal Act.

*It is important to note that for waivers, administrative permits, and consent calendar items, the Commission may determine that the development activity necessitates a regular Coastal Development Permit subject to a full public hearing before the Commission.*

#### **4.5.2 Local Government Development Review**

The Coastal Act provides a framework to authorize local governments to develop planning and zoning documents consistent with the Coastal Act and subsequently assume the responsibility for Coastal Development Permits within their City/County limits, with some exceptions. Permit authority cannot be delegated to local governments within areas of the Commission's retained jurisdiction, on federal lands, in specified ports, or within any state college or university.

Local governments implement the requirements of the Coastal Act pursuant to a Local Coastal Program that is reviewed, approved, and certified by the Coastal Commission. Once the LCP is effectively certified, the local government is responsible for reviewing and issuing CDPs consistent with the certified LCP. Though the local government assumes permit responsibility, some CDPs approved by the local government remain appealable to the Coastal Commission.

A public hearing must be provided for development that is appealable to the Coastal Commission.<sup>24</sup> The public hearing requirement can be waived for certain minor development, as discussed in Section 5.2, below, but otherwise a CDP for appealable development is subject to public hearing requirements. Hearing procedures vary among local governments and the Coastal Act allows for these variations provided that the local government notice and hearing procedures are in compliance with minimum requirements of the Commission's regulations and that they are certified as part of the LCP.<sup>25</sup> Each certified LCP will include detailed implementation procedures which lay out the development review processes, the governing body with review authority, and the policies and provisions by which development will be evaluated.

Where the Commission has certified a Local Coastal Program (LCP) for a Local Government, the Coastal Act allows for certain development activities to be streamlined through the local permitting process. However, the LCP ultimately determines the local CDP processing procedures, and they often vary from one local government to the next depending on the procedures the local government has decided to include in their LCP as well as the type, magnitude and location of the development under question. In general, Coastal Development Permits may be expedited by the permit issuing authority as waivers, administrative permits, or

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<sup>24</sup> Title 14 California Code of Regulations section 13566

<sup>25</sup> Title 14 California Code of Regulations, section 13560 through 13577.

by utilizing hearing waivers for minor development. These permit processing procedures are discussed below.

#### ***4.5.2.1 Local Government-Issued Permit Waivers***

Where certified as part of the local jurisdiction's LCP, a local government may issue a de minimis waiver for non-appealable development that has no potential for any individual or cumulative adverse effect on coastal resources and that is also consistent with all policies and provisions of the local government's LCP. The authority to issue de minimis waivers only applies to those local governments that have de minimis waiver provisions in the certified LCP. If the local government is authorized to issue waivers, the waiver must be reported to the local governing body at a public hearing. In addition, the de minimis waiver is contingent upon procedures that require notification to all interested persons, including the Executive Director of the Coastal Commission, who have the right to request that the waiver not be issued and that a regular CDP be obtained, consistent with the process for de minimis waivers specified in the Commissions regulations.

#### ***4.5.2.2 Local Government-Issued Administrative Permits***

Similar to the Coastal Commission's issuance of administrative permits for certain non-emergency development activities (see previous subsection 4.5.2.1 *Administrative Permits* above), local governments may also issue Administrative Permits pursuant to Coastal Act Section 30624 where the local government has a certified LCP and an appropriate local official (e.g., planning director) has been granted permitting authority by the local governing body. As discussed in the previous subsection, Section 30624 of the Coastal Act allows for the issuance of Administrative Permits for certain non-emergency developments, including any improvements to existing structures; any single-family dwelling; any development of four dwelling units or less within any incorporated area that does not require demolition; any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land; and any development specifically authorized as a principal permitted use and proposed in the area certified under the LCP.<sup>26</sup>

Administrative Permits streamline the permitting process by allowing for a staff level of review and approval of a development. However, any permit issued by the local official as an Administrative Permit must be scheduled on the agenda of the local governing body at its first scheduled meeting after the permit has been issued.<sup>27</sup> This allows for potential objections by interested persons, including the Executive Director of the Coastal Commission, and/or the local governing body, which may result in the permit subsequently being processed as a regular Coastal Development Permit that requires approval by the local governing body through the public hearing process (e.g., City Council or Board of Supervisor meetings).

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<sup>26</sup> Public Resources Code section 30624 also grants authority to the Executive Director of the Coastal Commission and the designated local government staff with a certified Local Coastal Program (e.g., planning directors) to issue emergency permits.

<sup>27</sup> Public Resources Code section 30624

#### ***4.5.2.3 Local Government-Issued Coastal Development Permits***

Coastal Act Section 30600 requires a Coastal Development Permit for new development in the coastal zone and describes the circumstances for which the local government has the responsibility for issuing CDPs. If the proposed project constitutes development and the person has not obtained a vested right in development or the development does not qualify as an exemption or Categorical Exclusion, and cannot be processed as a waiver or administrative permit, then a Coastal Development Permit is required.

Local CDPs must be found to be consistent with the certified LCP, and if seaward of the first public road, with the public access and recreation policies of the Coastal Act. Processing, timing, and fees vary amongst the local governments and also depend on other factors such as the complexity of the project. In some instances, an LCP may include streamlined procedures for considering certain categories of Coastal Development Permits, including using a process for moving items to the consent calendar; using a hearing officer, such as a zoning administrator, instead of an elected or appointed body, to act on coastal permit matters; deciding on certain permits administratively; and combining staff recommendations for functionally-related development, in order to expedite review. Given that each local government will undertake the permitting process, noticing, and hearing procedures in different ways, applicants must consult with their local government for more detailed information.

##### Summary:

A proposed agricultural development activity located within a local government's certified LCP jurisdiction may qualify for a de minimis waiver if:

- The certified LCP of the local government in which the development activity is proposed includes waiver procedures, including the notification of interested persons and criteria for development that may qualify as de minimis; and
- The development activity involves no potential for any individual or cumulative adverse effects on coastal resources; and
- It is development that is not appealable to the Coastal Commission.

A proposed agricultural development activity located within a local government's certified LCP jurisdiction may be expedited through the permitting process as an Administrative Permit if all of the following criteria are met:

- The Local Government in which the development activity is proposed has a certified LCP with certified procedures for Administrative Permits;
- The local governing body (e.g., a County Board of Supervisors) of the Local Government in which the development activity is proposed has granted authority to a local official (e.g., the Planning Director) to issue Administrative Permits;
- The development activity constitutes development that may be subject to the Administrative Permit process; and
- The applicant agrees to the terms and conditions (contained within the Administrative Permit) imposed on the development activity to bring the project in compliance with the Local Government's certified Local Coastal Program and the Coastal Act, as applicable.

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## Opportunities for Streamlining Local Government Permitting Processes

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Another way to facilitate maximum agricultural production is to provide optimal permit processing for agricultural development. The Coastal Act supports various levels of permit processing, including exemptions, waivers, administrative permits, and Coastal Development Permits, as discussed in the preceding sections. Development may be processed pursuant to these methods only where the development meets the prescribed Coastal Act criteria such as the type of development and its associated potential for impacts to coastal resources. In all cases except for consolidated permits and general consistency determinations, discussed below, these processes must be integrated into the local government's certified LCP in order for the local government to approve development using those processes. Given their significant potential to expedite agricultural development, the requirements for integrating the de minimis waiver (for non-appealable development) and local hearing waiver processes (for appealable development) into a jurisdiction's LCP are described in detail below. Other regulatory processes that may be particularly suited to facilitate agricultural development include Categorical Exclusion Orders, Public Works Plans, General Consistency Determinations, and Consolidated Permits. These potential streamlining opportunities are also described in detail below.

### 5.1 Local Coastal Development Permit Waiver

Local governments may expedite their local permitting procedures by issuing permit waivers for non-appealable de minimis development consistent with Section 30624.7 of the Coastal Act where such provisions are specifically certified as part of the LCP. The authority for local governments to issue de minimis waivers stems from Section 30519 of the Coastal Act, which authorizes delegation to local governments of all of the development review authority provided for in Chapter 7 of the Coastal Act, the chapter containing Coastal Act Section 30624.7. Local governments may incorporate this de minimis waiver authority into their LCPs as long as the waiver procedure follows certain review criteria and procedural requirements, as discussed below.

De minimis waivers may serve as a means to expedite minor, common agricultural activities (such as replacement of fencing or grading in an existing agricultural footprint), resulting in lower costs and quicker processing for farmers and ranchers. Although a de minimis

waiver determination must be evaluated on a case-by-case basis consistent with the relevant LCP, additional types of agricultural activities that may be minor enough to be considered de minimis include installation of hoop structures in the existing agricultural footprint, facility operation or abandonment activities, and water quality protection measures, provided that the development involves no potential for adverse effects on coastal resources.

Under Section 30624.7, the requirement for a Coastal Development Permit may be waived as de minimis if it involves no potential for adverse effects on coastal resources, either individually or cumulatively, and is consistent with the policies of Chapter 3 of the Coastal Act. When applied to local governments, the same general criteria apply; however, for development proposed in certified LCP jurisdictions, the proposed development must be non-appealable<sup>28</sup> and must be found consistent with the certified LCP of the local government in which the development is located, rather than with the Chapter 3 policies of the Coastal Act.

Examples of de minimis development may include replacement of existing structures or facilities in-kind, or small developments such as fencing or grading in the existing agricultural footprint. Because the development *as proposed* must ensure protection of coastal resources and be consistent with the LCP, implementation of the development cannot be subject to any special permit conditions. However, mitigation measures can be included by an applicant in their project proposal, such as water quality Best Management Practices, which could potentially expand the use of this waiver process.

The local waiver process follows the same Commission procedures as described in subsection 4.5.1.1, above. This means that the local government must implement the functional equivalent of the Commission's noticing and hearing requirements, including that the local government must also notice interested persons, including the Executive Director, who may then request that a CDP be required in lieu of the waiver.

## 5.2 Local Hearing Waiver

The Coastal Act allows for local governments to include a provision in their LCPs to waive the public hearing requirement for certain minor developments. Local governments may waive the requirement for a *public hearing* for minor development which a local government determines is consistent with its certified LCP, requires no discretionary approvals other than the subject Coastal Development Permit under review, and has no individual or cumulative adverse effect on coastal resources or public access to and along the coast.<sup>29</sup> The local government may only waive the requirement for a public hearing if public notice is provided, consistent with specific public noticing provisions, and no parties specifically request a hearing.<sup>30</sup>

This public hearing waiver can be utilized for qualifying development that is appealable to the Commission. If there are no objections to waiving the public hearing, and the hearing is

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<sup>28</sup> Title 14 California Code of Regulation section 13566 requires that at least one public hearing shall be held on each application for an appealable development affording interested persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns.,

<sup>29</sup> Public Resources Code section 30624.9

<sup>30</sup> Title 14 California Code of Regulation section 13566 requires that at least one public hearing shall be held on each application for an appealable development affording interested persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns.,



subsequently waived, local parties may no longer have standing to submit an appeal either at the local level or to the Commission for the subject CDP.<sup>31</sup> This change in appealability is a key benefit of a hearing waiver, though it should be noted that the development is still noticed as appealable development, and the Commission's typical appeal period must run to allow for potential appeals by Coastal Commissioners.

In summary, the public hearing for a proposed agricultural development activity located within a local government's certified LCP jurisdiction that is appealable to the Commission may be waived by a local government if all of the following apply:

- The development activity is consistent with the certified LCP of the local government in which the development is located;
- The development activity requires no other discretionary approval, such as a conditional use permit;
- The development activity involves no potential for any individual or cumulative adverse effect on coastal resources; and
- Public notice is provided, and no parties specifically request a hearing.

### 5.3 Categorical Exclusion Order

Coastal Act Sections 30610(e) and 30610.5(b) allow certain pre-authorized *categories of development* to be exempt from the requirement to obtain a Coastal Development Permit provided that the category of development has no potential for any significant adverse effects, either individually or cumulatively, on coastal resources or on public access. These categories of development are known as Categorical Exclusions (Cat Ex) and must be approved by the Commission pursuant to a Categorical Exclusion Order (Cat Ex Order) before those types of development can be excluded from Coastal Development Permitting requirements.

There is an opportunity for agricultural activities that have no potential to adversely impact coastal resources to be designated as Categorical Exclusions. The standard of review, processing, and other responsibilities to implement a Cat Ex Order are described in detail below.

#### 5.3.1 Categorical Exclusions

Since there is no pre-defined list of development that may be excluded, each local government or public agency requesting a Cat Ex must develop its own list of potential development categories to be excluded from permitting based on local circumstances and need. Section 30610(e) of the Coastal Act provides the authority for Categorical Exclusions. Specifically, Coastal Act section 30610(e) requires that development approved under a Cat Ex will not result in any potentially significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast.

Coastal Act Section 30610.5(b) requires that any eligible exclusion granted cannot lead to significant changes in density, height, or the nature of the land use. Categories of development may be more likely to meet the exclusion criteria if the categories are applied to smaller

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<sup>31</sup> Public Resources Code section 30624.9

geographic areas or are subject to terms and conditions that ensure compliance with Coastal Act criteria.

Local governments must submit a proposed exclusion to the Commission for approval. A Categorical Exclusion Order requires approval from a 2/3 majority of the Commissioners, as opposed to a simple majority. It is recommended that Commission staff at the local district office be consulted early on about the procedural requirements of Coastal Act Sections 30610(e) and 30610.5(b). Ultimately the Commission has the discretion to approve or reject a request for a Cat Ex Order.

### 5.3.2 Geographic Applicability

The Cat Ex Order must specify where the category (or categories) of excluded development will apply. Some exclusion categories may apply jurisdiction-wide (with the exception of statutorily excluded areas as described below), whereas other exclusion categories may be restricted to smaller geographic subsets of the jurisdiction.

By statute, Categorical Exclusions cannot be applied to the following areas:

- Tide and submerged lands;
- Beaches;
- Lots immediately adjacent to the inland extent of any beach;
- Lots immediately adjacent of the mean high tide line of the sea where there is no beach; and
- Public trust lands.<sup>32</sup>

### 5.3.3 Cat Ex Order Content

A Cat Ex Order may be submitted to the Executive Director of the Commission by local governments and other public agencies with jurisdiction in the Coastal Zone, as well as Commissioners and persons not representing public agencies. A Cat Ex Order must include the following key components:

- (1) A description of the category (or categories) of development requested to be excluded from permitting requirements, including the applicable geographic area, in sufficient detail to allow any person to know precisely which category of development within a specific geographic area does not require a Coastal Development Permit;
- (2) A description of findings that must be made for each type of development proposal in order for the local government to grant each individual exclusion;
- (3) The terms and conditions that each exclusion will be subject to in order to assure that the excluded development will not result in a significant change in density, height, or nature of use. The terms and conditions that each exclusion will be subject to in order to assure that the development will not result in any potential for adverse coastal resource impacts. The terms and conditions may specify any categories of development that may

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<sup>32</sup> Public Resources Code section 30610.5(b)

be excluded only on a condition that local government approvals are reviewable by the Coastal Commission, subject to prescribed procedures;

(4) The identification of any of the categories of development for which the Coastal Commission shall receive notice of public agency approval;

(5) A declaration that the Cat Ex order, in whole or in part, may be rescinded by the Commission at any time, subject to prescribed procedures, if the Commission finds that the terms of the exclusion no longer support the findings specified in Coastal Act section 30610(e); and

(6) A declaration that the Cat Ex Order may be revoked at any time that the conditions of exclusion are violated.<sup>33</sup>

### 5.3.4 Cat Ex Order Submittal and Processing

To initiate the formal Cat Ex process, the Cat Ex Order is submitted to the Executive Director of the Coastal Commission at the local district office. The Cat Ex Order must be submitted with detailed information and materials for the purpose of making the findings required by Coastal Act sections 30610(e) and 30610.5(b), as well as by CEQA.<sup>34</sup> The Executive Director, will consult with the public agency that normally approves the development activity proposed for exclusion, and with any affected local governments and any persons known to be interested in the development activity, before preparing and distributing a report for Commission review during the Commission's regularly scheduled hearings.<sup>35</sup>

At a Commission hearing, the Commission may approve a Cat Ex by a two-thirds vote of its appointed members.<sup>36</sup> To approve the Cat Ex Order, the Commission must find that all of the following apply:

(1) The category of development (as described, geographically limited, and where necessary, conditioned) has no potential for any significant adverse effects, either individually or cumulatively, on coastal resources;

(2) The category of development (as described, geographically limited, and where necessary, conditioned) has no potential for any significant adverse effects, either individually or cumulatively, on public access to or along the coast;

(3) If the exclusion would apply prior to the certification of an LCP in the subject area, an additional finding is necessary, demonstrating that the exclusion of this category of development will not impair the ability of the local government to prepare its LCP.<sup>37</sup>

Cat Ex Orders do not take effect until the acknowledgment of the Cat Ex Order and official acceptance of its terms and conditions. This includes the transmittal of copies of the Cat Ex Order by the Commission to each applicable local government or other public agency affected by the exclusion order, as well as the acknowledgment and acceptance by action of the

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<sup>33</sup> Title 14 California Code of Regulations section 13243

<sup>34</sup> Title 14 California Code of Regulations § 13241

<sup>35</sup> Title 14 California Code of Regulations § 13242

<sup>36</sup> Title 14 California Code of Regulations § 13243

<sup>37</sup> Title 14 California Code of Regulations § 13243

governing body of the local government or public agency which issues the permit for the category of development that is the subject of the Cat Ex Order.<sup>38</sup> Action by a local government or public agency's governing body, such as a City Council or Board of Supervisors, must include a resolution to accept and agree to any terms and conditions of the Cat Ex Order. Following issuance of this resolution, the Executive Director of the Commission must then determine in writing that the public agency's resolution is legally adequate to carry out the Cat Ex Order and that the notification procedures satisfy the requirements of the Cat Ex Order.

### 5.3.5 Implementation

Once a Cat Ex Order takes effect, development may only be excluded from permitting to the extent and in the manner specifically provided in the exclusion order.<sup>39</sup> All Categorical Exclusions must be reviewed and granted by the local government consistent with the necessary terms and conditions. Local property owners, for example, are not authorized to review the Cat Ex and make a determination on their own. Therefore the local government must have an official process in place to support Cat Ex reviews. Where the Cat Ex Order contains terms and conditions requiring the right of review by the Commission, permits for such development will not become effective for twenty working days following Commission receipt of the notification to approve a particular, categorically excluded development.

## 5.4 Public Works Plans

As an alternative to the issuance of individual Coastal Development Permits for public works projects, applicants for a public works project can apply to the Commission for approval of a Public Works Plan (PWP), pursuant to Section 30605 of the Coastal Act. Pursuant to Coastal Act Section 30114, public works projects include production, storage, transmission, and recovery facilities for water, sewer and other utilities, as well as projects undertaken by a special district. While public works plans have limited applicability to agricultural operations, they can be useful in three situations: (1) where a public entity undertakes an infrastructure project on or for agricultural lands, (2) where a public entity owns the underlying agricultural land, and; (3) where an agricultural district, or other special district, undertakes projects on agricultural land.

Public Works Plans are separate from LCPs and generally address a specific public works function (e.g., harbor, city college) to promote greater efficiency for the planning of any public works by avoiding the need for project-by-project approvals. Local governments are not authorized to approve Public Works Plans pursuant to the authority granted in their certified LCPs; all PWPs must be submitted and certified by the Coastal Commission. In approving a Public Works Plan the Commission must consult with the local government and must find the plan consistent with Chapter 3, if the proposed plan is submitted prior to certification of the local coastal program for jurisdictions affected by the proposed plan, or if submitted after LCP certification, with the certified LCPs affected by the plan.<sup>40</sup>

Developing a PWP falls under Coastal Act Sections 30605 and 30606, which grant the Commission the authority to impose conditions on such development projects to ensure that they

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<sup>38</sup> Title 14 California Code of Regulations § 13244

<sup>39</sup> Title 14 California Code of Regulations § 13247

<sup>40</sup> Public Resources Code section 30605

are consistent with the certified LCP. Once certified, the PWP establishes the scope of development that may be authorized with more limited oversight by the Commission than is typical of LCP implementation.

While a local government is delegated primary coastal permitting authority under its certified LCP, in certain cases, a local government's permitting decision can be appealed to the Coastal Commission and potentially be overturned. With a certified PWP, however, the concept of approving and denying Coastal Development Permits for proposed development does not apply. Rather, the Commission certifies a PWP and the projects it provides for at the onset. Further review of individual projects approved under the PWP is limited to ensuring that such projects are consistent with the PWP, including modifying such projects as necessary to ensure that this is the case.<sup>41</sup> Thus, development of the specific projects contained in a certified PWP can proceed without a Coastal Development Permit, provided that the applicant sends a Notice of Impending Development (NOID) to the Coastal Commission and other interested persons, organizations, and governmental agencies prior to undertaking the development, and that the Commission deems the identified development project consistent with the approved PWP (with or without additional permit conditions to make it consistent).

The differences between the manner in which development is authorized for PWPs compared to development approved pursuant to an LCP mean that it is critical that a certified PWP provides detailed specifications applicable to potential development projects, including specifications related to mitigation and associated offsetting improvements (e.g., habitat restoration and public access improvements) that can be relied upon to ensure that the development project conforms to the certified LCP. Thus, the need for detailed information on impacts and mitigation is the same for a PWP as that required under an individual CDP.<sup>42</sup>

The use of a PWP may be appropriate for public works that are implemented in a phased approach over a number of years. Essentially, this approach allows for the public work to be comprehensively approved upfront as a PWP, and allows individual projects to proceed thereafter in a timely manner, via Notices of Impending Development.

## **5.5 General Consistency Determinations by Federal Agencies**

The general consistency determination process authorizes the Commission to review general types of federal activities all at once rather than as an individual project.<sup>43</sup> General Consistency Determinations are always reviewed by the Commission and not by local governments, even those local governments with certified LCPs. Though not undertaken by a local government, general consistency determinations can streamline permitting for owners of agricultural land interested in participating in projects to reduce sedimentation of impaired waterways and enhance habitat.

The federal regulations provide that in cases where federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may

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<sup>41</sup> Title 14 California Code of Regulations section 13359.

<sup>42</sup> Title 14 California Code of Regulations sections 13353 and 13355.

<sup>43</sup> Title 15 Code of Federal Regulations §930.36(c)

develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity.<sup>44</sup> A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities or any other repetitive activity or category of activity(ies).<sup>45</sup> The general consistency determination authorizes development in compliance with pre-approved design, construction, and implementation standards, and may be implemented on a system-wide scale (e.g., implementing erosion and runoff protection controls throughout a County), on a recurring basis (e.g., requiring repeated maintenance and monitoring activities), and over multiple properties (e.g., under separate landownership).

For example, the NRCS, an agency within the federal Department of Agriculture, has made a general consistency determination pursuant to the federal regulations implementing the Coastal Zone Management Act (CZMA) to simplify the process for landowners as they participated in projects to reduce sedimentation of impaired waterways and enhance habitat.<sup>46</sup> The Commission has approved numerous restoration projects under the Partners in Restoration Permit Coordination Program (PIR) of the Natural Resources Conservation Service (NRCS). Together with Sustainable Conservation, the NRCS developed the PIR in 1998 in response to the permitting challenges associated with small, environmentally beneficial, erosion control projects taking place on private land.

The first PIR program was instituted in the Elkhorn Slough watershed in Monterey County, and was reviewed and approved by the Commission in a consistency determination.<sup>47</sup> This was followed by three other programmatic consistency determinations made by NRCS (and concurred with by the Commission) for restoration projects in the Salinas River, Morro Bay watersheds, and Humboldt County.<sup>48</sup> In all four of these consistency determinations, the Commission reviewed the restoration programs as a whole, rather than a specific project at a single location. In these four consistency determinations, the Commission concurred with the NRCS program to work with farmers and landowners to implement conservation projects and Best Management Practices (BMPs) to reduce runoff and sedimentation into waterways, with the NRCS assuming the lead role in ensuring project compliance with applicable policies.

Specific development activities that were authorized once the Commission concurred with the general consistency determination include: improving existing access roads for moving livestock, produce, and equipment; planting native vegetation to reduce damage from sediment and runoff; fencing to limit the passage of livestock into aquatic areas; installing filter strips to remove sediment, organic matter, and other pollutants from runoff and wastewater; constructing storage reservoirs to regulate or store water for irrigation; building structures to control grading; installing tanks and troughs; and protecting streambanks and stabilizing stream channels.

In some instances, the general consistency determination incorporated other regulatory authorizations, which freed farmers and ranchers from having to obtain additional permits when implementing the approved development activities. For example, in the Elkhorn Slough

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<sup>44</sup> Title 15 Code of Federal Regulations §930.36(c)

<sup>45</sup> Title 15 Code of Federal Regulations §930.33(a)(3)

<sup>46</sup> Title 15 Code of Federal Regulations §930.36(c)

<sup>47</sup> Consistency Determination CD-051-98.

<sup>48</sup> Consistency Determinations CD-096-01 (Salinas River), CD-036-03 (Morro Bay), and CD-085-06 (Humboldt County).

Watershed Project in Monterey County, where farmers were faced with resource issues associated with sandy soils, steep slopes, and intensive agricultural production, the NRCS proposed a project whereby multi-agency regulatory review was coordinated that would both uphold individual agency mandates, but make permitting more accessible. Although not all regulatory requirements were consolidated under the Elkhorn Watershed Project, numerous authorizations were incorporated, including a water quality waiver from the Central Coast Regional Water Quality Control Board and a streambed alteration Memorandum of Understanding from the Department of Fish and Wildlife. With respect to compliance with the federal and state endangered species acts, the U.S. Fish and Wildlife Service also issued a biological opinion for the project, while the U.S. Army Corps of Engineers also issued a regional permit for the project. This resulted in a reduction in the amount of required regulatory permits for implementation of the approved conservation projects and BMPs.

## **5.6 Consolidated Permit Process**

Coastal Act Section 30601.3 provides the Commission with the authority to act upon a consolidated permit for projects that require two coastal development permits, one from the local government with a certified LCP and one from the Commission. This authority to consolidate permit review is triggered if the applicant, local government, and Executive Director (or Commission) consent to consolidate the permit. The Chapter 3 policies of the Coastal Act serve as the standard of review for such permits.

Consolidated permits have the potential to streamline the process by allowing for development that straddles the line between local and Commission jurisdiction to obtain just one CDP from the Commission rather than CDPs from both the local government and the Commission. This strategy does not need to be codified within a jurisdiction's LCP in order to be utilized.