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A Brief Summary of Categorical Exclusions Under the Coastal Act

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.

Thus, there is an opportunity for development 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.

Categorical Exclusion Orders

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 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 two-thirds 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.

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.¹

Required 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 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

¹ Public Resources Code § 30610.5(b).

Summary of Categorical Exclusion Orders

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.²

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.³ 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.⁴

At a Commission hearing, the Commission may approve a Cat Ex by a two-thirds vote of its appointed members.⁵ 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.⁶

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 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

² Title 14 California Code of Regulations § 13243.

³ Title 14 California Code of Regulations § 13241.

⁴ Title 14 California Code of Regulations § 13242.

⁵ Title 14 California Code of Regulations § 13243.

⁶ Title 14 California Code of Regulations § 13243.

Order.⁷ 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.

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.⁸ 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.

⁷ Title 14 California Code of Regulations § 13244.

⁸ Title 14 California Code of Regulations § 13247.