

## CALIFORNIA COASTAL COMMISSION

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### Section I. Local Coastal Permit Requirements

The Implementation Plan (IP) of a certified local coastal program must include procedures for issuing coastal development permits. The first steps in the coastal regulatory process typically occur when a party who wants to develop in the coastal zone contacts a city or county planning department with a proposal. Or, an interested citizen may have questions about the regulatory process relative to a proposal or activity that he or she encounters in the coastal zone.

The Coastal Act and corresponding Regulations establish basic rules for requiring coastal development permits, including what types of activities need a coastal permit and what entity is the lead permitting agency. These requirements and the general procedures are further outlined in Chapter II of the *Local Coastal Program Post-Certification Guide for Coastal Cities and Counties* at <http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf>. The steps that the *Guide* covers are: Determining Jurisdiction Type, [Addressing] Projects Straddling Jurisdiction Boundaries, and Resolving Determination Disputes. Since the *Post-Certification Guide* was last revised in 2002, a new optional process for addressing projects straddling jurisdictional boundaries has been added to the Coastal Act.

In addition to the *Post-Certification Guide*, certain procedural interpretations have been made by the Commission over the years that can be incorporated into your practices to improve LCP implementation. In addition, the Commission's post-certification monitoring of LCP implementation has identified certain recurring procedural issues and problems in identifying permit requirements. For example, it is not always clear where precise jurisdictional boundaries are on the ground, or whether an applicant's proposal requires a coastal permit or whether your government has the authority to issue a coastal permit. You may find that your LCP does not include sufficient guidance on these matters. If such procedural directions are not clear to property owners, developers and the general public, problems may arise leading, for example, to enforcement actions being taken development approvals being delayed, or challenges being made to the legal status of lots. Updating your IP code sections can help prevent some of these problems and can result in saving time and money in processing coastal permits. In addition, because the coastal permit application sets the stage for considering and eventually implementing coastal permits, updating an LCP's procedures with respect

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to the initial permit determination process can result in the following benefits:

- Coastal resources receive enhanced protection;
- Proposed projects are considered in a consistent manner;
- Processing delays are reduced;
- Interagency coordination is enhanced;
- Applicants and new staff better understand where to direct questions and applications.

This section provides suggestions for updating the IP and considering other practices that will help guide the beginning stages of processing a coastal permit – namely, deciding whether you need to issue a coastal permit for a proposed project. The first step (Section I.A) is to resolve jurisdictional questions -- whether you would authorize the proposed project or whether the Coastal Commission or another entity, such as a port with a certified port master plan, would have this responsibility. The next step (B) is to determine whether the proposed project constitutes “development.” If it does not, no coastal permit is required. The third step (C) is to determine if the proposed project is somehow exempt from the coastal permit process. The fourth step (D) is to determine if the proposed project is subject to Coastal Commission appeal after you have rendered a coastal permit decision for it. A process is also available for resolving disputes about whether permits are required or appealable (E).

### ***A. Determine if a Proposed Project Is Within Local Permitting Jurisdiction***

Coastal Act § [30519](#) delegates coastal permit authority to local government in most of the coastal zone where an LCP has been certified. All IPs, therefore, must include some indication that the local government has the authority to process coastal permits and will exercise that authority.

Limitations to the local authority to issue coastal permits within its boundaries are clarified in various laws and regulations. Coastal Act § 30519(b) describes areas where the Coastal Commission retains coastal permit jurisdiction (e.g., tidelands, submerged lands, and public trust lands). Applicants for development in these locations go to the Coastal Commission, not local government, for coastal permits. Code of Regulations § 13577 directs how to map these Commission jurisdiction areas and local permit areas.

The full text of citations to the Coastal Act can be found at: <http://www.coastal.ca.gov/coa/stact.pdf>.

The full text of citations to the California Code of Regulations can be found at: <http://government.westlaw.com/linkedslice/default.asp?SP=CCR-1000>. All references are the Title 14 Natural Resources Division 5.5.

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Coastal Act § 30601.3, added to the Coastal Act in 2006, allows the Coastal Commission to process the entire permit where a project straddles the jurisdiction of the Coastal Commission and a local government, provided that the applicant, the appropriate local government and the Commission, through its Executive Director, consent to consolidate the permit action, and provided that public participation is not substantially impaired by such consolidation. The Coastal Commission also retains jurisdiction over permits that it has previously issued.

The Coastal Act also specifies certain special coastal approval processes where the local government does not issue the coastal permit. For example, Coastal Act § 30605 provides for sponsors of public works projects subject to a public works plan and private college projects subject to a long-range development plan to authorize such projects instead of local governments. Coastal Act §§ 30519(b) and 30605 establish a special review process for projects on state college and universities. Coastal Act § 30715 allows for certain port governing bodies to authorize development if they have a certified port master plan. And Coastal Act § 30600(a), referencing Public Resources Code § 25500, preempts local review of thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them.

Finally, the Commission retains jurisdiction under the Coastal Zone Management Act (CZMA) to review federal projects and non-federal projects on federal land for consistency with the Coastal Act. In most situations, local government would not issue coastal development permits for these types of projects.

Since these limitations on the responsibility to issue local coastal permits are specified in various laws, elaboration of them in an IP in one place would assist Commission and local staff, as well as the public, in understanding local permit authority as questions arise. Following are suggestions for LCP updates to address: (a) determining if a proposed project is within the city or county's coastal permit jurisdiction; (b) authorizing the Coastal Commission to act on coastal permits that straddle jurisdictional boundaries; (c) processing coastal permits locally when the Coastal Commission also has some jurisdiction over the same projects; (d) determining who acts on requests for subsequent projects on sites that had previously been subject to Coastal Commission permits; and (e) addressing projects where local coastal permit authority is preempted.

#### **1. Recommendation: Clarify Permit Jurisdiction**

**Update the IP to include a basic statement of responsibility to issue coastal permits, if not already included.**

*EXAMPLE: Certified IP text states purpose and intent, applicability, and requirement to obtain a coastal permit to undertake development (see Appendix B).*

## **2. Additional Updates, Procedures and Practices to Consider**

Some certified LCPs may already supplement a basic permit requirement provision, like the above example, with additional explanations as to which agency issues coastal development permits. If not, consider additional updated procedures that may clarify and inform applicants and the public when you have coastal permit jurisdiction and when you do not, pursuant to the cited laws and regulations. For example:

### **a. Clarify the process for determining whether a proposed project is within the coastal zone where coastal permit authority has been delegated to a local government.**

First, if your LCP does not already reference or quote Coastal Act [§ 30519](#) and corresponding Code of Regulations [§ 13577](#), defining where the Coastal Commission retains coastal permit authority, you may wish to incorporate these into an IP update. These authorities establish the basis for making determinations as to whether you have permit authority over a proposed project.

Second, your IP can include a reference to and a procedure for consulting the post-certification maps when making a jurisdictional determination. These maps, adopted by the Coastal Commission, show the legislatively established coastal zone boundary and the coastal zone portions of your city or county where the Coastal Commission retains permit jurisdiction. They are required pursuant to Code of Regulations § 13576, which provides that a map portraying the areas of continuing Commission permit and appeal jurisdiction be adopted in conjunction with the final LCP certification. An update procedure is also described and provides the basis for revision and re-adoption of the map by the Commission. Please note, however, that while the adopted map should portray the various jurisdiction boundaries as accurately as possible, it remains only a depiction -- a cartographic representation and not a definition of the jurisdiction -- and it cannot be used on its own without field determination procedures to establish a precise boundary location. Conditions on the ground control permit and appeal jurisdiction boundary locations, based on Coastal Act definitions, regardless of how accurate the mapped boundary may be. It is important to emphasize that all adopted maps come with the following disclaimer:

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*...If questions arise concerning the precise location of the boundary of any area defined in the above sections [of the Coastal Act], the matter should be referred to the local government and/or the Executive Director of the [Coastal] Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where post-LCP certification permit and jurisdiction is retained by the Commission.*

Thus, your IP can include a procedure to ensure an accurate determination is made in cases where it is unclear where the precise boundaries fall on the ground, either because this determination cannot be made from consulting the maps alone or because the adopted post-certification map may not be totally up to date or complete for the situation in question. For example, your procedures may sometimes require more precise mapping of the proposed project, involve performing a field inspection, or incorporate consulting the Coastal Commission staff.

Ultimately, the Coastal Commission is charged with resolving any coastal geographic jurisdictional dispute. Clearly specifying a dispute resolution process in the IP consistent with Code of Regulations § 13569 could reduce conflict and delays (please also section I.E “Resolving Disputes Over Whether Permits Are Required or Appealable” below).

Please note that the adoption of post-certification maps is independent of the LCP certification and amendment process. These maps are prepared by the Coastal Commission’s mapping unit before being adopted by the Commission. Thus, you cannot submit LCP amendments to change your official post-certification map. However you can revise other maps found in your LCP through an LCP amendment to ensure that they correspond to the coastal zone boundary that the Coastal Commission has already adopted. Our mapping staff continues to coordinate with local staffs as it updates and digitizes the post-certification maps. You are welcome to work with our staff and suggest updates to these maps, but please do not update your official versions without first consulting with the Commission. This can result in later disputes. Even if you wish to simply transfer boundary lines from USGS quad-scale maps to parcel-scale maps or from hard copy to digital, please have our mapping staff review them before officially using them to advise applicants.

**b. Add an option to have the Coastal Commission act on coastal permits when the proposed project straddles the boundary between your jurisdiction and the Commission’s.**

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Previously, when a development project straddled the boundary of a delegated permit jurisdiction, both the local government and the Coastal Commission had to process a separate coastal permit for the relevant portions of the project. Now under Coastal Act § 30601.3 one consolidated coastal permit may be processed by the Commission. Thus, you may wish to add provisions to your IP to allow for such Commission action.

If you amend your IP to include this option, you can explain how the procedure will work pursuant to § 30601.3. For example, you would need to inform a potential applicant of this option to see if they wanted to take advantage of it. Your IP could also designate who from your local government (e.g., the Planning Director) will make the decision to ask the Commission to act and under what criteria. Since the Coastal Act allows for this option only if “public participation is not substantially impaired” the designated decision-maker may need to first gauge how much public interest there is in the project and the nature of that interest. You could specify that proposals that generate a certain level or kind of public interest would still need permits from both the local government and the Commission. You may also want to facilitate transmitting local concerns to the Commission for those projects where you do ask the Commission to issue the consolidated coastal permit. Since you will likely remain responsible for issuing a building permit for the project, your IP may also include provisions for accepting the Commission’s decision (i.e., permit conditions) for any follow-up regulatory work that you perform. This would be similar to how you address coastal permits that the Commission ends up deciding on appeals (please see [Section III.C.2.c](#) “Reconcile any remaining local responsibilities with Coastal Commission action on the appeal”).

**c. Explain how to process a coastal permit when the Coastal Commission also has jurisdiction over the same proposed development project.**

If a proposed development project could be consolidated, but the consolidation process immediately described above in Section I.A.2.b is not used, the Coastal Commission would review that portion of the project within its jurisdiction and you would review the portion in yours. Although any approval is thus split between two agencies, projects and their impacts may not be easily separated by the jurisdictional boundary. Both the Commission and local government staff will need an understanding of the entire project in their respective consideration of

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individual permits in order to properly review and analyze the permit application.

You may thus wish to incorporate measures in your IP and/or adopt associated procedures to facilitate coordination with our coastal permit process. For example:

- Revise permit application forms and filing requirements to require the applicant to describe and provide information on the entire project and then clearly indicate the specific component of the project that will occur just within your jurisdiction. For example, you may request both the total amount of grading and the amount within your jurisdiction alone (please see [Section II.A](#) “Specify Application Contents”);
- Work with Commission staff during the application process in order to avoid giving applicants conflicting requirements and to ensure that all parties have the same factual understanding of the issues involved;
- Coordinate with Commission staff and the applicant to reach agreement on the sequencing of processing the applications. For example, if the part of the project in your jurisdiction is appealable to the Coastal Commission, it could save work if you process your permit first and then we process our permit, along with any appeal received on your permit;
- Consult with us if necessary to determine how issues may be separated between your permit and ours (e.g., you might address upland erosion and we might address shoreline erosion) and how those issues that do not easily separate on the jurisdictional boundary will be considered;
- Address Coastal Act issues that span the jurisdictional boundaries. If, for example, the majority of the project and issues raised are in your jurisdiction and/or if you have other permit authority, such as a use permit, for the portion in the Coastal Commission’s jurisdiction, your actions might be able to incorporate Commission concerns and resolve issues that the Commission would also have. In such cases, the Commission’s coastal permit process might be streamlined by incorporating the same conditions that you have imposed or by issuing a permit waiver if the applicant agrees to carry out all the local conditions over the entire project area. For example, if sensitive habitat spans the jurisdictional boundary and you require a sufficient mitigation/restoration plan, then the Commission may not have to devise a separate mitigation/restoration plan for the area under its jurisdiction – it might be able to reference and require the one that

you require. Early consultation with Commission staff is essential in these situations.

**d. Clarify the process for addressing subsequent projects on sites where the Coastal Commission has previously issued a coastal permit.**

Where the Commission previously issued a coastal development permit (pre-LCP certification or on appeal), it retains authority over projects that remain subject to the prior coastal permit decision. Your IP could include a process for clarifying when an applicant should seek an amendment to a previously issued Coastal Commission permit or can instead seek a new, separate coastal permit. If a proposed project must be processed as an amendment to the Commission-issued permit, then the application should be submitted to the Commission. Examples of when an amendment to the Commission-issued permit would be required include cases where the authorized development is not yet completed or where new proposals would conflict with permit requirements or conditions of the prior Commission action (e.g., limiting future development on the site). To confirm if the Commission acted on prior permits on a site and retains jurisdiction, your procedures could include measures to:

- require the application form to identify all prior permits;
- check local records for any building or other permits that you would have issued for the site in question between February 1, 1973 (the date the Coastal Commission started issuing coastal permits) and the date that you began issuing your own coastal permits;
- check for any recorded documents that govern the site;
- confirm if any development on the site remains underway or is incomplete;
- confirm whether the proposed project is distinct from existing development on the site.

Finally, if questions remain about prior permits, you can contact Commission staff to ask us to check our records for previously-issued coastal permits and determine whether you or the Commission processes the new application. The more information that you have about the site (e.g., the date of previous development and the owner at the time), the easier it may be for us to retrieve the actual coastal permit, if we issued it.

**e. Address situations where local coastal permit authority is preempted.**



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*Please see the U.S. Supreme Court's "Granite Rock decision" (CCC v. Granite Rock Co. (1986) 480 U.S. 572) for a discussion of the Coastal Commission's authority to issue permits for non-federal projects on federal land.*

To help inform the public and applicants, your IP can include a list of the categories of projects that are within your boundaries but where coastal development authority is retained by the Coastal Commission or another entity. For example, the Commission retains jurisdiction under the Coastal Zone Management Act (CZMA) to review federal projects, whether or not they occur on federal land, and local government would not issue coastal development permits for non-federal projects on federal land. These would need a coastal permit from the Commission. In addition, local governments do not issue a coastal development permit for public works projects subject to an approved public works plan; projects within a port with a certified port master plan; state college and university projects for educational facilities under a Long Range Development Plan; and thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them.

You may wish to prepare information for prospective applicants and interested citizens directing them to the agencies that will be responsible for deciding these matters. Your LCP may include a procedure to consult with us or other agencies in case jurisdictional questions arise over these types of projects. Your LCP may also include procedures to track these matters that involve your jurisdiction and to facilitate local involvement in the corresponding decision making processes.

### ***B. Determine if a Proposed Project Is "Development"***

Coastal Act § 30600 requires that anyone wishing to undertake "development" in the coastal zone obtain a coastal development permit. Coastal Act § 30106 defines development for purposes of this permit requirement. All LCPs, therefore, must include a clear definition of development that is consistent with the Coastal Act § 30106 definition.

Questions often arise as to whether a specific activity meets the basic definition of development. Applicants and others would thus benefit if your IP also includes: (a) illustrations of established determinations of what activities are development; (b) guidance and procedures for determining whether a particular activity is development; and (c) a statement that the definition is applied to private and public projects.

#### **1. Recommendation: Clarify What Is Development**

**Update the IP to incorporate the Coastal Act § [30106](#) definition of development, if not already included.**

## 2. Additional Updates, Procedures and Practices to Consider

In updating your IP, consider additional procedures to clarify and inform applicants and the public how the definition of development in Coastal Act § 30106 may be applied. For example:

### a. Illustrate the definition of development with established determinations of what activities are development.

It might not be immediately apparent whether a specific non-construction activity that someone is proposing is encompassed under the definition of “development.” Over time, the Commission, courts, and perhaps your decision-makers have made determinations that certain activities in all or specified circumstances fall under the definition of development. Many of these determinations conclude that certain activities result in a change in the intensity of use of land or water and/or a change in access to water (e.g., the ocean). Illustrating your IP’s definition of development with these determinations may facilitate effective implementation of your LCP. Examples of such decisions by the Coastal Commission and courts are shown in Table I.1.

Table I.1. Examples of Determinations of Whether An Activity is “Development”	
Type of Activity	Discussion
Adding Parking Meters or Substantially Raising Parking Fees	If the meters serve beach visitors, then imposing or substantially increasing fees is considered a change in access to water (e.g., the ocean), which is defined as development.
Prohibiting Existing Parking or Changing It to Preferential Parking	If the parking serves beach visitors, then eliminating it or restricting it to only certain users (e.g., residents) is considered a change in access to the water, which is defined as development.
Adjusting Lot Lines	Although the Subdivision Map Act distinguishes lot line adjustments from subdivisions, they are considered development under the Coastal Act as affirmed in <i>La Fe, Inc. v. County of Los Angeles</i> (1999) 73 Cal. App. 4th 231.

Please see, [“Imposing or Increasing Fees or Modifying the Hours of Operation of Public Beaches or Public Beach Parking Lots, Piers or Boat Launching Ramps,”](#) October 1993, page 2 for the rationale for coastal permit requirements for these activities.

**Table I.1. Examples of Determinations of Whether An Activity is “Development”**

Type of Activity	Discussion
Issuing Conditional Certificates of Compliance	Issuing a conditional certificate of compliance is a discretionary action requiring analysis and possible conditions to allow a division of land that was not previously accomplished consistent with relevant legal standards. This falls under the definition of development, which encompasses subdivisions and any other division of land. Please note that while issuing an unconditional certificate is a ministerial action that does not recognize any new or illegal division of land and hence is not development, if a public agency erroneously issues an unconditional certificate, instead of a conditional certificate, such issuance is still “development,” requiring a coastal permit. Issuance of a certificate of compliance, whether conditional or unconditional, must conform to the requirements of the Subdivision Map Act.
Imposing Beach Curfews	Imposing beach curfews usually reduces public access to the water (e.g., to the ocean) which is defined as development.

Please see, Please see [“Actions Limiting Public Access to Beaches and State Waters \(Beach Curfews\),” June 1994, p. 7 for further information on this topic.](#)

**b. Specify a process for determining whether a proposed project is “development.”**

In addition to the examples in Table I.1, we recognize that you may frequently face questions about whether a specific activity is development. Your IP could include a procedure for making these determinations, including specifying who makes the decision and the criteria for making the decision. The rule to follow is that the proposed activity must fall within at least one of the definitional elements listed within Coastal Act § 30106. You may include in your determination procedure a point for consultation with Coastal Commission staff to help answer questions that may arise. If a dispute remains over whether a proposed activity is development, then it is resolved through the required resolution process (please see [Section I.E](#) “Resolve Disputes Over Whether Permits Are Required or Appealable”).

The Coastal Commission makes determinations about whether an activity is development on a case-by-case basis, taking into account the specific facts of the situation and whether the activity meets one of the elements of the definition of development in Coastal Act § 30106. Table I.2 lists some additional examples where the Commission has determined that an activity constitutes development, and the basis for that determination.

<b>Table I.2. Examples of Determinations that an Activity is “Development”</b>	
<b>Type of Activity</b>	<b>Discussion</b>
Abandoning Public Roads	Does the road provide access to the shoreline, either directly or indirectly? Is the roadway used by the public a fair amount? If so, then privatizing it reduces the use it receives and public access to the ocean, which is a water body. A change in the intensity of use of the land and access to water are both defined as development.
Clearing Brush or Controlled Burning	Is the vegetation environmentally sensitive habitat? If so it is considered major vegetation, the removal of which is defined as development.
Closing Accessways	Closing an accessway may be accomplished by erecting a barrier, signs or other placement or erection of a structure on land. It may also reduce public access to the ocean, or result in a reduction in the intensity of public use of the area. Grading or removal of material may also be involved. Each of these situations has been determined to be development in the past.
Merging Lots	Merger of lots that each have some development potential will likely reduce overall development potential, which is a change in the density or intensity of use of land and therefore development.

Please see the Commission's temporary events guidelines at [http://www.coastal.ca.gov/la/docs/temp\\_events\\_guidelines.pdf](http://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf) for considering whether activities have a significant effect on public access.

Table I.2. Examples of Determinations that an Activity is “Development”	
Type of Activity	Discussion
Using Beaches & the Ocean to Teach Surfing, Kayaking etc.	If such activities take up substantial beach area then public access to the ocean may be affected, which may trigger the definition of development. If the schools need any equipment sheds, lifeguard towers, portable classrooms or placement of other structures, the activity involves development.

Please note that even though an activity may be defined as development, you may then be able to find it exempt from coastal permit requirements, at least in certain situations (please see [Section I.C](#) “Determine if a Development Proposal is Exempt from Permit Requirements”). Also, there may be procedures that could be used to expedite the processing of a required coastal permit (please see [Section II.C.2](#) “Specify Procedures for Deciding on Coastal Permits”).

**c. Affirm that the definition of development applies to activities of other governmental agencies.**

The Coastal Act differs from those state laws that exempt local, regional, and state agencies (e.g., school districts, water agencies, and State Parks) from the local regulatory process. The Coastal Act does require such other agencies to obtain coastal permits for new development pursuant to certified LCPs, unless specifically exempted. Your local staff may have confronted questions regarding development proposals from other agencies; or these agencies may lack detailed knowledge of Coastal Act requirements for local permits. Thus, you might include in your IP an affirmative statement that other local, regional and state governmental agency projects falling under the definition of development must abide by applicable coastal permit procedures.

You may wish to supplement such a provision by preparing permit training materials to assist other local, regional and state agencies and proactively performing outreach to the agencies that own land or typically operate in your community.

### ***C. Determine if a Development Proposal is Exempt from Permit Requirements***

Not all activities determined to be development require coastal permits. Coastal Act § 30610 lists development categories that are exempt from the requirement to be authorized by coastal development permits. California Code of Regulations §§ 13250-53 amplifies on some of these categories of exempt development. Coastal Act § 30600(e) exempts certain work responding to a Governor's state of emergency proclamation or to highway damage within its right-of-way due to natural events. Also, Coastal Act § 30005(b) provides that the requirement to obtain a coastal permit cannot be a limitation on your jurisdiction's power to abate a nuisance, although the approved abatement must be the minimum necessary to resolve the nuisance. All IPs, therefore, should include a clear list of development categories that are not subject to the coastal development permit process.

Questions often arise as to whether a specific activity falls within one of these exemption categories. Applicants and others would thus benefit if your IP also includes guidance to clarify what and under what conditions development is exempt by indicating, for example: (a) areas where exemptions apply; (b) which temporary events are exempt; (c) how the disaster replacement exemption is applied; (d) how the exemption for emergency work exemption is applied; (e) the scope and application of any exclusions; and (f) what nuisance abatement activities are exempt.

#### **1. Recommendation: Clarify Exemptions from Coastal Permits**

**Update the IP to incorporate Coastal Act §§ 30600(e) and 30610 lists of exemptions and the requirements of corresponding California Code of Regulations §§ 13250-53 that are applicable to your jurisdiction, if not already included.**

These various provisions can be melded into one exemptions section (please see [Appendix B](#)) with the related Act and Regulation sections combined (e.g., Code of Regulations§ 13250 expands upon Coastal Act § 30610(a) regarding improvements to existing single-family residences; Code of Regulations§ 13253 explains Coastal Act § 30610(b) regarding improvements to any structure other than a single-family residence; Code of Regulations § 13252 relates to Coastal Act § 30610(d) regarding repair or maintenance activities).

## 2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider adding procedures that may clarify and inform applicants and the public about when a proposed activity will or will not require authorization through the coastal permit process. For example:

**a. Include, define or reference specific statutory exemptions from coastal permit requirements for structural additions and repair and maintenance activities.**

Exemption provisions are complex. Some categories of development are exempt from permit requirements except in certain situations. Some of these situations are geographically-specific. Thus, you may include in your IP exemption section definitions of or references to specific qualifications that are included in Code of Regulations §§ 13250 through 13253 (see bolded text in Table I.3). If such designations have not been made, you may wish to do so and include them in your IP.

<b>Code of Regulation</b>	<b>Summary of Provision</b>	<b>Local Application in IP</b>
§ 13250(a)(2)	Exempts many improvements to structures “ <b>normally associated with a single-family residence</b> ” and lists some examples such as garages, pools, fences, and sheds.	Your IP could enumerate categories of structures normally associated with a residence for your jurisdiction.
§§ 13250(b)(1) and 13253(b)(1)	Does not exempt improvements in an area designated as “ <b>highly scenic</b> ” in a certified land use plan.	If you have such highly scenic areas designated in your LUP, you can reference them in your IP. If your LUP identifies areas of scenic importance, but does not use the term “highly scenic” you can amend your LUP to use that term.

<b>Table I.3 Possible Designations to Reference in List of Exemptions</b>		
<b>Code of Regulation</b>	<b>Summary of Provision</b>	<b>Local Application in IP</b>
§§ 13250(b)(5) and 13253(b)(5)	Does not exempt <b>“major water using development”</b> in areas with a <b>“critically short water supply”</b> designated by the Coastal Commission by resolution.	You could designate such water short areas in your LCP. Then, the Commission’s resolution certifying your LCP satisfies this designation requirement. Your IP can also specify the threshold for defining major water using development.
§ 13252(a)(1)(D)	Does not exempt certain repair and maintenance activities along the shoreline where <b>“mechanized construction equipment or construction materials”</b> are present in certain areas.	Your IP could more precisely define mechanized equipment or construction materials and specify a threshold for what constitutes their presence.
§ 13252(a)(2)(C)	Does not exempt dredge spoil removal in areas within a <b>“critically short sand supply”</b> designated by the Coastal Commission by resolution.	Your LCP could designate such critically short sand supply short areas. Then, the Commission’s resolution certifying your LCP satisfies this designation requirement.



<b>Table I.3 Possible Designations to Reference in List of Exemptions</b>		
<b>Code of Regulation</b>	<b>Summary of Provision</b>	<b>Local Application in IP</b>
§ 13252(a)(3)	Exempts certain repair and maintenance activities specifically described in “ <b>Repair, Maintenance, and Utility Hookups</b> ” at <a href="http://www.coastal.ca.gov/legal/exclusions-1978.pdf">http://www.coastal.ca.gov/legal/exclusions-1978.pdf</a>	You can incorporate relevant portions of this document in your IP so it will be conveniently accessible. You can specify local road maintenance programs that fall under part II.A of this document.

**b. Explain which temporary events are exempt from coastal permit requirements.**

You can include in your IP exemption section the text of or reference to the Coastal Commission’s temporary events guidelines found at [http://www.coastal.ca.gov/la/docs/temp\\_events\\_guidelines.pdf](http://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf) or excerpted in [Appendix B](#). You could further indicate how a “significant adverse impact upon coastal resources” would be determined for your city or county pursuant to these guidelines and Coastal Act § 30610(i). You may also include a procedure for consulting with the Coastal Commission staff as to whether a specific proposed temporary event is exempt from coastal permit requirements.

**c. Define “replacement” for purposes of implementing the exemption due to disasters pursuant to Coastal Act § 30610(g).**

You may be aware of structures located in sensitive areas of your city or county that were destroyed by disaster but have not been rebuilt many years after the disaster. If so, you might want to specify in your IP a defined time period for replacement to take place, after which construction of a new structure would no longer be exempt from permitting requirements.

**d. Describe which emergency work is exempt from coastal permits**

**pursuant to Coastal Act § 30006(e).**

You may want to include the Code of Regulations [§ 13329](#) definition of the term “emergency” as a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. You may also be aware of instances of proposed work purported to be an emergency response to a declared disaster that appeared to go beyond addressing the immediate emergency. If so, you might want to define in your IP exemption section the terms “immediate” and “necessary” to ensure that the Coastal Act § 30600(e) exemption is used solely under appropriate circumstances.

**e. Include or reference categorical exclusions from coastal permit requirements.**

*Please see Code of Regulations §§ 13240 – 13247 for further information about categorical exclusions.*

Categorical exclusions list types of development that do not require coastal permits. They are adopted by the Coastal Commission under separate procedures from the LCP certification and amendment process. However, you may include in your IP permit exemption section the text of or a reference to any categorical exclusions adopted and still in effect for your jurisdiction pursuant to Coastal Act § 30610(e) [Please note: any categorical exclusions that the Commission adopted prior to certification of your LCP ceased to apply upon LCP certification, unless they were subsequently readopted after LCP certification.] Adopted categorical exclusions incorporate some procedural terms (such as transmitting determinations to exempt proposed projects under the categorical exclusion to the Coastal Commission) that must be completed before you can inform applicants that no coastal permit is needed for their projects.

Also, please note that you cannot propose an amendment to a categorical exclusion through the LCP amendment process alone. Such changes must be requested pursuant to the categorical exclusion process, although you can concurrently submit an LCP amendment that includes the categorical exclusion text. If you wish to exempt a category of development from coastal permit requirements that is not already exempted by the Coastal Act and Regulations, then you must apply for an urban or categorical exclusion pursuant to Coastal Act § 30610(e) and companion Code of Regulation §§ 13215 -13225 and 13240 – 13249. The threshold for granting an exclusion is high – “no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast.” It will be necessary for you to provide the Commission with substantial documentation of no potential adverse effect in order to have the exclusion processed. Because the exclusion criteria are stringent and the process is substantial, exclusion

requests only make sense when they could significantly reduce your workload, based on your experience processing coastal permits. It may be more efficient to initiate some other streamlining measures as an alternative. (Please see [Section II.C](#) “Specify Procedures for Deciding on Coastal Permits.”)

**f. Include a limited exemption for abating nuisances.**

The Coastal Act does not limit the power of your jurisdiction to declare, prohibit, and abate nuisances. In addition, when your jurisdiction has formally declared a nuisance and required abatement, the abatement activities may in some circumstances not require a coastal permit. You may wish to include in your IP an explanation of when activities that constitute development could be exempt from coastal permit requirements. These could include, for example:

- when alternative abatement measures that are not development would not succeed,
- when the development is the minimum necessary to abate the nuisance, and
- when full mitigation for any adverse resource or access impacts is incorporated into the abatement work.

***D. Determine if a Proposed Project is Appealable to the Coastal Commission***

Coastal Act § 30603(a) provides that local coastal permit decisions can be appealed to the Coastal Commission if they fall within certain categories or geographical areas. Code of Regulations § 13577 directs how the Commission maps these areas. All LCPs, therefore, must include a list of categories of appealable projects. County LCPs must clearly indicate the principal permitted use in each zoning district because every project other than the one principal permitted use in each zoning district is appealable to the Coastal Commission.

Questions may arise as to whether a development falls within an appeal area. Thus, applicants and others may benefit if the IP includes guidance and procedures for determining whether a particular activity: (a) falls within a geographical appeal area; (b) is an appealable public works or energy project; and (c) is between the nearest public road and the sea.

## **1. Recommendation: Clarify if a Project Is Appealable**

**Update the IP to incorporate the Coastal Act § [30603\(a\)](#) list of the categories for appealing a local decision to the Coastal Commission, if not already included.**

**For counties, update the IP to show only one principal permitted use in each zoning district.**

For counties, you should review your zoning district regulations to see if they clearly specify one principal permitted use in each zoning district for purposes of appeal. Any additional uses that you may still want to call “other principal permitted uses” for other reasons would be subject to appeal to the Coastal Commission.

***EXAMPLE:** A proposed County IP’s agricultural zoning district with modifications suggested by the Coastal Commission indicates what is the principal permitted use that is not appealable and what are other permitted uses that are appealable (please see Appendix B).*

Please note that applying the Coastal Act with regard to principal permitted uses differs from traditional zoning application where principal uses are generally allowed “by right,” without further review and without any limitations other than the bulk and intensity requirements of the zoning district. Under the Coastal Act, as noted, there can only be one principal permitted use for county zoning districts for purposes of determining appealability. Also, a proposed development that is the principal permitted use will still need to be authorized by a coastal permit (unless the proposal is exempt or excluded) through the coastal permit process that evaluates the proposed development for consistency with LCP policies and development standards. For example, if the proposed principal permitted use cannot be found or made to comply with other IP provisions, such as habitat or view protection, it could be denied or conditioned to ensure LCP compliance.

## **2. Additional Updates, Procedures, and Practices to Consider**

In updating your IP, consider additional procedures that may clarify and inform applicants and the public if a project will be appealable to the Coastal Commission. For example:

**a. Clarify the process for determining if a proposed project is within your locality’s geographic appeal jurisdiction.**

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Please see [Section I.A.2.a](#) “Clarify the process for determining whether a proposed project is within the coastal zone where coastal permit authority has been delegated to a local government” because the same considerations apply to determining appeal areas boundaries.

**b. Include a reference to or quote the definition of and procedure for determining what is a major public works or major energy facility.**

Coastal Act § [30114](#) defines “public works;” Coastal Act § [30107](#) defines “energy facility” and Code of Regulations § [13012](#) defines when these are “major;” the latter referencing the Engineering News Record Construction Cost Index (please see Appendix B). Current and historic data from the Construction Cost Index is on line at [www.ENR.com](http://www.ENR.com) with access by subscription. If someone in your city or county is not already a subscriber, you can consult with our staff if there is a question as to current value. The Coastal Commission periodically collects the updated figures and can provide the information to you. An amended Code of Regulations § 13012(a) became effective in January 1983. Costs have more than doubled since then. Construction costs of \$100,000 in 1983 were equal to \$208,771.04 as of December 2008.

**c. Clarify whether a coastal permit amendment or extension request is appealable.**

In updating your IP, you may wish to ensure that the rules for determining whether a project is appealable to the Coastal Commission are clear as to how they apply to subsequent coastal permit amendment and extension requests. If you have procedures to amend (please see [Section II.C.2.f](#) “Include permit amendment procedures”), or extend the terms of issued coastal permits (please see [Section II.C.2.g](#) “Include permit extension procedures”), then those procedures need to also include a determination of appealability for actions that have to be noticed to the Coastal Commission. Below are a few examples of how to determine whether an amendment or extension application is appealable to the Coastal Commission:

- If the original approval was for development subject to appeal pursuant to Coastal Act § 30603, then a proposed permit amendment or extension is usually appealable;
- If the amendment application only involves a distinct development proposal that clearly falls entirely outside of the appeal area, then the amendment may not be appealable, even if the original permit was

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appealable (e.g., if original permit included a house within 100 feet of a wetland making it appealable only for that reason, but the amendment requests solely adding a shed entirely beyond 100 feet of the wetland);

- If the amendment application involves new development that falls even partially in the appeal area, then the amendment would be appealable, even if the original permit was not appealable (e.g., the original permit was for a house more than 100 feet from a wetland, but the amendment is for a garage within 100 of the wetland);
- In counties, if the amendment involves changing a use that is not the principal permitted use, then it would be appealable.

For coastal development permit extensions, there may also be some rare cases in counties where changed circumstances would result in a change in appeal status. A previously non-appealable permit may become appealable. A new designation of ESHA on a site is one example of such changed circumstance that can affect appeal status. For example, if the IP defines a house on a parcel with environmentally sensitive habitat (ESHA) as a conditional and thus appealable use, a permit extension for a house on a parcel that originally did not include ESHA, and was thus a non-appealable principally-permitted use, would be appealable if the changed circumstance is that a species located on the parcel is newly designated as endangered, so that the habitat on-site is re-designated as ESHA. Such cases do not happen often, but local government should be aware of the issue, especially for cases of multiple coastal permit extensions granted over time.

**d. Include a procedure for revising appeal determinations.**

Code of Regulation § 13569 requires that a determination as to whether a permit will be appealable is made at the time the application is submitted. This provision could be interpreted to read that a project's appeal determination cannot change. However, experience has shown that projects sometimes evolve through the local hearing process in a manner that could change their status. For example:

- a project design could be revised or a new element could be added that would place it within 100 feet of a stream, rendering it appealable to the Coastal Commission (or vice versa);
- a final local action could condition the project to include an element that renders the project appealable;

- a final local action to deny a project that would have been appealable renders it non-appealable (denials are not appealable to the Coastal Commission except for major energy or major public works projects);
- the Coastal Commission could determine that a project is appealable (please see, for example, [Section I.E](#) “Resolve Disputes Over Whether Permits Are Required or Appealable.”)

It would be helpful for your procedures to account for such possibilities, by, for example:

- providing clear information on any public notice that the initial determination that a project is appealable, or not, may change if the project is altered through a later action;
- ensuring original determinations of appealability remain accurate before mailing notices if circumstances have changed or a long period has elapsed between application and public hearing;
- revising a determination of appealability where necessary and making apparent on subsequent notices that the determination of appealability has changed.

You could make use of a standard statement that outlines whether a project is appealable to the Coastal Commission or not, the rationale, the process for appeals, and the date of determination or revision. This statement could be included on various documents pertaining to the permit including notices, staff reports, and agendas. It would be updated as necessary throughout the permit process, with a clear indication if and when it has been changed.

### ***E. Resolve Disputes over Whether Permits Are Required or Appealable***

Code of Regulations § 13569 outlines a procedure to resolve disputes involving whether a development is excluded or appealable. All LCPs, therefore, must include such a procedure to resolve disputes consistent with these regulations.

This procedure can only be fully operable if the public is informed of local permit determinations. Also, experience over time has shown that following this procedure exactly may be difficult, given the short time lines and the local notification responsibility. The public may benefit if additional guidance and procedures are included in the IP to clarify how to resolve permit determination disputes by: (a) adequately noticing the

public; (b) facilitating information exchange; and (c) accepting Commission decisions.

### **1. Recommendation: Clarify How to Resolve Disputes over Whether Permits Are Required or Appealable**

**Update the IP to include a procedure for resolving disputes consistent with Code of Regulation § [13569](#), if not already included.**

When including the steps outlined in § [13569](#) you can specify who or what body of your local government makes the determinations and requests called for.

### **2. Additional Updates, Procedures, and Practices to Consider**

In updating your IP, consider additional procedures that may clarify and inform applicants and the public about how disputes can be resolved. For example:

#### **a. Include procedures to ensure that any dispute resolutions can commence as soon as practical.**

An assumption underlying for Code of Regulation § 13569 is that interested parties are made aware of local determinations of permit requirements and appealability. However, this section does not dictate how such noticing should occur. If a determination is made that no coastal permit is needed, notification might not occur to anyone other than the applicant, and so interested parties may not be aware of this determination until they witness construction occurring. If a determination is made that a coastal permit is appealable, interested parties may not be made aware of this until seven days prior to action on the coastal permit when they receive the public hearing notice pursuant to Code of Regulation § 13565. To minimize the potential for disputes it may be important to make any notice clear and explicit as to appeal status and appeal process. You can update your IP to provide for earlier noticing of permit and appeal determinations in order for any ensuing disputes to be resolved expeditiously. Please see Section [I.D.2.d](#) “Include a procedure for revising appeal determinations” and Section [II.B.2.c](#) “Provide for some advanced noticing.”

#### **b. Expand procedures to facilitate information exchange.**

Experience with trying to follow the exact steps outlined in § 13569 has revealed some challenges. For example, sometimes interested parties may first call the Commission to question one of your decisions and sometimes



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Commission staff may have its own questions about your determinations that you may then want to review before the dispute process escalates. Also, the two day turn-around time for response is often problematic, especially if some information is lacking. There are some procedures that you can establish to facilitate information exchange, such as measures to:

- accept and address disputes from members of the public or our staff;
- discuss with us informally the particulars of the dispute, before triggering the formal two day response period;
- supplement the required phone notification with written explanations and background materials, including a map where helpful.

**c. Include procedures to accept a permit determination change as a result of dispute resolution.**

At some point in the dispute resolution process your determination of whether a proposal needs a permit or is appealable may change. Based on input from our staff, you may voluntarily change your determination or based on a decision by the Coastal Commission you may be compelled to change your determination. Although not required by § 13569(d), you may incorporate an option to be able to accept a Coastal Commission Executive Director determination to avoid a Commission hearing. It would also be helpful if your IP included provisions for the acceptance of a changed determination of permit requirements or appealability and for any necessary follow-up (e.g., you might have to change your notice).