

## CALIFORNIA COASTAL COMMISSION

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### Section III. Local Responsibilities in the Appeal Process

*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/linkedlice/default.asp?SP=CCR-1000>. All references are the Title 14 Natural Resources Division 5.5.

*To learn more about the appeal process please see “The California Coastal Commission Permit Appeal Process: Frequently Asked Questions” at:*  
<http://www.coastal.ca.gov/cdp/appeals-faq.pdf>

After the process of transmitting final local action notices to the Coastal Commission is completed, certain coastal permit decisions can be appealed. The appeal process is governed by Coastal Act § 30603 and California Code of Regulations §§ 13110 -- 13120. These requirements and the general process are further explained in Chapter IV 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>; topics covered are: Appeal Limitations; Appeal Procedures and Appeals by Two Commissioners. The Coastal Commission processes any appeals pursuant to Coastal Act and Code of Regulations rules. However, local involvement in the appeals process continues even after the filing of an appeal. Appeal rules in the Act and Regulations have not changed since the *Post-Certification Guide* was last updated in 2002.

Experience with appeals has identified some recurring procedural issues involving the interaction between the Coastal Commission and local governments. For example, if there is inconsistency in ordinance provisions or fee schedules as to whether there is a fee to appeal a coastal permit, members of the public may be confused about appeal rights and requirements. If procedures are lacking for considering a matter anew after an appeal by Coastal Commissioners, then you may be deprived of the ability to expeditiously resolve a matter locally. If the Commission staff does not receive local files in a timely manner after a permit is appealed to us, delays or misunderstandings can occur. And, if the Commission finds that an appeal raises a substantial issue, we are responsible for the follow-up permit issuance and compliance. However, there may still be a role for local government to play, especially if other local permits were also issued for the project. The IP should clarify all the appeals provisions and the full range of local responsibilities in order to better inform applicants and the public.

Since the appeal process injects the Coastal Commission into the coastal permit process that started at the local level, it is important to have clear, practical and legally correct procedures in your IP addressing the relationship between agencies. Some benefits from considering the suggestions offered in this section could include:

- Citizens can clearly understand their rights to appeal;

CCC LCP Update Guide  
*Local Responsibilities  
In the Appeal Process*

- The appeal process is not delayed;
- Local citizen and decision-maker input into considering an appeal is available;
- Matters of local importance that are beyond the scope of the Coastal Commission's authority are not diminished;
- Applicants can clearly understand how to satisfy both local and Coastal Commission requirements.

This section provides suggestions for updating the IP and considering other practices that will help coordinate your role with the Coastal Commission's in a coastal permit appeal. The first step covered (Section III.A) is whether or not you charge a fee for a local appeal of a coastal permit decision. The next step (B) is the file transmittal that must occur when there is an appeal of a permit on which you have acted. The final step (C) is the follow-up that you undertake once the Commission's appeal process commences.

### ***A. State Any Fees to Appeal Local Coastal Permit Decisions***

Pursuant to California Code of Regulations § 13573, an appellant, other than a Coastal Commissioner who acts as an appellant, generally must exhaust all local avenues for appeals before he or she may appeal a local final action on a coastal permit to the Coastal Commission. However, § 13573 provides that if a local government charges a fee for a local appeal, then parties may appeal directly to the Coastal Commission, bypassing the local appeal process. For this reason, IPs should clearly state whether or not a fee is charged for appeals.

Your IP's coastal permit procedures likely do specify whether a fee is charged to appeal to a local appellate body. However, you may have another ordinance provision that authorizes a fee schedule and/or a schedule that lists fees for appeals. Thus, updating an IP is also an opportunity to concurrently review other ordinance provisions and your published fee schedule to ensure: (a) a consistent application of the fee policy; and (b) that the public understands the ramifications of any appeal fee.

#### **1. Recommendation: State If There Is a Fee for an Appeal**

**Update the IP to specify whether a fee is charged to a party that appeals a coastal permit decision, if not already clearly stated.**

You have the option of identifying categories of development for which appeals fees apply, such as by specifying the location, type or size of a project triggering a fee requirement. The Coastal Act leaves this decision to local government.

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

Updating your IP provides an opportunity to review related procedures and fee schedules in order to ensure that the fee determination is consistently followed and understandable. For example:

### **a. Ensure that fee schedules accurately reflect any appeal fee.**

Typically Municipal and County Codes do not include a list of fees. Rather they usually establish the authority to determine fees that are adopted in separate fee schedules. If your IP states that a fee is charged to appeal a coastal permit decision, then you have discretion as to the amount set in your schedule. In updating your IP in relation to other Code provisions, it would be helpful to cross-reference fee determination provisions. If your IP states that you do not charge a fee for appealing coastal permits, then this should be referenced in the other sections of your Code that address fees. This cross-reference could serve as an alert to a decision-making body undertaking an independent fee schedule update about changing the coastal permit appeal fee structure. If they do decide to institute an appeal fee for coastal permits, then a corresponding amendment to the IP must be made. If you charge appeal fees for other types of permits, then your fee schedule should clearly explain that there are no appeal fees for coastal permits.

### **b. Ensure the public understands the effect of charging an appeal fee.**

If you charge an appeal fee, then you should include explanatory text of the effect on appeal procedures in any documents that mention the fee. The public should be able to fully understand their option to appeal a coastal permit directly to the Commission instead of to your appellate bodies if local fees are charged and if the permit is otherwise appealable to the Commission.

## ***B. Transmit Complete Files for Appealed Projects***

Regulation § 13572 requires the Coastal Commission to notify local governments within five days of receiving a valid appeal of a local coastal

permit decision. This Commission Notification of Appeal contains a request to receive the local file. Once you receive this appeal notice from the Commission, Code of Regulations § 13112 requires that you send us “all relevant documents and material” used in consideration of the permit within working five days.

Sometimes we do not receive complete appeal files within five days. While we understand that this requirement might at times be burdensome, it is essential to transmit a complete file in order to avoid delays in the appeal process. Along with updating your IP, you can consider procedures to: (a) designate staff to respond to Notifications of Appeal; and (b) assemble file materials for duplication and transmittal.

### **1. Recommendation: Ensure Files Are Transmitted for Appealed Coastal Permits**

**Include a provision in your IP to incorporate requirement of Code of Regulations § 13112 to promptly transmit permit files to the Coastal Commission after an appeal.**

Alternatively, this obligation to transmit the permit file within five days of being noticed by us of an appeal could be included in your administrative procedures.

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

You can also review your procedures to help ensure that your staff will be prepared to carry out this obligation, given the short turn-around time. For example:

#### **a. Designate staff to respond to file requests.**

Once we receive a valid appeal of a local coastal permit, we send the local government a Notification of Appeal that contains a request for the file. Please inform your counterparts at our Commission offices as to whom and how best to send these notices so that they will receive prompt attention.

#### **b. Outline procedures to assemble materials to transmit.**

Your procedures for assembling, duplicating and transmitting the material should be designed to ensure that we receive copies of everything in your files pertaining to the appeal, even bulky plans or exhibits and any digital material. This is because any materials that were available to you might turn out to be relevant to the Commission’s review. We maintain a permanent, public file for each coastal permit appealed to us.

You do not need to resend file material previously sent to the Commission office, provided that you have verified with us that we still have the materials and that they are part of the file. If a specific file assembly is going to be cumbersome (e.g., due to a large amount of material or bulky items), then we recommend that you consult with Commission staff regarding how best to transmit the file. For example, there may be some items in the file that we can agree are unnecessary, can be condensed, can be sent later, can be represented by taking a photo of them, or that can be sent electronically.

### ***C. Complete Local Process in Coordination with the Coastal Commission Action on Appeals***

Code of Regulations § 13572 provides that local action is suspended when an appeal is filed with the Coastal Commission. If the Coastal Commission determines that a substantial issue exists with the local decision, it acts on the coastal permit de novo, pursuant to Code of Regulations § 13115. The final Commission action supersedes and replaces the local government action on the coastal permit. Thus, at a minimum, your IP should provide that the Commission has the authority to replace a coastal permit decision that you have made.

There are some ways that you can affect the local permit once an appeal is filed with the Coastal Commission. You can provide a process in which the applicant can make changes to the project through your approval process to address the issues raised on appeal. Please note, however, that in this situation the Commission must still act on the appeal within 49 days, unless the applicants waive this deadline. Changes made through this process may convince the appellants that their appeal is no longer necessary, so they may withdraw it. In addition, if the local appeals process has not been exhausted and the project has been appealed by two Commissioners, Code of Regulation § 13573(b) allows the local appellate body to suspend the Commission appeal while it considers the merits of the project.

There may be other instances where local decision-makers have been interested in attempting to resolve the problem identified in the appeal prior to the Commission taking action on the appeal. Thus, you can update your IP to allow for: (a) requesting further local consideration by the appellate body after two Commissioners have appealed the project under Code of Regulation § 13573(b); and (b) further local consideration, at an applicant's request, of a coastal permit already appealed to the Coastal Commission. You can also (c) update your IP to clarify how the final

CCC LCP Update Guide  
*Local Responsibilities  
In the Appeal Process*

Commission decision on appeal is coordinated with any responsibilities that you retain over the approved development.

### **1. Recommendation: Accept Coastal Commission Appeal Decisions**

**Update the IP to have an acceptance of Commission action on the coastal permit on appeal, if not already included.**

EXAMPLE: *certified IP text:*

*The coastal development permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.*

EXAMPLE: *certified IP text:*

*Where an appeal has been filed with the Coastal Commission in compliance with Section 35-182 (Appeals) and the Coastal Commission has reversed or modified the action of the County on the Coastal Development Permit, the action of the Coastal Commission on the Coastal Development Permit is final. If the County has approved the Coastal Development Permit, any previously approved County project permits shall be automatically amended to conform to the Coastal Commission's approved Coastal Development Permit for the project or automatically terminated to conform to the Coastal Commission's disapproval of the Coastal Development Permit.*

*For the context of this example, please see City of Malibu Local Implementation Plan at: <http://www.qcode.us/codes/malibu-coastal/>. Click on CHAPTER 13— COASTAL DEVELOPMENT PERMITS, then 13.20 -- APPEALS.*

*For the context of this example, please see Santa Barbara Coastal Zoning Ordinance, in particular Sec. 35-169. Coastal Development Permits, found at: <http://www.sbcountyplanning.org/PDF/A/Article%20II.pdf>.*

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

In updating your IP, also consider adding procedures to allow for additional ways to resolve appeals and incorporating final Commission decisions in your responsibilities. For example:

**a. Establish a procedure for holding an additional hearing on a local permit that has been appealed to the Coastal Commission by Coastal Commissioners under Code of Regulations § 13573.**

To further consider a permit already under appeal to the Coastal Commission, you can revise your IP pursuant to § 13573 to include:

- how and when the request for the Commission to suspend its appeal consideration is made (Please note that since the Coastal Commission

must hold a hearing within 49 days, unless this deadline is waived by the applicant, the Commission staff is responsible for processing the appeal until the local government appellate body officially requests to rehear it);

- that the local permit’s operation and effect remain stayed by the appeal (Code of Regulations § 13112), even if the appeal process before the Commission has been suspended to allow for a local government’s reconsideration of the project;
- how and when the permit will be heard by the identified appellate body, including noticing requirements;
- the outcome of any changes to the project or from new hearings (Please see Table III.1).

**Table III.1 Local Hearing Follow-ups on Applications Already Appealed to the Coastal Commission**

<b>Results of Local Rehearing</b>	<b>Follow-Up</b>
Rehearing cancelled	<ul style="list-style-type: none"> <li>➤ the local decision remains stayed;</li> <li>➤ the Coastal Commission needs to be notified to lift its suspension for processing the appeal.</li> </ul>
No change to the project	<ul style="list-style-type: none"> <li>➤ the local decision remains stayed;</li> <li>➤ the Coastal Commission needs to be notified to lift its suspension for processing the appeal.</li> </ul>
Modification of the original approval	<ul style="list-style-type: none"> <li>➤ the previous local decision is superseded by this modified decision;</li> <li>➤ a new notice of final action must be mailed to the Coastal Commission in a timely manner pursuant to §§ 13570 – 13572;</li> <li>➤ the local action and notice should indicate that the previous permit notice is null and void (hence, rendering the previous appeal moot);</li> <li>➤ a new Commission appeal may result pursuant to § 13573(b), if a member of the public or two Commissioners identify that the project is still inconsistent with the certified LCP.</li> </ul>

**Table III.1 Local Hearing Follow-ups on Applications Already  
 Appealed to the Coastal Commission**

<b>Results of Local Rehearing</b>	<b>Follow-Up</b>
Reversal of the previous decision - i.e., the application is denied	<ul style="list-style-type: none"> <li>➤ the previous local decision is superseded by this modified decision (i.e., the previous approval is null and void);</li> <li>➤ a new notice of final action must be mailed to the Commission in a timely manner pursuant to §§ 13570 – 13572;</li> <li>➤ the new denial would no longer be appealable, unless the project is a major public works or major energy facility.</li> </ul>

**EXAMPLE:** *Certified IP text:*

*B. Where a project is appealed by any two members of the Coastal Commission, there shall be no requirement of exhaustion of local appeals; provided, however, that the Coastal Commission shall transmit a “Notice of Commissioners’ Appeal” to the City Council. Upon receipt of such notice, the Coastal Commissioners’ appeal may be suspended by the City Council pending a decision on the merits of the appeal by the Council. The City Administrator or any two Council members may request a review of the appeal by notifying the City Clerk and the City Administrator shall then notify the Coastal Commission that a suspension is in effect. The council shall review the matter within 45 days of said notice to the Coastal Commission. If the decision of the City Council is to modify or reverse the previous decision the Coastal Commissioners shall be required to file, if necessary, a new appeal of that decision.*

*For the context of this example, please see Section 17.54.050 of Carmel-by-the-Sea’s Municipal Code, found at:  
<http://www.codepublishing.com/CA/carmel.html>*

**b. Establish a procedure to address project changes after an appeal is filed.**

There have been instances where, following the Coastal Commission’s filing of an appeal of a locally-issued coastal permit, applicants propose further changes in their projects in order to address issues raised. Applicants may change project descriptions after the Coastal Commission has found substantial issue, in which case the Commission handles this directly, but applicants may also waive the 49 day limit for the Coastal



CCC LCP Update Guide  
*Local Responsibilities  
In the Appeal Process*

Commission action to allow for time to resolve appeal issues. In particular, applicants may want to request that you amend your local approval in order to accept changes that they decide to make in their projects to address appeal concerns. You can update your IP to allow your coastal permit amendment procedures to cover this situation, for example, by adding the following considerations:

- identify a process through which you can take further action on the permit, while acknowledging that the local permit's operation and effect remain stayed by the appeal (Code of Regulation § 13112);
- establish filing and hearing requirements that are appropriate for a process in which an applicant is only attempting to adjust the proposed project to meet appellants' concerns;
- specify how the result of any such amendment approval would affect the original coastal permit on appeal in order for the Commission to understand how to proceed with the original appeal (e.g., a decision to amend the coastal permit on appeal would most likely supersede the original coastal permit decision with a new coastal permit that has a new appeal period -- hence voiding the prior approval and rendering the prior appeal to the Coastal Commission moot).

**c. Reconcile any remaining local responsibilities with Coastal Commission action on the appeal.**

If the Coastal Commission determines that an appeal of a locally issued coastal permit raises a substantial issue, it assumes jurisdiction over the coastal permit from the local government. Often the Commission will approve the coastal permit with additional conditions or changes to some conditions adopted by the local government. Commission staff, if time allows, will try to coordinate with local staff during development of the staff recommended conditions. This will help avoid potential inconsistencies with other local permit requirements, such as where a septic disposal system that would be subject to a local septic permit can be sited. To address the coastal permit and any corresponding local permits following a Coastal Commission appeal decision, your IP and procedures could be updated to include, for example:

- clarifying to the public and applicant the procedures for conditions that are based solely on an authority other than the Coastal Act (Commission approval of a coastal permit on appeal often acknowledges that the approval has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.);

CCC LCP Update Guide  
*Local Responsibilities  
In the Appeal Process*

- clarifying to the public and applicant procedures for condition compliance in matters of local interest that are based on both a Coastal Act and other authority and conditions that the Commission retains verbatim from the local permit; (e.g., if you conditioned an appealed coastal permit to have final grading plans signed off by your grading inspector, the Coastal Commission could impose a revised condition stating that the applicant submit a final grading plan to the Commission, along with evidence that it has been approved by the county/city grading inspector);
- incorporating the Coastal Commission condition revisions into your process for issuing any subsequent local permits, such as the building permit; and updating your files and permit tracking system to incorporate the final Coastal Commission action on appeal;
- coordinating with us to ensure that we both sign-off on the same set of final plans.