

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
FAX (415) 904-5400  
TDD (415) 597-5885



# W21a

Filed: NA  
Staff: G. Benoit-SC  
Staff Report: 02/20/2020  
Hearing Date: 03/11/2020

## STAFF REPORT: REGULAR CALENDAR

**Map Adoption No.:** MA-2020-001

**Local Government:** City of Pacific Grove

**Location:** Coastal Zone area within the City of Pacific Grove, Monterey County.

**Map Description:** Draft Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction Map, prepared by staff to depict the geographic areas where the Commission retains permit authority pursuant to Coastal Act Section 30519(b), and where appeals of local government coastal development permit (CDP) approvals can be appealed pursuant to Coastal Act Section 30603(a), within the City of Pacific Grove LCP segment.

**Staff Recommendation:** Approval

---

## SUMMARY OF STAFF RECOMMENDATIONS

Staff recommends that the Commission **approve** the draft map prepared by staff, which shows the geographic areas where the Commission retains permit authority pursuant to California Coastal Act Section 30519(b) and where appeals of the City of Pacific Grove CDP actions are allowed pursuant to Coastal Act Section 30603(a).<sup>1</sup>

---

<sup>1</sup> The California Coastal Act is found in the Public Resources Code, sections 30000 *et seq.*

## TABLE OF CONTENTS

<b>I. RECOMMENDED MOTION AND RESOLUTION .....</b>	<b>3</b>
<b>II. STAFF NOTE.....</b>	<b>3</b>
<b>III. BACKGROUND.....</b>	<b>4</b>
<b>IV. FINDINGS AND DECLARATIONS .....</b>	<b>5</b>
A. DRAFT POST LCP CERTIFICATION PERMIT AND APPEAL JURISDICTION MAPS .....	5
B. STAFF ANALYSIS .....	5
C. BISECTED PARCELS.....	8
D. DRAFT MAP REPRODUCTION .....	9
E. DRAFT MAP LEGEND AND MAP NOTES .....	9
<b>APPENDIX A- SUBSTANTIVE FILE DOCUMENTS.....</b>	<b>10</b>
<b>APPENDIX B- RELEVANT PUBLIC RESOURCES CODE SECTIONS... </b>	<b>11</b>
<b>APPENDIX C- RELEVANT CODE OF REGULATION SECTIONS.....</b>	<b>14</b>

### EXHIBITS

[Exhibit 1 – Post LCP Certification Permit and Appeal Jurisdiction Index Map: County of Monterey](#)

[Exhibit 2 – Draft Post LCP Certification Permit and Appeal Jurisdiction Map: City of Pacific Grove](#)

## I. RECOMMENDED MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** the draft City of Pacific Grove Post LCP Certification Permit and Appeal Jurisdiction Map prepared by staff for MA-2020-001 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the draft City of Pacific Grove Post LCP Certification Permit and Appeal Jurisdiction (Post Cert.) map and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves Map Adoption MA-2020-001 and adopts the findings set forth below on grounds that the draft map depicts the areas where the Commission retains permit authority pursuant to Coastal Act Section 30519(b), and where appeals of City of Pacific Grove coastal development permits are allowed pursuant to Coastal Act Section 30603(a).

## II. STAFF NOTE

A local jurisdiction without an adopted Post Cert. map, such as the City of Pacific Grove, requires map adoption in conjunction with and following Commission actions to certify its Local Coastal Program (LCP).<sup>2</sup> After the initial adoption, map revisions can be made from time to time to incorporate updates that reflect changing conditions in the Coastal Zone environment upon which the boundaries are based, and to make corrections or refinements including, but not limited to, those made possible by the use of more accurate data and modern mapping technology. The timing of revisions to a city or county's Post Cert. map is usually coordinated with LCP updates.

The use of geographic information system (GIS) software is presently an integral part of Post Cert. map adoptions, revisions, and update processes underway throughout the Coastal Zone, and maps that the Commission adopts through these actions will be distributed primarily in digital form in order to allow the widest possible use of consistent, official information within the Coastal Zone community.

---

<sup>2</sup> The City of Pacific Grove's LCP was certified by the Commission on March 11, 2020 and the City will begin administering its LCP on that same date.

### III. BACKGROUND

After the Commission certifies a local government's LCP, permit authority within that jurisdiction is delegated to that local government. However, pursuant to Section 30519(b) of the Coastal Act, the Commission retains permit authority after LCP certification over developments occurring on tidelands, submerged lands, and public trust lands, whether filled or unfilled, and which are located within the Coastal Zone. The Commission may transfer permit authority to the local government for public trust lands that are determined by the Commission to be filled and developed and are located within an area that is committed to urban uses pursuant to Section 30613 of the Coastal Act.<sup>3</sup>

In addition to the Commission's retained permit jurisdiction, subsections (a) and (b) of Section 30603 of the Coastal Act define certain areas and types of development for which actions by the local government may be appealed to the Commission. Geographic appeal jurisdiction is retained, for example, on lands within 100 feet of a stream's top of bank or within 100 feet of the upland limit of a wetland, lands subject to the public trust that are no longer within the Commission's retained jurisdiction, lands within 300 feet of coastal bluffs, beaches, or the Mean High Tide Line (MHTL), and lands between the sea and the First Public Road paralleling the sea (FPR).

The Commission's administrative regulations (Title 14 of California Code of Regulations (14 CCR) Section 13576) provide 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 identified and provides the basis for revision and re-adoption of the map by the Commission. Within these regulations is implicit the idea that, while the adopted map should portray the various jurisdiction boundaries as accurately as possible, it remains only a depiction, i.e. a cartographic representation and not a definition of the jurisdiction, and should not be used on its own without field determination procedures to establish a precise boundary location. Conditions on the ground may change and thus conditions on the ground control permit and appeal jurisdiction boundary locations regardless of how accurate the mapped boundaries may be at any given time. In fact, changes to conditions on the ground may justify revisions to an adopted map.

The Commission continues to develop its GIS capabilities and has created parcel level accuracy GIS data for permit and appeal jurisdiction boundaries covering the City of Pacific Grove. The Commission's district staff and City staff have reviewed the current GIS-based version of the draft Post Cert. map and refinements have been made to reflect their comments and concerns. The City has reviewed and supports the draft Post Cert. map prepared by staff and included herein as Exhibit 2.

---

<sup>3</sup> At this time the City of has not requested that the Commission transfer permit authority for any filled, former tidelands located within the City.

## IV. FINDINGS AND DECLARATIONS

### A. DRAFT POST LCP CERTIFICATION PERMIT AND APPEAL JURISDICTION MAPS

During the late 1970's and early 1980's, the Commission's Mapping program began a project to complete draft Post Cert. maps for all local governments located within or partly within the Coastal Zone. The first effort consisted of producing a set of 161 draft maps using the USGS 7.5 minute quadrangle base (scale 1:24,000 or 1 inch equals 2000 feet), which was completed in 1981. The primary purpose of that project was to provide a consistent, statewide view of the draft permit and appeal boundaries for review by the local government staff, Commission staff, and other interested parties. It was fully anticipated that these maps would be reviewed and revised or refined, as indicated by the map notes and general correspondence sent out with maps for review. The area of the Coastal Zone within the City of Pacific Grove is covered by map sheet 80, the Monterey quadrangle.

### B. STAFF ANALYSIS

The depiction of the Commission's permit and appeal jurisdictions on the City of Pacific Grove draft Post Cert. map presents no significant areas of controversy affecting the map adoption at this time. Coastal Commission staff has reviewed the Post Cert. map and associated jurisdictional boundaries with City staff. The Coastal Commission's retained permit jurisdiction consists entirely of lands seaward of the MHTL and public trust lands or historic tidelands, whether filled or unfilled. Its appeal jurisdiction boundary encompasses lands seaward of the FPR. The route of the designated FPR is set forth in the section entitled: **First Public Road Description**. In areas inland of the FPR, the appeals jurisdiction may include areas 300 feet from the MHTL, 300 feet from the inland extent of the beach, 300 feet from the top of coastal bluffs, and also 100 feet from the upland boundaries of wetlands and streams. Furthermore, development approved by the local government located in a sensitive coastal resource area, in this case the Asilomar Dunes, may also be appealed to the Commission.

As mentioned earlier in the **Background** section, while the maps portray the various jurisdiction boundaries as accurately as possible, they remain only a depiction, i.e. a cartographic representation, and are not a static definition of the Commission's jurisdiction, and should not be used on their own without field determination procedures to establish a precise boundary location. Conditions on the ground may change, and thus conditions on the ground control permit and appeal jurisdiction boundary locations regardless of how accurate the mapped boundaries may be at the time of adoption of this map.

## Permit Jurisdiction

Geographically, the Commission's retained permit jurisdiction includes tidelands, submerged lands, and public trust lands including former tidelands.<sup>4</sup> The primary sources for determining the Commission's continuing permit jurisdiction in the City of Pacific Grove are the contemporary U.S. Fish and Wildlife Service's (USFWS's) National Wetland Inventory dataset covering this area; vertical and oblique coastal aerial photography; draft Post Cert. map 80 (Monterey quadrangle, scale 1:24,000), the map set showing potential public trust lands prepared for the Coastal Commission by the State Lands Commission staff in the late 1970's using, among other sources, tide and submerged land grant documents, and historical U.S. Coast Survey (now known as the National Geodetic Survey) topographic maps from the 19<sup>th</sup> century.

These maps, photos, and other documents and information were analyzed to establish the public trust component, when that is the controlling permit boundary criterion. Given the complexity involved in precisely mapping public trust boundaries, however, it is evident that the permit boundary delineation on this map may not include all areas subject to the public trust. This is with the understanding that permit jurisdiction boundaries are an extrapolation of the best available data and may be subject to future interpretation and determination if warranted by site specific information. Furthermore, questions regarding the exact location and extent of public trust lands must be referred to the State Lands Commission for determination. Both the Commission staff and City staff recognize that should additional public trust lands be identified in the future, those lands would be part of the Commission's retained permit jurisdiction.

Review of the above-referenced primary source materials indicates that the Commission's continuing permit jurisdiction in the City of Pacific Grove exists only on lands lying below the MHTL, and on potential or historical public trust lands (Exhibit 2). For the purposes of the Post Cert. map proposed for adoption by the Commission for the City, the landward boundary of the Commission's retained permit jurisdiction has been drawn to follow a combination of the tidelands, submerged lands and filled tidelands upon, in and under the Pacific Ocean as illustrated on the inland extent of the active beach and marine and estuarine intertidal zones as mapped by the USFWS in its National Wetlands Inventory and evident on high resolution aerial images of the City of Pacific Grove. As reference, Commission staff has also analyzed historical aerial imagery and U. S. Coast Survey Historical Topographic Maps T-320 (1851) and T-1458a (1876).

---

<sup>4</sup> Tidelands, the first component of the Commission's retained permit jurisdiction, are lands lying between the lines of mean high tide and mean low tide. The MHTL is the landward tidelands boundary, an ambulatory boundary that moves with changes in the profile of the shoreline, particularly in sandy beach areas. The MHTL is and has been used by the U.S. Supreme Court, the California Supreme Court, federal and state courts, the state legislature, state regulatory and administrative agencies, and local governments as the boundary between public tidelands and private uplands.

The location of the fluctuating MHTL is determined by establishing the intersection of the shore with the plane (elevation) of Mean High Water as calculated by the National Geodetic Survey for a particular location. Surveys can be performed to establish MHTL or tidelands locations. The State Lands Commission, as administrator of California's tidelands, can and does perform such surveys.

## **Appeal Jurisdiction**

The appeal jurisdiction boundary in the City of Pacific Grove is mapped according to the geographic criteria specified in Section 30603(a) of the Coastal Act, and further defined in the Commission's regulations at 14 CCR Section 13577. The appeal area is shown in Exhibit 2. Along the shoreline of the Pacific Ocean, the appeal jurisdiction boundary is based primarily on the FPR paralleling the sea designation, except where the designated road is situated closer than 300 feet inland from the inland extent of beach, MHTL, or top of the coastal bluff. In these locations the appeal jurisdiction boundary is 300 feet from the inland extent of the beach, 300 feet from the MHTL, or 300 feet from the top of the coastal bluff face, as appropriate. The wetland-based appeal area is located partially on the Pacific Grove Golf Links. Commission staff is not aware of any stream-based geographic appeal jurisdiction within the City.

As with the permit jurisdiction boundary, the Commission's regulations also provide for appeal boundary revisions from time to time. (See 14 CCR Section 13576.) Appeal boundary revisions are also intended to incorporate updates and changing conditions in the Coastal Zone environment upon which the boundaries are based, to make corrections, and to make refinements reflecting the use of more accurate data and modern mapping technology. The appeal boundary can shift even though the basis of the boundary remains unchanged.

## **The Asilomar Dunes Complex: Asilomar Dunes Residential Area and Asilomar Conference Grounds**

After certification of its LCP, an action taken by a local government on a CDP application may be appealed to the Commission for developments approved by the local government that are located in a sensitive coastal resource area (Coastal Act Section 30603(a)(3)). Within the City of Pacific Grove, the Asilomar Dunes complex is an environmentally sensitive habitat area extending several miles along the northwestern edge of the Monterey Peninsula. Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Commission has found this important and vulnerable habitat to be an environmentally sensitive habitat area (ESHA) due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.

The Asilomar Dunes complex extends through two protected areas, the Lighthouse Reservation area and Asilomar State Beach, which sandwich the Asilomar Dunes Residential Area (ADRA).<sup>5</sup> The ADRA includes some 95 residential parcels subdivided prior to enactment of the Coastal Act that are located within sensitive coastal dune

---

<sup>5</sup> The Pacific Grove Asilomar Dunes Residential Area is located between Lighthouse Avenue and State Parks' Asilomar Conference Grounds, and between inland Asilomar Avenue and the Asilomar State Beach shoreline.

habitat that the Commission and the City consider to be entirely ESHA. Thus, the LCP recognizes that the ADRA is a “sensitive coastal resource area” within the meaning of Coastal Act Section 30603(a)(3). Upon certification of the LCP, all City-approved CDPs for development in this area can be appealed to the Commission.

### **First Public Road Paralleling the Sea**

The language of 14 CCR Section 13577(i)(1) is intended to ensure that the designated “First Public Road Paralleling the Sea” extends inland around water bodies that are considered the “sea” as defined by Coastal Act Section 30115. The Coastal Commission’s regulations provide that in order for a road to qualify as the FPR, it must be a road that “does in fact connect with other public roads providing a continuous public access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.” See 14 CCR Section 13577(i)(1)(E). The appeal jurisdiction boundary, where based on the FPR under 14 CCR Section 13577(i)(1), is aligned along the inland, or landward right of way of such road.

### **First Public Road Description**

The series of roadways and streets listed below and shown as a component of the Commission’s appeal jurisdiction boundary on the attached Exhibit 2 constitute the current route of the FPR for purposes of Coastal Act Sections 30600.5, 30601, 30603, and 30115, and all other applicable Coastal Act provisions. This system of coastal roadways and streets is consistent with, and meets the criteria set forth in 14 CCR Section 13577.

From the southeastern City boundary adjacent to the City of Monterey, the route designated as the FPR in the City of Pacific Grove follows Ocean View Blvd. north and west to 17<sup>th</sup> St., north along 17<sup>th</sup> St. and along Ocean View Blvd., continuing north and west along Ocean View Blvd. to Sunset Dr., south along Sunset Dr. to the City of Pacific Grove eastern LCP boundary.

## **C. BISECTED PARCELS**

In some areas a parcel is bisected by the appeal jurisdiction boundary. All development proposed within the appeal area defined as appealable is subject to the Commission’s appellate jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, and partly on the remainder of the parcel, and the Commission finds that the portion of the project within its appeals jurisdiction raises a substantial issue, then it will consider the project de novo. The Commission’s de novo review is of the entire project, including the portion of the proposed development that is located outside the appeals jurisdiction.



#### **D. DRAFT MAP REPRODUCTION**

Due to the cost of reproduction, paper copies of the map index sheet (Exhibit 1) and the large scale map sheet (Exhibit 2) are not mailed to Coastal Commissioners and other interested persons who receive the report digitally via the Commission's public website. Printed copies of Exhibits 1 and 2 are available for review at the City of Pacific Grove, and at the Coastal Commission's offices in San Francisco and Santa Cruz. Full-size maps will also be available for review at the March 11-13, 2020 Commission meeting in Scotts Valley, CA.

#### **E. DRAFT MAP LEGEND AND MAP NOTES**

One of the elements of the Commission's transition to using GIS technology is the use of standardized base maps, boundary symbols, and map notes. In order to maintain consistency throughout the Coastal Zone, Post LCP Certification Jurisdiction boundaries have been developed using the Coastal Zone portions of the fifteen coastal counties as the basic unit. Accordingly, the Map Legend (Exhibit 1) includes all of the possible types of boundary and area symbols that may occur within any given County, while the draft map itself will include only those types of jurisdiction found within that area. In addition, the use of coastal counties as the basic geographic unit means that the maps may depict jurisdiction areas outside of the area for which a particular map adoption is occurring. In the case of the City of Pacific Grove LCP segment, areas adjacent to, but located southeast of the segment within the City of Monterey, and south of the segment within the Del Monte Forest area of Monterey County are not affected by the Commission's action to adopt the Post Cert. map for the City of Pacific Grove LCP segment.

## **APPENDIX A- SUBSTANTIVE FILE DOCUMENTS**

Draft Post LCP Certification Permit and Appeal Jurisdiction Map (Monterey Quadrangle, scale 1:24,000) California Coastal Commission, 1981.

National Wetland Inventory Digital Data, U.S. Fish & Wildlife Service, October 2017.

Potential Public Trust Land Maps, (Monterey Quadrangle), California State Lands Commission, 1979.

U.S. Coast Survey Historical Topographic Maps, T-320 (1851) and T-1458a (1876).

ESRI World Imagery basemap service. Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community.

California Coastal Records Project, 2010-2016.

U.S. Geological Survey (USGS) 7.5 Minute Series Topographic Maps, (Monterey Quadrangle), USGS, 1965 (revised 1991).

## **APPENDIX B- RELEVANT PUBLIC RESOURCES CODE SECTIONS**

### **30519 DELEGATION OF DEVELOPMENT REVIEW AUTHORITY; RECOMMENDATION OF AMENDMENTS TO PROGRAM**

(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

(c) The commission may, from time to time, recommend to the appropriate local government local coastal program amendments to accommodate uses of greater than local importance, which uses are not permitted by the applicable certified local coastal program. These uses may be listed generally or the commission may recommend specific uses of greater than local importance for consideration by the appropriate local government.

### **30603 APPEAL OF ACTIONS TAKEN AFTER CERTIFICATION OF LOCAL PROGRAM; TYPES OF DEVELOPMENTS; GROUNDS; FINALITY OF ACTIONS; NOTIFICATION TO COMMISSION**

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

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any

wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

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

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

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

(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time.

Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

### **30603.1 ADJUSTMENT OF INLAND BOUNDARY; READJUSTMENTS**

(a) In any city and county which so requests, the commission may adjust the inland boundary of the area within which the issuance of coastal development permits may be appealed to the commission pursuant to paragraph (1) of subdivision (a) of Section 30603. Any such adjustment shall be made solely to avoid the circumstance of having the boundary of that area bisect an individual parcel of property. The adjustment may be made landward or seaward, but shall be the minimum distance necessary, consistent with the policies of Chapter 3 (commencing with Section 30200), to avoid bisecting a parcel of property.

(b) If the commission subsequently finds that the circumstances which warranted a boundary adjustment pursuant to subdivision (a) have changed, it may, after notice to the city and county, readjust the boundary so that it is consistent with the changed circumstances. The requirements of subdivision (a) shall apply to any such boundary adjustment.

**30613 LANDS SUBJECT TO PUBLIC TRUST WHICH ARE FILLED, DEVELOPED AND COMMITTED TO URBAN USES; COASTAL DEVELOPMENT PERMITS; LOCAL COASTAL PROGRAMS; CATEGORICAL OR URBAN EXCLUSIONS**

(a) The provisions of subdivision (b) of Section 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any lands which may be subject to the public trust but which the commission, after consultation with the State Lands Commission, determines are (1) filled and developed and are (2) located in an area which is committed to urban uses.<sup>6</sup>

(b) No later than 120 days after receiving a request from a local government, the commission shall determine the lands within the jurisdiction of that local government to which the provisions of subdivision (a) apply.

(c) The provisions of this Section shall apply to lands which have been the subject of coastal development permits, local coastal programs, categorical exclusions or urban exclusions, which have previously been approved, authorized, or certified by the commission.

---

<sup>6</sup> The Commission retains appeal jurisdiction over developments occurring on any areas transferred to the permit jurisdiction of the local government.)

## **APPENDIX C- RELEVANT CODE OF REGULATION SECTIONS**

### **13576. MAP(S) OF AREAS OF COMMISSION PERMIT AND APPEAL JURISDICTION**

(a) In conjunction with final Local Coastal Program certification or the delegation of coastal development permit authority pursuant to Public Resources Code Section 30600.5, whichever occurs first, the Commission shall, after public hearing, adopt a map or maps of the coastal zone of the affected jurisdiction that portrays the areas where the Commission retains permit authority pursuant to Public Resources Code Sections 30603 (a) (1) and (a)(2), or 30600.5 (d). These maps shall be drawn based on the criteria for permit and appeal boundary determinations, set forth in Section 13577 below, and will serve as the official maps of the Commission's permit and appeal jurisdiction. The Commission, in consultation with the local government, shall update these maps from time to time, where changes occur in the conditions on which the adopted maps were based, or where it can be shown that the location of the mapped boundary does not adequately reflect the intended boundary criteria. Revisions of the adopted maps shall be based on precise boundary determinations made using the criteria set forth in Section 13577. The revised maps shall be filed with the affected jurisdiction within 30 days of adoption by the Commission. In addition, each adopted map depicting the permit and appeal jurisdiction shall include the following statement:

"This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Sections 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission"

(b) In the case of local governments which have received Commission approval of their Phase III (implementation) Work Program and Budget prior to January 1, 1980, the permit and appeal area maps shall be adopted by the Commission prior to the certification becoming effective pursuant to Section 13547 of the Commission's regulations.

### **13577. CRITERIA FOR PERMIT AND APPEAL JURISDICTION BOUNDARY DETERMINATION**

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program.

The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands:

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

(c) Estuaries. Measure 300 feet landward from the mean high tide line of the estuary. For purposes of this section, an estuary shall be defined as a coastal water body, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with the open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. The salinity level may be periodically increased to above that of the open ocean due to evaporation. The mean high tide line shall be defined as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on

observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station.

(d) Tidelands. Tidelands shall be defined as lands which are located between the lines of mean high tide and mean low tide.

(e) Submerged Lands. Submerged lands shall be defined as lands which lie below the line of mean low tide.

(f) Public Trust Lands. Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

(g) Beaches. Measure 300 feet landward from the inland extent of the beach. The back beach, or dry beach, if it exists, shall be included. The inland extent of the beach shall be determined as follows:

- (1) from a distinct linear feature (e.g., a seawall, road, or bluff, etc.);
- (2) from the inland edge of the further inland beach berm as determined from historical surveys, aerial photographs, and other records or geological evidence; or
- (3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence.

(h) Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean:

- (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and
- (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred



feet shall be the minimum length of bluff line or edge to be used in making these determinations.

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

(2) Whenever no public road can be designated which conforms to all provisions of (i)(1) above, and a public road does exist, which conforms to all provisions of (i)(1) except (i)(1)(v), the effect of designating the first public road paralleling the sea shall be limited to the following:

(A) all parcels between the Pacific Ocean and such other public road; and

(B) those parcels immediately adjacent of the sea inland of such other public road.

(3) Where the Commission determines that the designation of the "first public road paralleling the sea" results in the inclusion of areas within the permit and appeal jurisdiction where the grounds for an appeal set forth in Public Resources Code Section 30603(b) are not an issue, the Commission may take action to limit the geographic area where developments approved by a local government may be appealed to the Commission, to that area where any such grounds are, in fact, an issue.