



## **Appeal Information Sheet**

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5. Approval or denial of development constituting a major public works project (including a publicly financed recreational facility and/or a special district development) or a major energy facility.<sup>3</sup>

#### **Who can appeal?**

The applicant for the CDP or any “aggrieved person” may submit an appeal to the Commission provided they have exhausted all local appeals. An “aggrieved person” generally means any person who participated in the local CDP application and decision making process (e.g., submitted comments, testified at hearings, etc.), whether directly or through a representative, or who for good cause was unable to do so (e.g., a person who did not participate because they were not properly noticed).

To exhaust local appeals, a potential applicant or aggrieved person appellant must pursue appeals through all of the local appellate processes for CDP decisions specified in the certified LCP (e.g., appeal of Zoning Administrator CDP decisions to the Planning Commission, and appeal of Planning Commission decisions to the City Council/Board of Supervisors). A potential appellant can be deemed to have exhausted local appeals without completing all such local appellate processes in certain situations, the most common being that the local government either did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes. In addition, any two Coastal Commissioners are eligible to appeal regardless of participation status and without exhausting local appeals.

#### **What are the allowed grounds for appeal?**

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Appellants need to clearly identify the ways in which they believe the development meets or doesn’t meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible, and emphasis on the areas where they believe the local government decision was in error. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

#### **When, where, and how can appeals be filed?**

Local governments are required to send notices of their final CDP decisions to the Coastal Commission. The filing of a complete final local action notice, or FLAN, starts a 10-working day appeal period for that action running, during which time appeals may be filed with the Commission. Currently appealable local CDP actions are available for

<sup>3</sup> For definitions of ‘energy facility’ and ‘public works’ see Coastal Act Sections 30107 and 30114. For determining what constitutes ‘major’, see California Code of Regulations, Title 14, Section 13012.

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review in the Commission district office with jurisdiction over that geographic area (again, click [here](#) for the Commission contact page) and are also published on the Commission's website (click [here](#) to see currently see appealable local actions). Appeals may be submitted in person, via email,<sup>4</sup> or by mail to the district office with jurisdiction over the project area. An appeal must be received by 5pm of the tenth working day of the appeal period, and appeals received after that time will be rejected.

#### **Is there a fee for appeals?**

There is no fee for an appeal unless the appeal is deemed patently frivolous by the Executive Director (in which case a \$300 fee must be paid within 5-working days of receiving notice of the Executive Director's determination, or the appeal will not be filed)<sup>5</sup> or it is an appeal of a CDP major project denial decision, in which case the appeal must be accompanied by a fee in the amount that would apply to the denied development if it were a CDP application for the same project pursuant to the Commission's CDP application fee regulations, and where the full and proper fee must be received by the Commission by 5pm on the tenth working day (see above) or the appeal will be deemed invalid and will not be processed. In the latter case, potential appellants are encouraged to contact staff in the Commission district office with jurisdiction over the applicable area to ensure the proper fee is timely submitted. Either way, it is the appellant's responsibility to submit the proper fee, and in cases where the fee is not submitted or the fee submitted is insufficient to cover the required development application fee, the appeal will be rejected.

#### **How do I track potential appealable CDP actions and appeal periods?**

Staff in the Commission district office with jurisdiction over the applicable area are your best sources for information on local government CDP decisions and appeal provisions. In addition, each district office maintains a list of currently appealable CDP decisions, with information on the development that was approved or denied, along with the appeal period dates and deadlines. This list can be accessed at the offices (again, see contact information [here](#)). In addition, appealable local government decisions are listed on the Commission's website [here](#).

<sup>4</sup> Emailed appeals are ONLY accepted if sent to the general email address for the Coastal Commission district office with jurisdiction over the geographic area where the development is proposed (e.g., for the North Coast District Office the general email address is [northcoast@coastal.ca.gov](mailto:northcoast@coastal.ca.gov), for the North Central Coast District Office the address is [northcentralcoast@coastal.ca.gov](mailto:northcentralcoast@coastal.ca.gov), etc.). An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is a would-be appellant's responsibility to use the correct email address. The addresses are contained on the appeal form for each district. For more information, click here for the Commission [contact page](#) which identifies each district geographically and identifies each district's general email address.

<sup>5</sup> If the Coastal Commission ultimately determines that the appeal raises a substantial issue (see also discussion below), then the \$300 fee will be refunded.

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#### **Where do I find the appeal form?**

The appeal forms are available on the Commission's website. Download the appropriate form for the district from this [page](#).

#### **What happens after I submit an appeal?**

Provided the appeal is properly and timely submitted, including any required fees (see above), Commission staff will notify the applicants, the appellants, the local government, and known interested parties that the appeal has been filed, and will ask the affected local government to forward a copy of the local administrative record for the subject CDP decision to the Commission. Commission staff will then evaluate the appeal contentions and prepare a staff recommendation on the appeal for Commission consideration.

#### **What happens when the Commission considers an appeal?**

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal, unless the applicant has waived that requirement, in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.<sup>6</sup> At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will *not* take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the applicant, persons who opposed the application before the local government (or their representatives), and the local government are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does *not* raise a substantial issue, then the first step is the only step, and the local

<sup>6</sup> Including (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance.

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government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the CDP application, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing.

#### **What if I have questions?**

If you have any questions about this information sheet or any aspect of the appeal process, please contact Commission staff in the Commission district office with jurisdiction over the area in question (click [here](#) to visit the Commission's contact page).