

## CALIFORNIA COASTAL COMMISSION

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# Frequently Asked Questions: The Coastal Commission Permit Appeal Process<sup>1</sup>

## Why Is There An Appeals Process?

The [California Coastal Act](#) protects California's coast through state and local government implementation of policies that safeguard state interests in coastal resources, including the provision of maximum public access and recreational opportunities to and along the shoreline. Although state and local interests often coincide, the Coastal Act appeal process is an important mechanism to assure that *statewide* interests in coastal resources are protected and appropriately balanced with competing local interests.

## What Kinds Of Projects Are Appealable?

Any locally-approved development project between the first public road and the sea; within 300 feet of a beach, mean high tide or bluff edge; within 100 feet of a wetland or stream; or on tidelands, submerged lands, or public trust lands; is appealable to the Commission. The approval or denial of a major public works project or energy facility, regardless of its location, is also appealable. In counties only, the approval of any project that is not the principal-permitted use under the certified Local Coastal Program (LCP) zoning code is appealable to the Commission. If you have questions about whether a project may be appealable, call your local planning department or [Coastal Commission office](#).

## Who Can File An Appeal Of A Project?

Any applicant or person who participates in the local permitting process for a project, or who otherwise communicates their concerns to the local government, may file an appeal. Also, an appellant must have exhausted all *local* appeals unless the local government charges a fee to appeal, restricts the class of people who can file appeals, or failed to follow the hearing and notice requirements for issuing a coastal development permit. Any two Coastal Commissioners may also appeal projects to the Commission.

## What Are Valid Grounds for Appealing a Project?

The grounds for appealing a project are limited to whether the project conforms to the requirements of the LCP or the public access policies of the Coastal Act. Issues that are not addressed by the LCP are not valid appeal grounds.

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<sup>1</sup> The information in this document applies only to appeals pursuant to Coastal Act Section 30603.

## How Can Applicants Avoid An Appeal to the Commission?

The best way to avoid an appeal is to work closely with your local government, neighbors and interested citizen groups, *as early as possible*, to address the requirements of the LCP that may apply to your project. This may include providing biological and other technical information that identifies sensitive resources and potential development impacts; avoiding or providing a buffer from sensitive resources such as wetlands, environmentally sensitive habitat areas (ESHA), and riparian areas; and following specific design rules to address shoreline erosion and other hazards, water quality, drainage, scenic views and community character concerns. Sometimes public access or recreational opportunities in the project area will need to be addressed. Coastal Commission staff is also generally available to answer questions you may have concerning interpretation and application of the LCP in your situation. Due to severe budget and staffing constraints, it is not always possible for Commission staff to provide comments on a project to the local government. Don't assume that the absence of staff comments means there are no issues. When in doubt, call Commission staff for your area, or request that your local planner coordinate directly with staff, to identify potential issues that may result in an appeal of your project if not addressed.

## What Happens If Your Project Is Appealed?

The first step in the appeal process begins when the Commission receives the notice of final local action (the local decision) on your project (see flowchart). Receipt of this notice starts a ten "working day" appeal period (approximately two weeks) during which your project may be appealed. If appealed, the Commission must begin the public hearing on the appeal within 49 days of the appeal, and determine whether it raises a "substantial issue" relative to conformance with the LCP or with Coastal Act public access policies. A decision on this question will depend on the facts and nature of issues raised in the appeal. Relevant facts include the significance of resources potentially impacted, the extent of potential impacts, and whether and to what degree the local decision conflicts with LCP requirements or with Coastal Act public access requirements.

If more time could help clarify appeal issues, result in more relevant information being available, or allow for a more convenient location for the hearing, applicants can *waive* the 49-day hearing requirement. Sometimes applicants can make project changes that result in the withdrawal of the appeal if the changes are incorporated into the local permit approval. A 49-day waiver may also avoid the need for the appeal hearing to extend over two or more meetings by allowing the Commission to evaluate whether the appeal raises a "substantial issue" and, if so, conduct a *de novo* review of the project at the same meeting (see below). If the Commission finds that an appeal does not raise a substantial issue, the local decision becomes final.

## What Happens If The Commission Finds "Substantial Issue"?

If the Commission finds that your project raises a substantial issue, the Commission takes jurisdiction over the coastal permit. This means you will need to work with Commission staff to address all the issues raised in the appeal, and potentially other issues related to LCP compliance. It is important to understand while the "substantial issue" phase of an appeal hearing is limited to issues raised by the appeal, at the *de novo* hearing phase all issues relating to conformance with LCP, and Coastal Act public access and recreation policies are appropriate for consideration. New studies may be required to address unresolved issues. In some cases changes in project

design or location, or additional mitigation measures may be needed to address LCP or Coastal Act requirements. After staff has evaluated the issues, your project will be scheduled for the *de novo* phase of the public hearing. A staff recommendation is prepared that you will usually be able to review approximately 10-20 days before the hearing. You have a right to one postponement if you feel more time is needed to respond to staff's recommendation. The majority of projects appealed to the Commission are approved, but often with revised conditions to address coastal resource constraints and impacts.

## How Long Does the Appeal Process Take?

The time required to process a Commission appeal depends in part on the complexity and significance of the issues raised. The average time for appeals that do not raise a substantial issue is 2 to 3 months. For appeals that raise a "substantial issue" it takes approximately 6-8 months on average to reach a final decision. It may take longer to resolve more complicated appeals. The Commission does its best to process appeals as quickly as possible, generally in the order they are received. Information needs, complexity of issues, extent of public interest, and staff workload due to budget constraints are all factors affecting the timing of the appeal process.

## How Should You Communicate Your Concerns To The Commission?

The best way to have your concerns and information reflected in a staff recommendation is to work with Commission staff. You also will have an opportunity to address the Commission in a public hearing. It is important to note that the Coastal Act presumes that an appeal raises a substantial issue. Accordingly, when staff recommends that an appeal raises a substantial issue, unless three or more commissioners want to hear a discussion on substantial issue, public testimony is deferred to the *de novo* phase of the hearing when you will be able to address the Commission and will usually be given 15 minutes to do so. Thus, you may not be able to address the Commission at the Substantial Issue phase of the hearing, though written comments submitted in advance will be distributed to Commissioners. If the Commission wants to hear a discussion on the substantial issue question, the appellant and the applicant will each be given three minutes to present their case, following the staff presentation of the issues. You may also contact individual commissioners outside the public hearing process (an "*ex parte*" communication). Commissioners must report such *ex parte* communications in detail and in writing before the hearing or orally at the hearing on the item.

## What Happens After the Commission Approves a Project?

Once the Commission approves a coastal development permit, there may be special conditions that need to be addressed before the permit can be "issued" or before construction can begin. Sometimes it will be necessary to prepare and record legal documents on your property that reflect the requirements of the coastal permit, such as protections for habitat or open space areas. Other times revised project plans will be required that reflect changes in project design approved by the Commission. The time required to receive authorization to proceed with construction will depend on how quickly the special conditions can be addressed. As with the processing of appeals, Commission staff does its best to review "condition compliance" materials submitted by applicants as soon as possible and generally in the order received. However, limited staff resources have prevented expeditious review of permit condition compliance.

## CALIFORNIA COASTAL COMMISSION (CCC) APPEALS PROCESS

