

CHAPTER 35.102 - APPEALS

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35.102.010 - Purpose and Intent

The purpose of this Chapter is to provide procedures for accepting and processing appeals to the Board, Commission, and the Zoning Administrator and to list the criteria for those developments that may be appealed to the Coastal Commission.

35.102.020 - General Appeal Procedures

A. Who may appeal. An appeal may only be filed by an applicant or any aggrieved person. An aggrieved person is defined as any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing or decision, informed the review authority of the nature of their concerns or who for good cause was unable to do either.

- 1. Appeals by members of the Coastal Commission.** Within the Coastal Zone, the following decisions on applications for projects that are defined as appealable development may be appealed by any two members of the Coastal Commission:
 - a. Decisions by the Director on the approval, denial, or revocation of Coastal Development Permits, except for those actions on Coastal Development Permits which may be appealed to the Coastal Commission in compliance with Subsection [35.102.060.D](#). (Decisions appealed to the Coastal Commission) below.
 - b. The final approval of projects under the jurisdiction of the Director, Commission, or Zoning Administrator.
 - c. Decisions of the Board of Architectural Review.

B. Timing and form of appeal.

- 1. Appeals of decisions of the Board of Architectural Review, Director, Commission, or Zoning Administrator.**
 - a. Filing of the appeal.** An appeal, which shall be in writing and accompanying fee, of a decision of the Board of Architectural Review, Director, Commission, or Zoning Administrator shall be filed with the Department within the 10 calendar days following the date of the decision or determination that is the subject of the appeal, except as follows:
 - (1) Within 30 calendar days following the date of decision by the Director that an oil or gas lease has been abandoned in compliance with [Section 35.56.070 \(Decision on Application to Defer Abandonment\)](#).
 - (2) Except as otherwise provided in this Development Code.

b. Form of appeal. The appellant shall use the form provided by the Department in addition to any other supporting materials the appellant may wish to furnish in compliance with Subsection C. (Requirements for contents of an appeal) below, explaining the reasons for the appeal. An appeal shall be filed with the Director, who shall process the appeal in compliance with this Chapter, including scheduling the matter before the applicable review authority.

2. Computation of time for appeal. The time within which the appeal shall be filed shall commence on the day following the day on which the decision or determination was made. In the event the last day for filing an appeal falls on a non-business day of the County, the appeal may be timely filed on the next business day.

C. Requirements for contents of an appeal.

1. General requirements. The appellant shall specifically provide in the appeal all of the following:

- a. The identity of the appellant and their interest in the decision;
- b. The identity of the decision or determination appealed which may include the conditions of that decision or determination;
- c. A clear, complete, and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of this Development Code or other applicable law;
- d. If it is claimed that there was an error or abuse of discretion on the part of the review authority, or other officer or authorized employee, or that there was a lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration leading to the making of the decision or determination that is being appealed, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made, then these grounds shall be specifically stated.
- e. An appeal of the denial of a Coastal Development Permit for property within the Coastal Zone of the Toro Canyon Planning area shall be submitted with an application for an Economically Viable Use Determination if it is claimed by the appellant that the denial of the Coastal Development Permits constitutes a taking of private property. The Economically Viable Use Determination application shall be in compliance with Subsection 2.d (Economically Viable Use Determination applications) below, and shall provide information supporting the assertion that denial of the Coastal Development Permit would constitute a taking of private property.

2. Additional requirements for certain appeals. The following information is required to be submitted for the appeals listed below in addition to the information required to be submitted by Subsection C.1 (General requirements) above:

- a. Appeals regarding a previously approved discretionary permit.** If the approval of a Coastal Development Permit or a Land Use Permit required by a previously approved discretionary permit is appealed, the appellant shall identify:
- (1) How the Coastal Development Permit or Land Use Permit is inconsistent with the previously approved discretionary permit;
 - (2) How the discretionary permit's conditions of approval that are required to be completed before the approval of a Coastal Development Permit or Land Use Permit have not been completed; or

- (3) How the approval is inconsistent with [Chapter 35.106 \(Noticing and Public Hearings\)](#).

b. Appeals regarding residential second units.

- (1) **Coastal Zone.** The grounds for an appeal of the approval or conditional approval of a Coastal Development Permit or Land Use Permit for a residential second unit in compliance with [Section 35.42.230 \(Residential Second Units\)](#) shall be limited to whether the approved or conditionally approved project is in compliance with the applicable provisions and policies of the Coastal Land Use Plan and the provisions of this Development Code. If the approval or conditional approval of a Coastal Development Permit or Land Use Permit for a residential second unit is appealed, the appellant shall identify how the approved or conditionally approved project is not in compliance with the applicable provisions and policies of the Coastal Land Use Plan and the provisions of this Development Code.
- (2) **Inland area.** The grounds for an appeal of the approval or conditional approval of a Land Use Permit for residential second unit in compliance with [Section 35.42.230 \(Residential Second Units\)](#) shall be limited to whether the approved or conditionally approved project is in compliance with development standards for residential second units provided in Subsection [35.42.230.G \(Development standards\)](#). If the approval or conditional approval of a Land Use Permit for a residential second unit is appealed, the appellant shall identify how the approved or conditionally approved project is not in compliance with development standards for residential second units provided in Subsection [35.42.230.G \(Development standards\)](#).

- c. Appeals of final decision of the Board of Architectural Review.** A decision of the Board of Architectural Review to grant final approval may not be appealed to the Commission unless the appellant can demonstrate that the project for which final approval was granted does not substantially conform to the project that was granted preliminary approval. If the Director determines that the appeal does not raise a substantial issue that the project for which final approval was granted does not substantially conform to the project that was granted preliminary approval, then the Director shall make that determination in writing, and the appeal shall not be processed. This decision of the Director is final and not subject to appeal.

- d. Economically Viable Use Determination applications.** An application for an Economically Viable Use Determination shall include the entirety of all lots that are geographically contiguous and held by the appellant in common ownership at the time of the application and the following information as deemed necessary by the Department shall be submitted:

- (1) The date the appellant purchased or acquired the lot, and from whom.
- (2) The purchase price paid by the appellant.
- (3) The fair market value of the lot at the time the appellant acquired it, including information on the basis in which the fair market value was derived, including any appraisals done at the time.
- (4) The Comprehensive Plan and land use designation applicable to the lot at the time the appellant acquired it, and any subsequent changes to these designations.
- (5) Any development or use restrictions, other than the restrictions described in Subsection (4) above, applicable to the property at the time it was acquired or which have been subsequently imposed.

- (6) The date and method of any subsequent changes in the size or configuration of the lot, if applicable.
- (7) Information (e.g., sale, lease or rent prices and associated dates) regarding any subsequent sale or lease of a portion or interest in the lot, if applicable.
- (8) Any title reports, litigation guarantees or similar documents in connection with all or a portion of the lot of which the appellant is aware.
- (9) Any offers to buy all or a portion of the lot which the appellant solicited or received, including the approximate date of the offer and offered price.
- (10) The appellant's costs associated with the ownership of the lot, annualized for each of the last five calendar years including, property taxes, property assessments, debt service costs (such as mortgage and interest costs), operation, and management costs.
- (11) Any income excluding any rents received from the leasing of all or a portion of the lot over the last five calendar years, listed on an annualized basis along with a description of the uses generating the income.
- (12) Any additional information that the Department deems necessary to make the determination.

- D. Acceptance of appeal.** An appeal shall not be accepted by the Director unless it is complete and complies with all requirements of Subsection C. (Requirements for contents of appeal) above. This decision of the Director is final and not subject to appeal.
- E. Appeal fees.** The appellant shall pay the required filing fee in compliance with the Board's Fee Resolution, at the time of the filing of the appeal.
- 1. No fee for developments appealable to the Coastal Commission.** An appeal fee is not required for developments which are appealable to the Coastal Commission in compliance with Subsection [35.102.060.D](#). (Decisions appealed to the Coastal Commission).
- F. Effect of filing an appeal.** The filing of the appeal shall have the effect of staying the issuance of any permit or approval provided for by the terms of this Development Code until a final action has occurred on the appeal, or unless otherwise indicated in this Development Code.
- G. Public hearing required.** The review authority shall consider all appeals in a noticed public hearing. Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with [Chapter 35.106 \(Noticing and Public Hearings\)](#). Notice shall be mailed to the appellant and the applicant, if different than the appellant.
- H. Special processing requirements.** The following requirements apply to applications for Coastal Development Permits, Land Use Permits, and Zoning Clearances that also require review by the Board of Architectural Review:
- 1. Projects requiring Coastal Development Permits or Land Use Permits.**
 - a. If a preliminary approval by the Board of Architectural Review is appealed, then the hearing on the appeal shall be held after the approval of the Coastal Development Permit or Land Use Permit, but before the issuance of the Coastal Development Permit or Land Use Permit for the project.
 - b. If a preliminary approval by the Board of Architectural Review is appealed, and the approval of the Coastal Development Permit or Land Use Permit is appealed, then the appeal of the preliminary approval by the Board of Architectural Review shall be processed concurrently

with the appeal of the Coastal Development Permit or Land Use Permit.

- c. If a decision of the Board of Architectural Review to deny preliminary or final approval is appealed, a hearing shall be held on the appeal of the decision of the Board of Architectural Review before any decision on the Coastal Development Permit or Land Use Permit.

2. Projects requiring Zoning Clearances.

- a. If a preliminary approval by the Board of Architectural Review is appealed, then the hearing on the appeal shall be held before the issuance of the Zoning Clearance for the project.
- b. If a decision of the Board of Architectural Review to deny preliminary or final approval is appealed, a hearing shall be held on the appeal of the decision of the Board of Architectural Review before the decision on the Zoning Clearance.

35.102.030 - Appeals to the Zoning Administrator

- A. **Decisions appealed to the Zoning Administrator.** The following decisions of the Director may be appealed to the Zoning Administrator:
 1. Any decision by the Director to approve, conditionally approve, or deny an application for a Land Use Permit for a temporary use in compliance with [Section 35.42.260 \(Temporary Uses and Trailers\)](#) may be appealed to the Zoning Administrator.
- B. **Hearing Required.** The Zoning Administrator shall hold a hearing on the appeal no later than 12 hours prior to the time the event is scheduled to commence.
- C. **Notice required.** Notice of the date, time and location of the hearing shall be provided to the applicant, the appellant, if different than the applicant and any interested person who has filed a written request for notice with the Department.
- D. **Action on appeal.** The Zoning Administrator shall affirm, reverse, or modify the decision of the Director as soon as practicable following the filing of the appeal and in no case later than the time the temporary use is scheduled to commence. The action of the Zoning Administrator is final and not subject to appeal.

35.102.040 - Appeals to the Commission

- A. **Decisions appealed to the Commission.** The following decisions may be appealed to the Commission provided the appeal complies with the requirements of Subsections [35.102.020.C](#) through Subsection [35.102.020.E](#) above.
 1. **Board of Architectural Review decisions.** The following decisions of the Board of Architectural Review may be appealed to the Commission:
 - a. Any decision of the Board of Architectural Review to grant or deny preliminary approval.
 - b. Any decision of the Board of Architectural Review to grant or deny final approval in compliance with [Section 35.102.020.C.2.c](#) (Appeals of final decisions of the Board of Architectural Review).
 2. **Director decisions.** The following decisions of the Director may be appealed to the Commission:
 - a. Any determination on the meaning or applicability of the provisions of this Development Code.
 - b. Any determination that a discretionary permit application or information submitted with the application is incomplete as provided by Government Code Section 65943.

- c. Any decision of the Director to revoke an approved or issued Coastal Development Permit or Land Use Permit.
- d. Any decision of the Director to approve or deny an application for a Coastal Development Permit or Land Use Permit except as follows:
 - (1) Land Use Permits approved in compliance with [Section 35.42.260 \(Temporary Uses and Trailers\)](#) not including Subsection 35.42.260.G (Trailer Use).
- e. Any decision of the Director to revoke an issued Zoning Clearance.
- f. Any decision of the Director to approve, conditionally approved, or deny an application for a Development Plan.
- g. Any decision of the Director to approve, conditionally approved, or deny any other discretionary application where the Director is the designated review authority.
- h. Any other action, decision, or determination made by the Director as authorized by this Development Code where the Director is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.

3. Zoning Administrator decisions. The following decisions of the Zoning Administrator may be appealed to the Commission:

- a. Any decision of the Zoning Administrator to approve, conditionally approve, or deny an application for a Coastal Development Permit, Conditional Use Permit, Development Plan, Lot Line Adjustment, Modification, Overall Sign Plan, Sign Modification, Variance, or other discretionary application where the Zoning Administrator is the applicable review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.
- b. Any other action, decision, or determination made by the Zoning Administrator as authorized by this Development Code where the Zoning Administrator is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.

B. Report to the Commission. The Department shall transmit to the Commission copies of the permit application including all maps and data and a statement identifying the reasons for the decision by the Board of Architectural Review, Director, or Zoning Administrator before the hearing on an appeal.

C. Scope of appeal hearings. The hearings on the appeal shall be de novo.

D. Action on appeal. The Commission shall affirm, reverse, or modify the decision of the Board of Architectural Review, Director, or Zoning Administrator.

E. Additional findings required for Economically Viable Use Determinations. A decision by the Director to deny a Coastal Development Permit for a lot within the Coastal Zone of the Toro Canyon Planning Area that has been appealed by the appellant, where the appellant asserts that the denial of the Coastal Development Permit constitutes a taking of private property, shall be reversed or modified by the Commission only if all of the following findings are first made in addition to the findings contained within [Section 35.82.050 \(Coastal Development Permits\)](#).

- 1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use allowed by the Local Coastal Program policies and/or standards would not provide an economically viable use of the applicant's property.
- 2. Application of the Local Coastal Program policies and/or standards would unreasonably interfere

with the applicant's investment-backed expectations.

3. The use proposed by the applicant is consistent with the applicable zoning.
4. The use and project design, siting, and size are the minimum necessary to avoid a taking.
5. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program other than the provisions for which the exception is requested.
6. The development will not be a public nuisance. If it would be a public nuisance, the development shall be denied.

35.102.050 - Appeals to the Board

- A. Decisions appealed to the Board.** The following decisions of the Commission may be appealed to the Board provided the appeal complies with the requirements of Subsection 35.102.020.C through Subsection 35.102.020.E. above.
1. Any final action on decisions that are appealed to the Commission in compliance with [Section 35.102.040 \(Appeals to the Commission\)](#) above.
 2. Any final action on decisions of the Commission to approve, conditionally approve, or deny an application for a Conditional Use Permit, Development Plan, Lot Line Adjustment, Tentative Map, Variance, or other discretionary application where the Commission is the designated review authority.
 3. Any other action, decision, or determination made by the Commission as authorized by this Development Code where the Commission is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.
- B. Report to the Board.** The Department shall transmit to the Board copies of the permit application including all maps and data and a statement identifying the reasons for the decision by the Commission before the hearing on an appeal.
- C. Scope of appeal hearings.** The hearings on the appeal shall be de novo.
- D. Action on appeal.** The Board shall affirm, reverse, or modify the decision of the Commission. The decision of the Board shall be final.

35.102.060 - Appeals to the Coastal Commission

- A. Coastal Commission jurisdiction.** For developments which are defined as appealable development in compliance with State law (Public Resources Code Section 30603), an action by the County may be appealed to the Coastal Commission within the 10 working days immediately following the date of receipt by the Coastal Commission of the County's Notice of Final Action by the applicant, an aggrieved person or any two members of the Coastal Commission. An aggrieved person is defined as any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing or decision, informed the review authority of the nature of their concerns or who for good cause was unable to do either.
- B. Filing of the appeal.** Appeals shall be in writing and filed with the appropriate Coastal Commission district office.
- C. Exhaustion of local appeals.** An appeal filed in compliance with this Section may not be filed with the Coastal Commission by the applicant or an aggrieved person until all local appeals on the project permit have been exhausted.

D. Decisions appealed to the Coastal Commission. In compliance with State law (Public Resources Code Section 30603(a)), an action taken by the County on a permit application for any of the following may be appealed to the Coastal Commission.

1. Developments approved by the County and located 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 tide line of the sea where there is no beach, whichever is the greater distance, as indicated on the official County appeals zone maps.
2. Developments approved by the County not included within Subsection D.1 above located on public trust lands, submerged lands, tidelands, within 100 feet of any estuary, stream, wetland, or within 300 feet of the top of the seaward face of any coastal bluff, as indicated on the official County appeals zone maps or as determined by the State Lands Commission.
3. Developments approved by the County that require a Conditional Use Permit or Minor Conditional Use Permit in compliance with [Section 35.82.060 \(Conditional Use Permits and Minor Conditional Use Permits\)](#). The approval of a Coastal Development Permit on a conditionally allowed use is also appealable to the Coastal Commission.
4. Coastal Development Permits required to allow developments approved by the County that require:
 - a. A Conditional Use Permit.
 - b. A Final Development Plan for appealable development.
5. Developments approved by the County that require a Conditional Certificate of Compliance.
6. Coastal Development Permits for Residential Second Units approved in compliance with [Section 35.42.230 \(Residential Second Units\)](#).
7. Any development which constitutes a major public works project or a major energy facility. The phrase, "major public works project or a major energy facility," as used in State law (Public Resources Code Section 30603(a)(5)) and this Development Code shall mean any proposed public works project or energy facility exceeding \$50,000.00 in estimated cost of construction.

E. Grounds for appeal.

1. The grounds of appeal for any development appealable under Subsection D.1 above, shall be limited to one or more of the following.
 - a. The development fails to provide adequate physical access or public or private commercial use or interferes with the uses.
 - b. The development fails to protect public views from any road or from a recreation area to, and along, the coast.
 - c. The development is incompatible with the established physical scale of the area.
 - d. The development may significantly alter existing natural landforms.
 - e. The development does not comply with shoreline erosion and geologic setback requirements.
 - f. The development is not in compliance with the Local Coastal Program.
2. The grounds of appeal for any development appealable under Subsection D.2, through Subsection D.4 above, shall be limited to whether the development is in compliance with the Local Coastal Program.