COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

Th 7a

Brian C. Crawford
DIRECTOR

Thomas Lai
ASSISTANT DIRECTOR

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY
www.marincounty.org/plan

April 13, 2015

Honorable Commissioners,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: **County of Marin LCP Amendment No. LCP-2-Mar-13-0224-1**
(Hearing 4-16-15. A copy of this letter has been provided to District Staff).

Dear Chairman Kinsey and Members of the Commission:

Marin County was among the first local governments to complete and have the California Coastal Commission certify its Local Coastal Program (LCP) (in three parts in 1980 and 1981). In the more than 30 years that have passed, the original LCP has been exceptionally effective in stewarding and protecting the resources of Marin's coastal zone. Beginning in late 2008, the Board directed staff to review the policies and provisions of the LCP to determine which might require amendments based upon new knowledge, emerging trends and the experience of administering the current LCP.

The County has carried out an extraordinarily open, transparent and vigorous public and stakeholder participation process intended to provide all interested parties with the opportunity to contribute to the preparation of a set of Local Coastal Program Amendments (LCPA). Our www.MarinLCP.org website made all the reports, background documents, meeting schedules, all letters of comment received, and other information quickly and easily available to all interested persons. Going beyond the legal notice requirements, County staff sent out notifications to more than 2,000 people who subscribed to our email list whenever new actions were pending or new information became available.

After extensive workshops, discussions and hearings at the staff, Planning Commission and Board of Supervisors level, the Board adopted a package of six separate Amendments along with a Resolution authorizing staff to submit the package of Amendments to your Commission. After extensive consultation with your staff, the County officially submitted its amendments including both Land Use Plan Amendments (LUPAs) and an Implementation Plan Amendment (IPA) on November 5, 2013. After meeting two rounds of requests for extensive additional information, the

submittal was deemed complete on April 28, 2014, and your Commission acted on the LUP Amendments only on May 15, 2014. Several key changes were made in the Commission Staff's recommendation within two days prior to that hearing. As pointed out in this letter, some of those changes, particularly those related to Environmental Hazards, are important in the context of IP before you today.

Our respective staffs have been working together to resolve as many issues as possible over the past several months and we believe that a substantial amount of progress has been made. Our comments for the April 16th hearing are focused on several major issues we hope to either resolve at your hearing or at a minimum receive the Commission's input and advice on how we can continue to move forward toward a mutually agreeable LCP. Of course, the valuable public input you receive at your hearing will be helpful in your deliberations. There are also other issues that deserve additional analysis and possible refinements or revisions that we hope to resolve before the final LCP is accepted by the County and certified by the Commission.

The major issues the County has identified thus far are:

1. **Protecting Agriculture and the Working Landscape's Resources.**

   a. **Regulations governing legal parcels (lots)** held in full or partial ownership by an individual in the Coastal Agricultural Production Zone (C-APZ). The County's concern with the Modifications to the IP, as well the LUP Modifications to Policy C-AG-5 itself, is the potential for these provisions to create an incentive to break up working farms and ranches, an unintended consequence that would run counter to the stated objective of protecting agricultural viability that is the goal of the Coastal Act, in particular PRC 30242. Further revisions to this section have been a topic of ongoing discussions between Coastal Commission and County staff and we are optimistic that a resolution to the County's concern may be achievable prior to the Coastal Commission decision on the IP. Specific changes to the Modification are included in Appendix A.

   b. **The ability to conduct routine, normal agricultural operations** outside of ESHAs and their buffers, and within the existing boundaries of farms and ranches that have been the hallmark of Marin's environmental and agricultural stewardship. The vast majority of agricultural production and operations throughout the Coastal Zone have gone on without the time consuming and expensive process that would be established by the proposed Modifications for changes in agricultural production activities. The small scale family farms of Marin are completely unlike the industrial agriculture that occurs elsewhere, they are leaders in organic farming and locally sustainable food production. Regulations in the LCP affecting ongoing agricultural operations should accommodate rather than impede the ability of farmers and ranchers to diversify their operations while also ensuring that other important policy objectives of the Coastal Act are upheld. An alternative approach that is more

efficient and tailored to local conditions is warranted in this area of the LCP. Recommended changes are provided in Appendix A.

c. **Reasonable retail sales of locally grown agricultural products.** Your Commission recognized the normal process of producing "added value" agricultural products which often require a variety of sources from the local "farmshed," in the LUPA hearing, and your staff has ably incorporated that idea in the Suggested Modifications. The situation is different, however, when dealing with agricultural product sales directly to the public. It is a reasonable compromise to require that farmers or ranchers directly produce what they wish to sell under the benefit of being classified as a Principal Permitted Use. This will assure that Coastal Permits allowing the sale of wine, cheese, oysters or different products produced by others within the Marin/Sonoma region would be subject to appeal to your Commission. We believe Coastal Commission staff is in agreement with this point. Revisions to accomplish this are provided in Appendix A.

2. **Responding to Environmental Hazards,** including those related to climate disruption and sea level rise, in a scientifically sound, deliberative and inclusive manner, to yield enduring and effective adaptation responses that are appropriate to the constantly changing nature of the problem.

   County staff concerns with the Environmental Hazards IP Modifications stem primarily from the Land Use Plan changes made in the Commission staff recommendation during the May 2014 hearing that were subsequently adopted by your Commission. While we understand the revision process can lead up to and extend into the public hearing, the Coastal Hazards revisions would benefit from careful consideration or analysis by the County and input by affected stakeholders. The IP Modifications in the staff recommendation to implement these policies, particularly Policy C-EH-5 "New Shoreline and Blufftop Development", highlight the problems with these LUP policies. These policies are critical to the future of Marin's coast, and to its residents, institutions and property owners. Additional effort needs to be invested for stakeholders and the County to continue working with Coastal Commission staff to ensure that Marin County's LCP provides clear, reasonable, and fair provisions for guiding development in areas subject to environmental hazards.

   As described in more detail in Appendix A, the County's primary concerns relate to the complex definition of "coastal redevelopment" as well as the apparent inconsistencies between restrictions on "coastal redevelopment" and the overlapping and conflicting provisions of Chapter 22.68, which specifically exempt from Coastal Permit requirements categories of development which would qualify as redevelopment under the proposed definition, such as improvements to existing structures (22.68.050.A), repair and maintenance work (22.68.050.B), and the replacement of structures destroyed by disaster (22.68.050.C). Other concerns include the use of vague or confusing language and the imposition of cumbersome and unnecessary submittal requirements. For example, the

IP includes provisions that do not clearly define the entity responsible for deciding whether "best available science" should be considered in defining specific locations where preparation of an "environmental hazards report" would be necessary, and impose a requirement to document all work done to a building's structural components since 1973, even though proposed limitations on further structural changes would not apply retroactively.

While revisions to address some of the specific concerns noted above are provided in Appendix A and the attached materials, the definition of "coastal redevelopment" was incorporated into the language of Policy C-EH-5 itself, so any further modifications would need to be proposed in conjunction with changes to the underlying LUP policy. As part of future discussion on this issue, the County would encourage modifications to the "coastal redevelopment" definition that rely upon the Coastal Permit exemption provisions of Chapter 22.68. For example, coastal redevelopment could be redefined to allow any work within the existing building footprint (including foundation improvements to comply with FEMA requirements) and minor additions resulting in a one-time increase of somewhere between 10% (the percentage trigger for exemptions) and 50% (the percentage trigger in Policy C-EH-5) of the structure's floor area. Such a change would provide a greatly simplified and readily understandable definition that improves consistency with Chapter 22.68, allows work within the existing footprint to improve a structure's safety, energy efficiency, and functionality during its remaining economic life, and provides for minor additions to existing residences, while at the same time ensuring that substantial new development is discouraged in high hazard areas.

Finally, as your Commission is aware, the County is deeply engaged in climate disruption adaptation planning through its C-SMART program (Collaboration: Sea-level Marin Adaptation Response), an effort partially funded by the Coastal Commission itself. This program is assessing the implications of sea level rise on the Marin Coast and will develop a range of adaptation alternatives and strategies that are feasible, appropriate, and supported at the local level. As currently structured, the LUP and corresponding IP provisions seem to address sea level rise with a heavy reliance on "managed retreat" through highly restrictive regulations intended to discourage investment in structures over time. Although managed retreat may be an appropriate and necessary approach in many cases, regulations for development in coastal areas adopted now as part of Marin's LCP will provide a precedent for future regulations and should not preclude consideration of more flexible or nuanced adaptation strategies that may be the result of the C-SMART project.

3. **Effective and efficient Coastal Permit Administration**. Several Suggested Modifications appear to be unsupported by law or regulations. They would divert limited resources from more critical coastal protection needs and would unnecessarily elevate costs in time and money for permit applicants and the public. A key example described below involves the administrative determination that a project is exempt from a Coastal Permit.

Suggested modifications would make the most basic administrative action by County staff appealable or "challengeable" to the California Coastal Commission. The initial determination of whether a project requires a coastal permit or is exempt is made by the Community Development Director for each proposed project, whether large or small. The suggested modifications would make all such determinations subject to possible Coastal Commission review (see modifications suggested to Sec. 22.70.040.B and C.). Thus, the Coastal Commission would be drawn into what is ordinarily a straightforward administrative matter. By contrast, as submitted by the County, the Development Code contains a well-established procedure for prompt, local resolution of questions regarding project processing (Sec. 22.70.040, as submitted). The Development Code also contains a procedure that allows for certain disputes about permit applications to be elevated to the Coastal Commission, specifically whether a project is appropriately "categorically excluded" from the coastal permit requirement and whether a public hearing is required.

Consequences of the suggested modifications include:

a. The suggested modifications would elevate costs in time and money for permit applicants and the public. A "waiting period" of 10, 15, or 30 days, depending on the nature of the determination, would apply before such a determination could be relied upon. For example, in the case of a property owner who proposes a home repair project that is exempt from a coastal permit, at least 30 days would need to elapse before work could start (a longer delay would ensue if the Coastal Commission actually took up the question).

b. Rendering permit exemption determinations into matters of Coastal Commission concern is unsupported by law or regulations. The Coastal Act and accompanying regulations provide no authority for the Coastal Commission to rule on whether a particular project in Marin County's coastal zone is exempt from a coastal permit. The determination that a project is exempt is made by the County, under Local Coastal Program rules that have been certified by the Coastal Commission. The Coastal Commission's regulations provide for the Coastal Commission or the Commission's executive director to become involved only in limited questions, specifically whether a project should be "categorically excluded" from a coastal permit and whether the project should be treated as appealable or non-appealable for purposes of notice, hearing and appeals (Calif. Code of Regulations, Title 14, Sec. 13569).

c. The Coastal Commission's staff report indicates that "public participation" would be enhanced by allowing any and all questions regarding permit processing to be taken before the Coastal Commission. But the Commission has statewide jurisdiction, meets only monthly (rarely in Marin County), and is admittedly understaffed. On the contrary, public participation, along with efficiency and economy, would be enhanced by providing for Marin County decision-makers to resolve questions regarding permit processing whenever possible. (For more information, see the attached Appendix A.)

Thank you for your consideration of the above points and we look forward to our continued work toward producing an outstanding LCP through the amendment process that meets Marin County's local needs while also serving the State's interest in protecting the California Coast.

Sincerely,

Brian C. Crawford
Director

Attachments:
Appendix A

APPENDIX A
Selected Marin County Recommended Changes to CCC Staff Suggested Modifications

Table of Contents

APPENDIX A
Selected Marin County Recommended Changes to
CCC Staff Suggested Modifications

1. Protecting Agriculture and the Working Landscape's Resources.

Issues raised by suggested modifications: Agricultural Protection:

A. Regulations governing legal agricultural parcels (lots).
B. The ability to conduct routine, normal agricultural operations.
C. Reasonable retail sales of locally grown agricultural products.

A. Regulations governing legal agricultural parcels (lots). The Suggested Modification is complex, unworkable, of no value in protecting agricultural land or other coastal resources, and is likely to have the opposite effect by creating economic incentives to break up working ranches and farms into smaller, less viable separate holdings.

Solution: Substitute the following for the Suggested Modification to 22.65.040(C)(1)(e)(3) and (4).

22.65.040 – C-APZ Zoning District Standards…

C. Development standards. Development permits in the C-APZ district shall ~~also~~ be subject to the following standards and requirements in addition to section 22.65.030:

1. Standards for ~~agricultural uses~~ all development in the C-APZ:…

e. Agricultural dwelling units shall also meet the following standards, below, including those specified in Section 22.65.040(C)(4)**:**

3. An application for a farmhouse or intergenerational home shall identify the farm, which shall consist of all parcels owned ~~*(in either total or partial fee ownership)*~~ by the same owner of the property upon which the proposed farmhouse or intergenerational home is located. A farm shall consist of no less than all contiguous properties under common ownership. ~~Non-contiguous property may constitute a separate farm when determined to be a wholly independent farming operation, as evidenced by such factors as independent types of bona fide commercial agricultural production, the history of such agricultural production on the property, and the long-term capital investment in independent agricultural operations and infrastructure (such as fencing, processing facilities, marketing mechanisms, and agricultural worker housing).~~ The application shall identify all existing agricultural dwellings on the identified parcels that constitute the farm, and shall demonstrate that the proposed farmhouse or intergenerational house is located on a legal lot.

4. Only one farmhouse or a combination of one farmhouse and up to two intergenerational homes with the combined total of 7,000 square feet (plus the allowed 540 square feet of garage space and 500 square feet of office space in the farmhouse used in connection with the agricultural operation) is allowed for the farm

identified in subsection (3) above, regardless of the number of legal lots the farm owner or operator owns that comprise the farm. Nothing in this subsection shall be construed to prohibit the sale of any legal lot comprising the farm, nor require the imposition of any restrictive covenant on any legal lot comprising the farm other than the legal lot upon which development of one farmhouse and up to two intergenerational homes is approved. Future development of other legal lots comprising the farm shall be subject to the provisions of the LCP and Development Code, including but not limited to Section 22.65.040.

B. **The ability to conduct routine, normal agricultural operations.** Marin County agriculture is unique in the State and even the world in how it marries stewardship of the land, stunning landscapes that frame nationally significant parklands, an authentic family farming culture, a source for sustainable, organic local food, and innovative and dedicated people and institutions such as the Marin Agricultural Land Trust (MALT) and the new Measure A funding program Marin's citizens have taken on to protect the County's scenic working agricultural landscapes. Requiring new, burdensome bureaucratic processes for simply conducting normal agricultural operations is contrary to the Commission's historical tradition and practice, and inconsistent with Coastal Act Policy 30242's mandate to protect continued or renewed agricultural use.

Solution: Delete all references to permits for agricultural use, and substitute the following for the Suggested Modification to Section **22.68.050 – Coastal Permit Not Required: Exempt ~~Projects~~Development** and **Chapter 22.130 (Definitions):**

Agricultural Production Activities, Ongoing Coastal). Existing agricultural production activities, including all ongoing grading and routine agricultural cultivation practices (e.g. plowing, tilling, planting, harvesting, and seeding) and new or renewed agricultural production activities which involve routine agricultural cultivation practices, including plowing, tilling, planting harvesting and seeding, and do not expand into areas where Environmentally Sensitive Habitat Areas (ESHA) and ESHA buffers exist.

C. **Reasonable retail sales of locally grown agricultural products.** In acting on the LUPA, your Commission supported the critical idea of providing for agricultural diversification that is an economic necessity for the long-term viability of agricultural uses protected by the Coastal Act. Part of that action was to recognize a larger "farmshed" that functionally supports agricultural production, and to make allow small agricultural processing operations like cheese making draw from that farmshed, now defined in the Suggested Modifications as comprising Marin and Sonoma Counties.

The context is different with agricultural product sales directly to the public. Local residents are concerned that the agricultural fabric of the area not be undermined by sales of products like wine, souvenirs, and other goods produced by others in the Marin/Sonoma region. Such sales of general goods could lead to traffic congestion that would adversely affect coastal access as well as local residents. A reasonable compromise is to restrict agricultural retail sales classified as Principal Permitted Uses to those that are selling products produced by the owner or operator of the farm.

Solution: Adding the phrase as shown below to section 22.65.040 (C) (1) (f)

22.65.040 -- C-APZ Zoning District Standards, sec. (C) (1) (f)

f. Other Agricultural Uses: Agricultural Processing Uses and Agricultural Retail Sales Facilities/Farm Stands shall be classified as principally permitted agricultural uses only when also consistent with the following standards: …

Agricultural Retail Sales Facility/Farm Stand

5. The building(s) or structure(s) or outdoor areas used for retail sales do not exceed an aggregate floor area of 500 square feet;
6. Agricultural products to be sold are produced ***by the operator of the sales facility*** within the farmshed, defined as the same farm as the proposed sales facility, or on other agricultural properties located in Marin County or Sonoma County;
7. The operator of the sales facility is directly involved in the agricultural production on the property on which the sales facility is located;
8. Sufficient parking, ingress, and egress is provided. In addition, conditions as to the time, place, and manner of use of the sales facility may be applied as necessary through the Coastal Permit process to ensure consistency with provisions of the LCP.

Note: The above revision should also be included in the Agricultural Processing Uses standards in Section 22.65.040(C)(1)(f).

APPENDIX A
Selected Marin County Recommended Changes to
CCC Staff Suggested Modifications

2. Responding to Environmental Hazards

Issues raised by suggested modifications: Environmental Hazards:

A. Definition of "redevelopment" and "coastal redevelopment"
B. Fundamental inconsistencies between "coastal redevelopment" and Section 22.68.050 – Exempt Development
C. Contradictory provisions related to "coastal redevelopment" and replacement of structures destroyed by disaster (Section 22.68.050.C)
D. Unclear provisions related to the preparation of an Environmental Hazards Report (Section 22.64.060.A.1.b)
E. Unnecessarily burdensome application requirements for previous building permit records (Section 22.64.060.A.2)

A. Definition of "redevelopment" and "coastal redevelopment"

The proposed definitions of these terms are problematic, which is of particular concern given their critical importance in defining the point at which all new LCP provisions and requirements with respect to environmental hazards are "triggered". The proposal to define "redevelopment" as the alteration of 50% or more of major structural components **or** a 50% increase in floor area **or** any alterations which exceeds 50 percent of the structure's market value seems unnecessarily complicated, confusing, and difficult to track and implement over time and would result in widely varying and potentially unfair outcomes based on factors such as existing home size, value, age and condition at the time of certification of the LCP. For example:

- The intermixing of various criteria for triggering hazards analysis (i.e., percentage of major structural components, percentage of additions, and market value of the structure) makes the Environmental Hazards section difficult to understand and implement.
- The definition of Coastal Redevelopment expressly excludes additions up to 50% of the existing floor area, which may be interpreted as meaning that type of project would not be subject to the Environmental Hazards standards. However, the section on Additional Coastal Hazards Analysis for Blufftop and Shoreline Development includes a general reference to "additions to existing structures." How these two sections relate is unclear.
- The work permitted to be done on an older "non-renovated" home before its considered "redevelopment" could be significantly less (based on market value) that work permitted on a nearby newly constructed home of the exact same size.
- The provision that alterations are not additive between major structural components, but are considered cumulatively would mean that one owner could alter 49% of every structural component of their house, while another owner would be prohibited from modifying slightly over 50 percent of just one component.

B. Fundamental inconsistencies between "coastal redevelopment" and Section 22.68.050 – Exempt Development

There appears to be fundamental inconsistencies between the definition of "coastal redevelopment" discussed above and provisions of Section 22.68.050, which exempt from Coastal Permit requirements both improvements to existing structures, including those resulting in a floor area increase of up 10 percent (22.68.050A.1) as well as "repair and maintenance" defined simply as development which does not result in an addition to, enlargement, or expansion of the object of the repair and maintenance. The definition goes on to specify that the replacement of 50 percent or more of the structure would no longer be considered repair and maintenance, which clearly means that the replacement of up to 50 percent of the structure would qualify as repair and maintenance. Although the percentages included in 22.68.050 (up to 10% expansion of floor area, up to 50 percent replacement of structure) may seem at first glance to be consistent with the limitations included in the definition of "coastal redevelopment", neither the "improvements to an existing structure" nor the "repair and maintenance" exemptions track individual structural components, require that changes be considered cumulatively over time, or consider the market value of such improvements. It should be noted that, per Section 22.68.060.A, these exemption would not be applicable to structures "on a beach….seaward of the mean high tide line…or within 50 feet of the edge of a coastal bluff." However, these geographical areas are much more limited in scope and extent than those proposed to be considered under the definition of coastal redevelopment ("near the ocean" "at very low lying elevations", etc.).

C. Contradictory provisions related to "coastal redevelopment" and replacement of structures destroyed by disaster (Section 22.68.050.C)

As noted previously, provisions related to "coastal redevelopment" (generally contained in 22.64.060) are clearly intended to have the effect of discouraging improvements or expansion of existing structures in areas subject to environmental hazards. Yet, pursuant to Section 22.68.050.C, existing structures that are destroyed by a disaster (defined as "any situation in which the force or forces which destroyed the structure were beyond the control of its owner") may be reconstructed in their entirety (and even expanded by up to 10 percent) without any Coastal Permit approval. The dichotomy between the "philosophy" of these two code sections sets up confusing inconsistencies. For example, per the definition of coastal redevelopment, a property owner along the coast or in a low lying area wishing to do a minor expansion (less than 10% of floor area) in conjunction with reconstructing 100% their foundation for FEMA compliance would, among other things, be required as part of a Coastal Permit application to prepare a "removal and restoration plan" detailing how that structure would be relocated or removed if it was deemed uninhabitable as a result of flooding or other hazards. They would also be required under 22.64.060.B.8 (Applicant's assumption of risk) to waive any existing right to ever construct a shoreline protective device. However, if the same owner did nothing and waited for a disaster event to occur, they could rebuild the structure (up to 10 percent larger and in compliance with FEMA) without a Coastal Permit and free from requirements to agree to remove or relocate the structure or give up their rights to apply for a shoreline protective device. It seems therefore, that the various provisions as currently proposed could create a disincentive for taking preventative actions against flooding or other hazards, in contradiction to other policies encouraging public health and safety.

D. Unclear provisions related to the preparation of an Environmental Hazards Report (Section 22.64.060.A.1.b)

Proposed language in the Environmental Hazards Section 22.64.060(A)(1)(b) requires preparation of an Environmental Hazards Report where proposed development is located "…on a blufftop, near the shoreline (i.e. at or near the ocean-sand interface and/or at very low lying elevations in areas near the shoreline)…" Given the significant cost and time implications of preparing such a report, more precise definitions should be provided to clarify what is meant by terms such as "near the shoreline" or "at very low lying elevations". Alternatively, the text could be revised to refer to areas located within mapped hazard areas as shown below:

Solution: Modify Section 22.64.060.A.1.b as follows:

> **Environmental Hazards Report**. Where the initial site assessment reveals that the proposed development is located within a mapped hazard area on hazard maps maintained by the County, ~~on a blufftop, near the shoreline (i.e. at or near the ocean-sand interface and/or at very low lying elevations in areas near the shoreline) or within 100 feet of an area potentially subject to geologic or other hazards over the 100 year assessment time frame~~, the project shall include an Environmental Hazards Report…"

E. Unnecessarily burdensome application requirements for previous building permit records (Section 22.64.060.A.2)

New language in the Environmental Hazards Section 22.64.060(A)(2)(a) specifies that an applicant proposing alterations to an existing structure must identify any previous changes to major structural components of that structure since February 1973, including identifying all associated Coastal Permits. Under the County's certified LCP and zoning in effect since 1982, structural alterations or additions resulting in an increase of less 10% of the internal floor area of an existing structure are exempt from Coastal Permit requirements. In addition, the County's Building Permit records are incomplete and would not consistently provide a clear record of work done to a structure that did not require a separate discretionary approval. Therefore, in many cases, it is quite unlikely that a current owner would have access to records regarding "any previous changes to major structural components" since 1973 unless they had owned the property since that time. In addition, it is not clear what the purpose of providing this information would be, since the new restrictions on "blufftop and shoreline development" now proposed by CCC staff (and their corresponding limitations on the extent of change to major structure elements) would apply from the date of certification of the LUP forward, not retroactively to structural alterations done in the past.

Solution: Modify the last sentence of Section 22.64.060.A.2.a as follows:

> The applicant must also identify any previous changes to such major structural components since February 1973, where available, including identifying all associated Coastal Permits.

APPENDIX A
Selected Marin County Recommended Changes to CCC Staff Suggested Modifications

3. Effective and efficient Coastal Permit Administration.

Issues raised by suggested modifications: Coastal Permit Processing and Administration

A. Burdensome and unsupported "appeals" of Coastal Permit exemption determinations
B. Elimination of administrative flexibility and judgment
C. Narrowing of a permit "streamlining" procedure to the point that it becomes useless
D. Creation of cumbersome procedures unsupported by law or regulation
E. Inclusion of provisions that are not supported by the Coastal Act
F. Creation of inconsistent provisions within the Development Code
G. Use of imprecise terminology
H. Creation of internal contradiction
I. Insertion of key definitions in various places, rather than under "Definitions"

A. Burdensome and unsupported "appeals" of Coastal Permit exemption determinations

The suggested modifications would create complex and costly procedures at the very beginning of the County's land use review process. As submitted, Chapter 22.70 of the County's Development Code provides for the processing of applications for development in the coastal zone. The first step, of course, is to determine whether an activity requires a coastal permit or not. There are two ways an activity might be exempt from a coastal permit: the activity might not even constitute a "development," which is the mechanism by which the Coastal Act regulates projects in the coastal zone. Or the activity might be a "development" but nevertheless be specifically exempted by the Coastal Act (such as by Public Resources Code Section 30610 (a), (b), or (d) and accompanying regulations). Either way, the Coastal Act provides no authority to regulate an activity if exempt under the law.

On the other hand, if an activity does constitute a "development" (and does not fall within an exemption), then the next step is to determine whether the activity qualifies for a coastal permit exclusion under a Coastal Commission-adopted Categorical Exclusion Order, whether the project might qualify for a de minimis waiver, or whether a coastal permit is required, with or without a public hearing.

The County recognizes that disagreements may arise over the appropriate process to be followed in reviewing a particular proposed project in the coastal zone. The relevant provisions of the Development Code, as submitted by the County, provide:

> 22.70.040 – Appeal of Permit Category Determination
>
> Where an applicant or interested person disputes the Director's permit category determination of Coastal Permit category (Section 22.70.030.B – Determination of Permit Category), the determination may be appealed as follows:
>
> A. General County appeal procedure. Appeals to the Planning Commission or Board shall be filed and processed in compliance with Chapter 22.114 (Appeals).

B. Timing of County appeal. A determination regarding permit category by the Director may be appealed to the Planning Commission, and subsequently to the Board, within 10 business days of the determination.

C. Procedures for appeals of permit category determination to the Coastal Commission. Appeals of permit category determinations to the Coastal Commission shall follow the procedures contained in California Code of Regulations, Title 14, section 13569 (Determination of applicable Notice and Hearing Procedures).

Thus, determinations by the Director of Community Development may be appealed to the Planning Commission and subsequently the Board of Supervisors. Paragraph C. provides additional procedures, involving the Coastal Commission's executive director and the Coastal Commission itself, in certain circumstances.

The suggested modifications would substitute more "spelled out" procedures in place of the County's proposed reference to the California Code of Regulations, Title 14, section 13569. That suggested modification, taken by itself, would be appropriate, as it would put in one place the relevant procedures, rather than requiring the reader to consult the California Code of Regulations, along with the Development Code.

The suggested modifications, however, go considerably beyond merely spelling out what is provided in the California Code of Regulations. The suggested modifications would, in fact, create an entirely separate process for all disputes regarding permit category determinations and would appear to draw the Coastal Commission into most or all of them, even where not warranted:

22.70.040 – ~~Appeal of~~ Challenges to ~~Permit~~ Processing Category Determination

Where an applicant or interested person disputes the Director's ~~permit~~ processing category determination ~~of Coastal Permit category~~ (Section 22.70.030.B – Determination of ~~Permit~~ Processing Category), the determination may be challenged ~~appealed~~ as follows:

A. Challenges to Processing Category Determination. The Director's determination that a proposed development is to be processed as a categorical exclusion, exemption, de minimis waiver, non-public hearing application, public hearing application, or public hearing waiver application may be challenged ~~General County appeal procedure. Appeals to the Planning Commission or Board shall be filed and processed in compliance with 22.114 (Appeals)~~.

B. Timing of Challenge ~~County appeal~~. A determination regarding permit processing category by the Director may be ~~appealed~~ challenged to the ~~Planning~~ Coastal Commission~~, and subsequently to the Board,~~ within 10 business days of the ~~determination~~ date of sending the notice of determination for exclusions, within 10 days of the date of sending the notice for de minimis waivers, non-public hearing applications, and public hearing applications; within 15 working days of the date of sending the notice for public hearing waiver applications; and within 30 days of its posting date for exemptions.

C. ~~Procedures for appeals of to permit category determination to the~~ Coastal Commission Challenge Procedures. ~~Appeals of permit category determinations to the Coastal Commission shall follow the procedures contained in California Code of Regulations, Title 14, section 13569 (Determination of applicable Notice and Hearing Procedures).~~ Where an applicant, interested person, the County, or the Coastal Commission's Executive Director has a question as to any

processing category determination under Section 22.70.030 for a proposed development, the following procedures shall provide an administrative resolution process for determining the appropriate permit category:

(1) The County shall make its determination as to the processing category for the proposed development in accordance with the procedure set forth in Section 22.70.030.

(2) If the County's processing category determination is challenged by the applicant, an interested person, or the Coastal Commission's Executive Director, or if the County wishes to have a Coastal Commission determination as to the appropriate processing category, the County shall notify the Commission of the dispute/question and shall request an Executive Director's opinion. County processing of the permit application shall cease if a challenge is received by the County and/or the Coastal Commission.

(3) The Executive Director shall provide his or her opinion to the County, the applicant and any other known interested parties as soon as possible. There are three possible outcomes of a challenge:

(a) If the Executive Director agrees with the County's determination, then the determination shall be final and shall apply to the proposed development;

(b) If the Executive Director disagrees with the County's determination, and the County then agrees with the Executive Director's opinion, then the review and permit procedures associated with the Executive Director's opinion shall apply to the proposed development; or

(c) If the Executive Director disagrees with the County's determination, and the County disagrees with the Executive Director's opinion, then the matter shall be set for public hearing for the Coastal Commission to make the final determination of applicable review and permit procedures, and the Coastal Commission's determination shall apply to the proposed development.

(4) The challenge period shall be deemed concluded if no challenge is received within the time periods specified in 22.70.040(B), or when the Executive Director provides his or her opinion to the County in outcomes (a) or (b) above, or when the Executive Director provides the Coastal Commission's determination to the County in outcome (c) above. The operation and effect of any application shall be stayed until the challenge period is concluded.

Paragraph B above, as suggested to be modified, states that any challenge can be taken directly to the Coastal Commission, thus bypassing the Planning Commission and Board of Supervisors, even though the suggested modifications to Paragraph C suggest a role for the Planning Commission and Board of Supervisors. The suggested modifications are unclear.

Disputes about whether an activity should appropriately be classed as exempt may arise, just as disputes about any aspect of land use controls may occur. And in fact the County's Development Code provides for such disputes to be taken up. Section 22.114.020 – Appeal Subjects and Jurisdiction provides generally that any determination or action made by staff may be appealed to the Planning Commission and to the Board of Supervisors. In particular, paragraph B. provides:

B. Determinations and actions that may be appealed. The following types of actions may be appealed:

1. Determinations as to the meaning or applicability of the provisions of this Development Code that are believed to be in error;…

Chapter 22.114, although not part of Article V of the Development Code that forms the bulk of the Local Coastal Program's Implementation Plan, is nevertheless effectively "drawn in" to the LCP by virtue of being referenced in Sec. 22.70.040.A. The Coastal Commission's staff report states that it is necessary to restate the provisions of Chapter 22.114 within the Local Coastal Program portion of the Development, but the suggested modifications do not accurately mirror the provisions of Chapter 22.114. For instance, the provisions of Paragraph B.1. quoted above do not appear in the suggested modifications. Furthermore, the suggested modifications would appear to bring all permit category disputes into the Coastal Commission's arena, even those that would be appropriately addressed by the County's own mechanisms.

The suggested modifications would draw into the Coastal Commission's arena even instances where a dispute involves a proposed activity that is simply exempt from a coastal permit. Where an activity is exempt, no coastal permit is required, and therefore no coastal permit application or file is created. The Coastal Commission's staff report suggests that the basis of requiring permit exemption disputes to be taken before the Coastal Commission is to maximize public participation. But there is no authority for involving the public in this way. Section 13569 of the Coastal Commission's regulations make no mention of disputes about permit exemptions being taken before the Coastal Commission; instead, the regulations address determinations of three types: whether a development is "categorically excluded, non-appealable or appealable."

Furthermore, the suggested modifications would establish various time limits ("10 business days," "15 working days," and "30 days") with respect to various disputes, which vary from each other and also vary from the County's established procedures. With respect to permit exemptions, the suggested modifications would require a waiting period of 30 days during which an exemption determination might be challenged. In other words, a property owner would be barred for at least 30 days from embarking on a home repair or other project that needs no coastal permit in the first place, thus placing an unreasonable and unjustified burden on residents in the coastal zone.

Solution: Adopt the County's submittal for Sections 22.70.020 through 22.70.040, thus providing for local resolution of questions regarding permit filing. In addition, the following provisions could be added to Section 22.70.040, paragraph C, in order to flesh out procedures for those particular disputes that are suitable to be taken to the Coastal Commission:

Sec. 22.70.040

…

C. Coastal Commission Challenge Procedures. Following the County's determination as set forth in Section 22.70.030:

(1) If the County's processing category determination is challenged by the applicant or an interested person, or if the County wishes to have a Coastal Commission determination as to the appropriate processing category, the County shall notify the Commission of the dispute/question and shall request an Executive Director's opinion. County processing of the permit application shall cease if an Executive Director's opinion is requested.

(2) The Executive Director shall provide his or her opinion to the County within two working days of the County's request for opinion or upon completion of a site inspection where warranted. There are three possible outcomes of a challenge:

(a) If the Executive Director agrees with the County's determination, then that determination shall be final;

(b) If the Executive Director disagrees with the County's determination, and the County then agrees with the Executive Director's opinion, then the review and permit procedures associated with the Executive Director's opinion shall apply to the proposed development; or

(c) If the Executive Director disagrees with the County's determination, and the County disagrees with the Executive Director's opinion, then the matter shall be set for public hearing before the Coastal Commission to make the final determination of applicable review and permit procedures, and the Coastal Commission's determination shall apply to the proposed development.

(3) The challenge period shall be deemed concluded when the Executive Director provides his or her opinion to the County in outcomes (a) or (b) above, or when the Executive Director provides the Coastal Commission's determination to the County in outcome (c) above. The operation and effect of any application shall be stayed until the challenge period is concluded.

B. Elimination of administrative flexibility and judgment

The suggested modifications to Sec. 22.62.040.B.5. – Allowable Land Uses and Coastal Permit Requirements include the following:

5. Land uses that are not listed in Tables 5-1, 5-2, and 5-3 or are not shown in a particular zoning district are not allowed~~, except where otherwise provided by Section 22.06.040.B (Determination of Allowable Land Uses), or 22.68.050 (Exempt Projects).~~

The suggested deletion would eliminate any flexibility by the Planning Director needed when reviewing proposed land uses that may not be named precisely in Tables 5-1, 5-2, or 5-3. The LCP must be designed to last for many years. Over time, nuances and variations on proposed land uses will inevitably arise, and the County needs reasonable flexibility to determine how to interpret its Development Code. The suggested modifications would simply strike out that flexibility.

Solution: Adopt text as proposed by the County:

22.62.040.B.5. – Allowable Land Uses and Coastal Permit Requirements.
Land uses that are not listed in Tables 5-1, 5-2, and 5-3 or are not shown in a particular zoning district are not allowed, except where otherwise provided by Section 22.06.040.B (Determination of Allowable Land Uses), or 22.68.050 (Exempt Projects).

[Note that Sec. 22.06.040.B. (Determination of Allowable Land Uses) relies in part on Sec. 22.02.020.E (Rules of Interpretation – Allowable uses of land); both sections are essential in administration of the Development Code.]

C. Narrowing of a permit "streamlining" procedure to the point that it becomes useless

The procedure for waiver of a public hearing where no interested person intends to participate (found in Section 22.70.030 – Coastal Permit Filing, Initial Processing, subparagraph B.5.) is suggested to be modified in ways that would render the procedure nearly useless:

> 65. Public hearing waiver for minor development appealable to the Commission. A public hearing that would otherwise be required for athe below identified minor development appealable to the Commission under 22.70.080(B) shall be waived if both the following occur:
>
> (a) Notice is provided as required by Section 22.70.050 – "Public Notice" that a public hearing shall be held upon request by any person is provided , and
> (b) No written request for a public hearing is received within 15 working days from the date of sending the notice required by Section 22.70.050.
>
> In addition to the requirements of Section 22.70.050, the notice shall include a statement that the hearing will be cancelled if no person submits a written request for a public hearing as provided above, and a statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the County of Marin on the Coastal Permit application.
>
> For purposes of this Section, "minor development" means a development that the Director determines satisfies all of the following requirements:
>
> (1) As proposed, Iis econsistent with the certified Local Coastal Program,
> (2) Requires no discretionary approvals other than a Coastal Permit, and
> (3) As proposed, Hhas no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.
>
> Notwithstanding the waiver of a public hearing, any written comments submitted regarding a coastal permit application shall be made part of the permit application record. Such applications shall be accompanied by a statement of whether County decisions on the proposed development would be appealable to the Coastal Commission, and the reasons supporting such a determination.

First, the suggested modifications would limit the provisions to minor developments that are appealable to the [Coastal] Commission. The Coastal Act provisions (Public Resources Code Section 30624.9) that allow for the public hearing waiver procedure do not contain that limitation; some projects that are not appealable to the Coastal Commission may still require a County public hearing, because multiple approvals may be required for any given project.

Secondly, the suggested modifications would strike the word "written" with respect to a request for a public hearing. But government's regulation of land use cannot be expected to function successfully while relying on verbal, unwritten communications. The requirement to conduct a public hearing costs time and money for permit applicants, and the lack of a written record for a hearing request could expose the County to argument and potential legal liability.

Thirdly, the suggested modifications would state that, for a public hearing to be waived, a project as submitted must be consistent with the LCP and have no adverse effects on coastal resources. That is, the

County would be unable to apply any conditions of approval, a practice that is routine in the case of many or most coastal permits. Placing conditions of approval on a project is simply unrelated to the question of whether a public hearing is to be held or not.

Solution: Adopt the provisions for Public Hearing Waiver (found in Sec. 22.70.030.B.5.) as submitted by the County.

D. Creation of cumbersome procedures unsupported by law or regulation

As provided in Section 22.70.090 – Notice of Final Action, the County's provision of a "notice of final action" on a coastal permit plays an essential role in letting a permit applicant know when a permit becomes valid and also in letting potential appellants know of their rights. It is appropriate for the County to provide notice not only to the Coastal Commission but also to the public, in order to maximize public participation. The suggested modifications, however, would establish cumbersome procedures that go well beyond what is required in the event Coastal Commissioners or members of the public are interested in a particular project.

The suggested modifications to Section 22.70.090 would provide that:

> The notice ~~shall include conditions of approval, written findings and the procedures for appeal of the County decision to the Coastal Commission.~~ shall be in two parts: (1) a cover sheet or memo summarizing the relevant action information and (2) materials that further explain and define the action taken…."

The first part of what is suggested, the publication of a "cover sheet or memo" with key facts about an approved project would be sufficient to alert anyone with a potential interest in filing an appeal. The second part of what is suggested, the "supporting materials" is cumbersome and unjustified:

> B. Supporting Materials: The supporting materials shall include the following information:
>
> 1. Final adopted findings and final adopted conditions (must be provided hard copy).
> 2. Final staff report (must be provided hard copy).
> 3. Approved project plans (may be provided in hard copy and/or electronic format).
> 4. All other substantive documents cited and/or relied upon in the decision including any environmental review documents prepared in accordance with the California Environmental Quality Act, technical reports (geologic reports, biological reports, etc.), correspondence, etc. (may be provided in hard copy and/or electronic format)

The introduction to Section 22.70.090, moreover, includes suggested modifications to require such "supporting materials" to be "provided for public review at the Community Development Agency's front counter and webpage." But the list of "supporting materials" includes much of what is already contained in a project file. It would be duplicative and wasteful to make a separate copy of such materials to have on hand at the front counter of the Community Development Agency, when the files are generally open to public inspection in any event. Furthermore, although the suggested modification implies that public notice can be provided on the County's website, other provisions state that certain components must be provided in "hard copy" form. Confusingly, the suggested modifications also seem to require provision of a "list" of all decisions, in addition to the required "notice of final action," which is necessarily a document that addresses only one decision at a time. Finally, the suggested modifications exceed the requirements of the Coastal Commission's own regulations in Section 13571, which state that a notice of

final action "shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission." As submitted, the County's procedures meet that requirement.

Solution: Adopt the following:

> 22.70.090 – Notice of Final Action
>
> Within 7 calendar days of a final County decision on an application for a Coastal Permit, the Director shall provide notice of the action by First Class mail to the Coastal Commission, to any persons who specifically requested notice and provided a self-addressed stamped envelope or other designated fee covering mailing costs, and on the Community Development Agency's website. The notice shall include the following information:
>
> 1. All project applicants and project representatives and their address and other contact information.
> 2. Project description and location.
> 3. County decision making body, County decision, and date of decision.
> 4. All local appeal periods and disposition of any local appeals filed.
> 5. Whether the County decision is appealable to the Coastal Commission, the reason why the development is or is not appealable to the Coastal Commission, and procedures for appeal to the Coastal Commission.
>
> A 10 working day appeal period to the Coastal Commission shall commence the day following receipt by the Commission of a valid Notice of Final Local Action that meets all requirements of this Chapter.

E. Inclusion of provisions that are not supported by the Coastal Act

The Coastal Act provides that certain developments are exempt from the requirement to obtain a coastal development permit. For instance, the law states generally that repair and maintenance can proceed without a coastal permit, as long as the subject structure is not made any larger (Public Resources Code Section 30610(d) provides that "Repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities" are exempt, except for extraordinary cases where there is a risk of adverse environmental impact as further specified in the Coastal Commission's regulations). The suggested modifications, by contrast, would limit the repair and maintenance exemption in a way not contemplated by the Coastal Act and in a way that would render the exemption almost meaningless. The first sentence of Sec. 22.68.050 – Exempt Projects, paragraph B. Repair and Maintenance, is suggested to be modified with the addition of the words <u>or change</u>, thus providing a coastal permit exemption only for:

> Repair and maintenance activities that do not result in the addition <u>or change to</u>, or enlargement or expansion of, the object of repair or maintenance.

Not only would the modification narrow the exemption beyond that contemplated by the Legislature, but it would make the exemption useless; what conceivable repair and maintenance activity might be proposed that would involve no <u>changes</u> to a structure?

Solution: Adopt the first sentence of Section 22.68.050.B. as submitted by the County.

In another example, the suggested modifications propose to narrow the coastal permit exemption for nuisance abatement activities in a way that would be inconsistent with the Coastal Act. The Act provides

that no provision of the law is a limitation "On the power of any city or county or city and county to declare, prohibit, and abate nuisances." (Public Resources Code Sec. 30005(b). By contrast, the suggested modifications would add the following sentence to the list of activities in Sec. 22.68.050. – Exempt Projects, paragraph J. Nuisance Abatement:

> Exempt nuisance abatement only applies to temporary development that is the minimum necessary to abate the nuisance, and only provided such development is removed if a regular Coastal Permit is not obtained that authorizes such development.

Not only would that provision appear to contradict the County's authority to abate nuisances, recognized by PRC Sec. 30005(b), but it would seem to be unworkable on its own terms. Nuisance abatement, for example, may involve removal of a dangerous structure that threatens public safety. How could such abatement be "temporary"? How could such abatement be "removed"?

Solution: Delete the suggested modification, leaving Sec. 22.68.050.J. as submitted by the County.

F. Creation of inconsistent provisions within the Development Code

The suggested modifications would create confusion and inconsistency by mixing provisions for repair and maintenance of shoreline protective works (such as seawalls) with repair and maintenance of single-family homes. When read together, as submitted by the County, Sections 22.68.050 – Exempt Projects and 22.68.060 – Non-Exempt Projects provide that repair and maintenance of a seawall or revetment is generally non-exempt, which is to say that a coastal permit is required. The methods of repair specified by Sec. 22.68.060.K. that would make a project non-exempt are quite broad, including the placement of any solid materials on a beach or on a shoreline protective work, or the replacement of 20 percent or more of the materials of an existing structure with materials of a different kind. Those repair methods reflect the Coastal Commission's regulations (Calif. Code of Regulations, Sec. 13252). In sum, only the most minor of seawall repair projects would be exempt from a coastal permit.

The suggested modifications propose to augment the provisions regarding repair and maintenance of seawalls and revetments by adding separate provisions to Sec. 22.68.050.B, specifically ones that would be inconsistent with those found in Sec. 22.68.060.K. For instance, as suggested to be modified, Sec. 22.68.050.B. would include this sentence:

> Unless destroyed by a natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin, or any other structure is not considered ~~solely~~ repair and maintenance, but instead constitutes a replacement structure requiring a Coastal Permit (see also "Redevelopment (coastal)" and "Redevelopment, Coastal (coastal)").

The suggested additions to Sec. 22.68.050.B. would create a conflict with Sec. 22.68.060.K. The latter section would potentially exempt a seawall repair that involves the replacement of 20 percent or more of its materials, while the former would seem to exempt a seawall repair that involves the replacement of 50 percent or more. What if a seawall repair involves, say, 30 percent replacement? Would it be exempt or not exempt?

Dividing the provisions for repair and maintenance of seawalls between two different sections of the Development Code, and then providing different standards in the two places, is a recipe for future problems in interpretation and administration of the Development Code. (Note also that the suggested modifications use the term "natural disaster," whereas the Development Code defines and uses the term

"disaster," as does the Coastal Act in Sec. 30610(g). The insertion of the word "natural" in one section only of the Code would invite future problems in interpretation, i.e., what is the purpose of the extra word in one place and not in others?)

Solution: Maintain all provisions regarding repair and maintenance of seawalls and revetments in one place in the Development Code, specifically in Sec. 22.68.060.K, as submitted by the County. Then, leave the provisions of Sec. 22.68.050.B. to address the repair and maintenance of structures other than seawalls and revetments, such as single-family residences, as submitted by the County.

G. Use of imprecise terminology

The suggested modifications in several places would insert the word "including" along with stated criteria or definitions in a way that would render them imprecise, thus causing needless disputes and potential delays in permit processing. In an apparent attempt to be as broadly encompassing as possible, the word "including" is proposed, thus implying that whatever the item of concern, it is in some way broader than is described in the Development Code.

For instance, the suggested modifications propose the following in Chapter 22.130 – Definitions:

> Coastal Resources (coastal): Include, but are not limited to: public access and public access facilities and opportunities, recreation areas and recreational facilities and opportunities (including for recreational water-oriented activities), public views, natural landforms, marine resources, watercourses (e.g., rivers. streams, creeks. etc.) and their related corridors, waterbodies (e.g., wetlands. estuaries. lakes. etc.) and their related uplands, groundwater resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

That definition contains many appropriate examples of coastal resources that merit protection under the Coastal Act, but what, then, is the meaning of the phrase "Include, but are not limited to"? What other resources are there, and who might answer that question? By contrast, the purpose of the Development Code is to define the parameters of land use regulation, not simply to provide open-ended examples.

Solution: When defining a key term, provide its parameters, along with (or in place of) listing examples. For instance, the following definition might be employed:

> Coastal Resources (coastal): Public access facilities and opportunities; recreation areas, facilities, and opportunities; scenic and visual qualities; natural landforms; marine resources; watercourses and waterbodies and related groundwater resources; environmentally sensitive habitat areas; agricultural lands; and archaeological and paleontological resources, all as addressed in Chapter 3 of the California Coastal Act (Public Resources Code Section 30200 et.seq.

H. Creation of internal contradiction

The suggested modifications propose unnecessary changes along with an apparent contradiction with respect to the date on which a coastal permit approval becomes effective. The result could be potential confusion and delay for permit applicants and interested persons. Section 22.70.110 – Effective Date of Final Action establishes when the County's action on a Coastal Permit becomes final, or "effective." The procedure encompasses not only the County's final decision, but also the subsequent "waiting period" during which an appeal might be filed with the Coastal Commission. There is both a 10 working-day appeal period, during which potential appellants may register their appeal at the Coastal Commission, and a separate 21 calendar-day period, which affords potential appellants time to learn that the appeal period

may have already commenced and to act on that information. As proposed by the County, both periods, which run concurrently, are accommodated.

The suggested modifications would provide:

> 22.70.110 – Effective Date of Final Action
>
> A final decision by the applicable review authority on an application for an appealable development shall become effective after the 10 working day appeal period to the Coastal Commission has expired or after the 21st calendar day following the final County action if no appeal to the Coastal Commission is filed, unless any of the following occur in which case the County action shall not be considered effective:
>
> **A.** An appeal is filed in compliance with Section 22.70.080 – Appeal of Coastal Permit Decision.
>
> **B.** The notice of final Coastal Permit approval does not meet the requirements of Section 22.70.090 (Notice of Final Action) or Section 22.70.100 (Notice of Failure to Act).
>
> ~~**C.** The notice of final action is not received in the Coastal Commission office and/or distributed to interested parties in time to allow for the 10 working day appeal period within the 21 days after the County decision.~~
>
> Where any of the above circumstances occur, the Coastal Commission shall, within five days of receiving notice of that circumstance, notify the County and the applicant that the effective date of the County action has been suspended.

With the suggested modifications, the meaning seems to become: "A final decision becomes effective if no appeal is filed, unless an appeal is filed." What does that mean? As submitted by the County, the procedure is clear: a decision becomes final after the 10 working-day period and the 21 calendar-day period, unless a circumstance specified in paragraphs A., B., or C. occurs (one of which is that appeal is filed).

Solution: adopt Section 22.70.110 – Effective Date of Final Act as submitted:

I. Insertion of key definitions in various places, rather than grouped, in the Development Code

The suggested modifications propose to insert certain definitions of key terms in various sections of the Development Code rather than grouping them, as is the County's practice, in Chapter 22.130 – Definitions. Placement of definitions in various places in the Code, rather than all together in Chapter 22.130, means the reader may overlook key definitions.

For example, the suggested modifications propose to delete the definition of "Disaster (coastal)" from Chapter 22.130 – Definitions, while at the same time adding that definition to Sec. 22.68.050 – Exempt Projects. In another example, the suggested modifications propose to duplicate the definition of "Development (coastal)" in two different sections of the Code, both in Sec. 22.68.030 – Coastal Permit Required and also in Chapter 22.130 – Definitions. Duplicating a definition is not only unnecessary, but it risks unintended consequences, such as if a minor difference in wording or punctuation appears in one definition and not in the other.

Solution: Place all definitions of key terms in Chapter 22.130 – Definitions.

In a related example, the suggested modifications propose to insert substantive standards for certain types of projects in inappropriate sections of the Development Code where such standards might be overlooked. For instance, the following phrases are suggested to be added to Section 22.70.080 – Appeal of Coastal Permit Decision:

> (c) Development approved that is not designated as the Principal Permitted Use (PP) by Tables 5-1, 5-2, or 5-3 in Chapter 22.62 – Coastal Zoning Districts and Allowable Land Uses (any use that also requires the granting of a Coastal Zone Variance shall not be considered a principal permitted use; land divisions are not the principally permitted use in any zoning district); and…

Section 22.70.080 states what can and cannot be appealed; that is not the appropriate place to specify what types of projects can be approved. The Development Code contains other sections that address Coastal Zone Variances (Sec. 22.70.150) and Land Divisions (Sec. 22.70.190, as proposed to be modified). In fact, the suggested modifications to Sec. 22.70.190 also contain the same statement that "land divisions are not the principally permitted use in any zoning district"; it is unnecessary to repeat that provision.

Solution: Delete the suggested modification to Subsection 22.70.080.B.(c)