

Marin County Planning Commission
Special Meeting
Wednesday, August 31, 2011

ROLL CALL The meeting was called to order by Chair Peter Theran at 10:01 a.m.

Present at Roll Call: Peter Theran; Katherine Crecelius; Don Dickenson; Mark Ginalski; Randy Greenberg; Wade Holland.

Absent at Roll Call: Joan Lubamersky.

Agenda

1. INITIAL TRANSACTIONS

a. Incorporate Staff Reports into Minutes

M/s Wade Holland - Randy Greenberg to incorporate the staff reports into the minutes.

Vote: Motion carried 6-0

AYES: Peter Theran; Katherine Crecelius; Don Dickenson; Mark Ginalski; Randy Greenberg; Wade Holland.

ABSENT: Joan Lubamersky.

b. Minutes

None. The minutes of the meeting of August 22, 2011, will be approved at the special meeting of September 8, 2011.

c. Communications

None.

2. DIRECTOR'S REPORT

a. Preliminary Agenda Discussion Items, Field Trips

Assistant Director Tom Lai provided an update of upcoming agenda items, including rescheduling of the Matthews Land Division

3. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER)

Chair Theran opened and closed public open time with no speakers coming forward.

4. LOCAL COASTAL PROGRAM UPDATE HEARING

[Staff Report & Revised Staff Recommendations](#)

Chair Theran opened the public hearing.

Staff present were Assistant Director Tom Lai, Principal Planner Jack Liebster, and Consultant Steve Scholl.

Following discussion by Chair Theran of meeting process and introductory remarks by Mr. Liebster, Mr. Scholl gave an overview with a visual presentation of proposed changes to the overall structure and format of the LCP Implementation Program and the administration of Coastal Permits, specifically Chapters 22.60, 22.68, and 22.70.

The following members of the public spoke regarding the lack of enough time to adequately review and prepare responses to the proposed amendments; concerns that proposed changes to public noticing and appeal requirements will be detrimental to the public; the need for prompt review of Emergency Coastal Permit applications; concerns about Wind Energy Conversion Systems, including impacts on historical resources and birds and the effects of low-frequency sound in the Coastal Zone; concerns about climate change and sea level rise; support for allowing alternative energy development on farms; the need for clarification of the purpose of Coastal Permits; concerns about development along ridgelines; weakness in Coastal Zone permit requirements; concern that the Development Code is consistent with the Countywide Plan and not the existing LCP; permitting requirements for tree removal in the Coastal Zone should be brought in line with County ordinance (tree preservation); and the need to protect major resources: Amy Trainer, Environmental Action Committee of West Marin (EAC); Bridger Mitchell, EAC and Inverness Association (IA); Richard Kohn; Beverly McIntosh-Childs, West Marin/Sonoma Coastal Zone Advocates; Bernie Stephan, Transition West Marin; Terence Carroll; Louise Gregg; Cella O'Connor; Helen Kozoriz, West Marin/Sonoma Coastal Advocates; Nick Whitney, IA; Scott Tye, Surfrider Foundation-Marine; Barbara Salzman, Marin Audubon Society; and Susan Stompe, Marin Conservation League.

By straw vote 6/0/1 (Lubamersky absent), the Commission tentatively approved the LCP Development Code overall format as proposed by staff.

The Commission reviewed and approved Chapters 22.60, 22.68 and 22.70 with the following revisions provided to staff:

Chapter 22.68

- Item 11: 22.68.030 - Coastal Permit Required. In 2nd paragraph, 1st sentence, replace "Coastal development" with "Development in the Coastal Zone."

- Item 13: 22.68.050 - Exempt Projects.

- C.2. Replacement after disaster. Add "(including legal non-conforming)" to legal use.
- E. Emergency Highway Repair. Remove from the last sentence, "from this section."
- A.2. Improvements on developed lots. The Commission was tied 3/3 (Theran, Dickenson, Crecelius) on whether a Coastal Permit should be required for more than 1,000 square feet of impermeable paving. Staff will research the effects this would have on projects not normally needing a Coastal Permit or even a building or grading permit.
- I. Temporary event.
 - 1. Delete "or would occupy a sandy beach only in areas outside of" and replace with "in." Reorder this item to #4.
 - 4. Increase duration from one day to two days and reorder this item to #1.

The Commission recessed for lunch at 12:27 p.m. and reconvened at 1:04 p.m. with six members present as indicated.

- 22.68.070 De Minimis Waiver of Coastal Permit. A. Define "cumulatively" in Article VIII, using the definition from the Coastal Act.

Chapter 22.70 Coastal Permit Administration

- 22.70.030 - Coastal Permit Filing, Initial Processing
 - 5. Public hearing waiver. Add written or email request for public hearing waivers.
 - Staff will come back with a recommendation for the period of time for public hearing waiver request, possibly a separate provision with a minimum of 25 days.
- 22.70.080 - Appeal of Coastal Permit Decision. 2. Filing. Revise the first sentence to reflect the 10th working day after the filing of the notice of the final action to the Coastal Commission.
- 22.70.090 - Decision on Coastal Permit. Change 10 calendar days to seven calendar days of a final County decision on an application for a Coastal Permit.
- 22.70.160 - Coastal Zone Variance Exemptions.
 - Floor area in items B. and C. should be consistently expressed in percentage or ratio.
 - E. Staff corrected maximum roof height from 30 feet to 25 feet.

Mr. Liebster addressed edits submitted by Commissioner Greenberg (PC Enclosure 2 of the Revised Staff Recommendation of August 30, 2011).

By straw vote 6/0/1 (Lubamersky absent), the Commission approved Chapters 22.60, 22.68, and 22.70, as amended, including revised staff recommendations 11 through 22, and not including the issue of requiring a Coastal Permit for impermeable paving in excess of 1,000 square feet (22.68.050 - Exempt Projects).

By straw vote 6/0/1 (Lubamersky absent), the Planning Commission tentatively approved the proposed Land Use Plan Introduction, as amended.

The revisions discussed and agreed upon at this hearing are set forth in the Decision Table attached to these minutes as Attachment 1.

The Planning Commission recessed briefly at 2:01 p.m. and reconvened at 2:20 p.m. with six members present as indicated.

Mr. Lai distributed a revised Comparison of Noticing Requirements. Following questions and discussion, the Commission chose the Option B noticing requirements for De Minimis Waiver and Administrative Coastal Permits, as follows: 1. Owner/applicant, public agency, property owners 300/600 feet, and interested parties (optional depending on web improvements), 2. Site Notice, and 3. Coastal Commission. Usage of the term "business days" is preferable (as opposed to "calendar" or "working" days).

M/s Wade Holland - Katherine Crecelius to continue the hearing on Development Code amendment housing impact fees to Monday, September 26, 2011.

Vote: Motion carried 6-0

AYES: Peter Theran; Katherine Crecelius; Don Dickenson; Mark Ginalski; Randy Greenberg; Wade Holland.

ABSENT: Joan Lubamersky.

M/s Mark Ginalski - Randy Greenberg to adjourn.

Vote: Motion carried 7-0

AYES: Peter Theran; Katherine Crecelius; Don Dickenson; Mark Ginalski; Randy Greenberg; Wade Holland; Joan Lubamersky.

Chair Theran adjourned the meeting at 2:32 p.m.

The Planning Commission is scheduled to convene a special meeting on Thursday, September 8, 2011.

Timestamps:

00:30:00 Staff presentation

01:00:00 Public testimony

01:40:00 Questions, discussion and approval of overall format

02:00:00 Chapter 22.68

02:26 - 03:00 - Lunch recess

03:00 De Minimis Waiver

03:09 Chapter 22.70

04:03 Public Notice (Revised)

**Planning Commission Tentative Decision Table
Local Coastal Program (LCP) Hearing on the Development Code Structure and Process
August 31, 2011**

All sections in Chapters 22.60 (Purpose and Applicability of Coastal Zone Regulations), 22.68 (Coastal Permit Requirements), and 22.70 (Coastal Permit Administration) of the LCP Proposed Development Code Amendments were reviewed and approved by the Planning Commission (PC) unless noted below. Changes responding to specific Planning Commission direction are shown after the tables below in tracked changes format with **highlight, strike-out and underline**. Staff notes regarding specific items are shown in *blue italics*.

CHAPTER 22.60 – Purpose and Applicability of Coastal Zone Regulations
<i>PC Actions:</i>
<i>None. The PC had no comments or modifications for Chapter 22.60.</i>
<i>Items Continued:</i>
<i>None.</i>

CHAPTER 22.68 – Coastal Permit Requirements
<i>PC Actions:</i>
<i>See changes noted below.</i>
<i>Items Continued:</i>

- The PC suggested the following modification. Staff will evaluate the potential impacts of this change, and will bring issue back for discussion at future PC hearing.

Section 22.68.050.A.2 – Exempt Projects

...

2. Structures on a residential lot normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses, **or** self-contained residential units, **or 1,000 or more square feet of impermeable paving**; and

...

- The PC requested that staff clarify that “legal use” includes “legal non-conforming use.” Staff will evaluate whether “legal use” already encompasses both “legal conforming use” and “legal non-conforming use,” and will propose modified language if necessary. Staff will bring this issue back for discussion at future PC hearing.

Section 22.68.050.C.2 – Exempt Projects

2. Be for the same legal use as the destroyed structure, **whether that use is legal conforming or legal non-conforming**;

- The PC requested that staff add the Coastal Act definition of “cumulative” to Section 22.130.030 of the Development Code, in order to clarify “cumulatively” as used in **Section 22.68.070.A** below.

Section 22.68.070.A – De Minimis Waiver of Coastal Permit

- A. Involves no potential for adverse effects, either individually or **cumulatively** on coastal resources,

...

CHAPTER 22.70 – Coastal Permit Administration

PC Actions:

See changes noted below.

Items Continued:

- The PC requested that staff modify **Section 22.70.030.B.5(b)** as shown, and that staff review the “15 working days” requirement as it relates to the “10 working days” requirement in **Section 22.70.050.A – Public Notice**. Staff will evaluate the issue and bring back for further discussion at a future PC hearing.

Section 22.70.030.B.5(b) – Coastal Permit Filing, Initial Processing

- a. No **written** request for a public hearing is received within 15 working days from the date of sending the notice.
- The PC requested that staff modify **Section 22.70.050.A** as shown, and that staff review the “15 working days” requirement as it relates to the “10 working days” requirement in **Section– Public Notice**. Staff will evaluate the issue and bring back for further discussion at a future PC hearing.

*PC-approved changes to Chapters 22.68 and 22.70 of the LCP proposed Development Code amendments are shown below in tracked changes format with **highlight, strike-out and underline**. Staff notes are shown in blue italics.*

CHAPTER 22.68 – COASTAL PERMIT REQUIREMENTS

Sections:

- 22.68.010 - Purpose of Chapter
- 22.68.020 - Applicability
- 22.68.030 – Coastal Permit Required
- 22.68.040 – Categorically Excluded Projects
- 22.68.050 – Exempt Projects
- 22.68.060 – Non-Exempt Projects
- 22.68.070 – De Minimis Waiver of Coastal Permit
- 22.68.080 - Projects Requiring a Coastal Commission Permit
- 22.68.090 – Consolidated Coastal Permit

22.68.010 – Purpose of Chapter

This Chapter determines when a Coastal Permit shall be required to authorize a proposed development.

22.68.020 – Applicability

The provisions of this Chapter apply to proposed development in the Coastal Zone as defined by Public Resources Code Section 30103.

22.68.030 – Coastal Permit Required

A Coastal Permit is required for ~~coastal~~ development **in the Coastal Zone** proposed by a private entity or a State or local agency unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

~~Coastal~~ development is defined in Article VIII of this Development Code and is interpreted to include **installation of** water or sewage disposal systems, the closure of County-managed public accessways, **changes in public access to the water including parking availability, construction of** agricultural processing facilities and the significant alteration of landforms. Significant alteration of land forms entails the removal or placement of vegetation on a beach, wetland, or sand dune, or within 100 feet of the edge of a coastal bluff, stream, or in areas of natural vegetation designated as environmentally sensitive habitat areas. Agricultural crop management and grazing are not considered to be a significant alteration of land forms.

22.68.040 – Categorically Excluded Projects

- A. A project specifically designated as categorically excluded from the requirement for a Coastal Permit by Public Resources Code Section 30610 ~~(d) and (f)~~ **(e)** and implementing regulations is not subject to Coastal Permit requirements.
- B. The Director shall maintain **and regularly transmit to the Coastal Commission** a list of projects determined to be categorically excluded from the requirements of this Chapter for a Coastal Permit. The list shall be available for public inspection and shall include the applicant's name, project description and location, and the date of the Director's determination.

22.68.050 – Exempt Projects

The following projects, **as determined by the Director,** shall be exempt from the requirements of Section 22.68.030 – Coastal Permit Required, **unless listed as non-exempt by Section 22.68.060.**

- A. **Improvements, other than to a public works facility, on developed lots.** The following improvements on developed lots:
 - 1. All fixtures and other structures directly attached to an existing structure including additions resulting in an increase of less than 10 percent of the floor area of the existing structure; and

2. Structures on a residential lot normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and *[may be revised - see note under "Items Continued" above]*
3. Landscaping on the lot.

B. Repair and maintenance. Repair and maintenance activities that do not result in the addition to or enlargement or expansion of the object of repair or maintenance. No coastal permit shall be required for ordinary maintenance of the Seadrift Revetment, which is defined to include removal from the beach of any rocks or other material which become dislodged from the revetment or moved seaward from the identified footprint, replacement of such materials on the revetment, minor placement of sand over the revetment from a source other than the Bolinas Sandspit Beach, planting of dune grass on the revetment, and similar activities.

Unless destroyed by a 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.

C. Replacement after disaster. The replacement of any legal structure, other than a public works facility, destroyed by a disaster. The replacement structure shall:

1. Conform to applicable existing zoning requirements;
2. Be for the same legal use as the destroyed structure; *[may be revised - see note under "Items Continued" above]*
3. Not exceed the floor area of the destroyed structure by more than 10 percent or 500 square feet, whichever is less, or the height or bulk of the destroyed structure by more than 10 percent (the applicant must provide proof of pre-existing height and bulk); and
4. Be sited in the same location on the site as the destroyed structure, unless the Director determines that a relocation is warranted because of proximity to coastal resources.

D. Emergency work. Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550 of Division 1 of Title 2 of the Calif. Government Code).

E. Emergency highway repair. Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not

exempt ~~from this section~~ any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

- F. **Time-Share.** Any activity that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the Calif. Business and Professions Code.
- G. **Maintenance dredging.** Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the US Army Corps of Engineers.
- H. **Utility connection.** The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development for which a Coastal Permit has been approved.
- I. **Temporary event.** A temporary event which:
 - 1. ~~Would have a duration of two consecutive days or less; and~~
 - 2. ~~Would not occupy a sandy beach, or would occupy a sandy beach only in areas outside of~~ Muir Beach, Stinson Beach, Bolinas, ~~and or~~ Dillon Beach; and
 - 3. ~~Would not involve a charge for general public admission or seating where no fee is currently charged for use of the same area; and~~
 - 4. ~~Would not take place in any wetlands, streams and riparian corridors, or other environmentally sensitive habitat areas; and,~~
 - 5. ~~Have a duration of one day or less.~~
- J. **Nuisance Abatement.** Nuisance abatement actions by the County that are necessary to protect public health and safety, when such abatement must occur more quickly than could occur if authorized by a Coastal Permit. If exempt from a Coastal Permit, a nuisance abatement action shall involve the minimum level of development activity necessary to successfully abate the nuisance.

22.68.060 – Non-Exempt Projects

Notwithstanding the provisions of Section 22.68.050 – Exempt Projects, a Coastal Permit shall be required for all of the following projects unless the development is categorically excluded or qualifies for a De Minimis Waiver:

- A. **Improvements to existing structures, and repair and maintenance of existing structures.** Improvements to a structure ~~and repair and maintenance of a structure~~ if the structure is located on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff.
- B. **Alterations within geographically defined appealable areas.** On property that is 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 of the sea where there is no beach, whichever is the greater distance, improvement that would result in an increase of 10 percent or more of floor area of an existing structure

or an additional improvement of 10 percent or less where an improvement to the structure had previously been exempt from Coastal Permit requirements, an increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

- C. **Shoreline protective devices.** Those repair and maintenance activities which involve seawalls and similar shoreline structures.
- D. **Seadrift Revetment.** Extraordinary maintenance of the rock revetment as permitted by Coastal Commission permit #A-1-MAR-87-235-A issued August 31, 1994. Extraordinary maintenance is defined to include placement of any material on or adjacent to the seaward face of the revetment (other than replacement of dislodged material) or which expands the height or length of the revetment.
- E. **Changes in intensity of use.** Improvements to a structure, other than a single-family residence or public works facility, which increases or decreases the intensity of use of the structure, as determined by the Director.
- F. **Conversions.** Improvements carried out in conjunction with the conversion of an existing structure from a multi-family residential rental or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold, including a condominium conversion, stock cooperative conversion or motel/hotel conversion, not including a time-share project.
- G. **Structures of special character and visitor appeal.** Demolition of, or substantial alterations or additions to any structure built prior to 1930, except for maintenance or repair consistent with its original architectural character and maintenance or repair that includes replacement-in-kind of building components.
- H. **Water wells and septic systems.** The expansion or construction of water wells or septic systems.
- I. **Landform alterations.** Any significant alteration of land forms.
- J. **Future Improvements.** Any improvement to a single-family residence or other structure where the coastal development permit issued for the original structure indicated that any future improvements would require a development permit.

22.68.070 – De Minimis Waiver of Coastal Permit

The Director may waive the requirement for a Coastal Permit in compliance with this Section upon a written determination that the project meets all of the following criteria:

- A. Involves no potential for adverse effects, either individually or cumulatively on coastal resources,
- B. Is consistent with the certified Local Coastal Program,

- C. Is not of a type or in a location where the project, if subject to a Coastal Permit, would be appealable to the Coastal Commission or would be subject to a Coastal Permit issued by the Coastal Commission, and
- D. Public notice of the proposed De Minimis Waiver of Coastal Permit has been provided in the same manner as required by Section 22.70.050.

22.68.080 – Projects Requiring a Coastal Commission Permit

- A. **Coastal Commission approval required.** Development or new land uses proposed on tidelands, submerged lands, public trust lands, or otherwise located seaward of the line of Coastal Commission jurisdiction, shall require a Coastal Permit from the Coastal Commission in compliance with Public Resources Code Section 30519(b). Also under the Coastal Commission's continuing jurisdiction are amendments or extensions to coastal permits issued by the Coastal Commission; thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them; state university or college projects; and non-federal projects on federal land.
- B. **Determination of jurisdiction.** The determination of jurisdiction shall be made by the Coastal Commission based upon maps and other descriptive information that the County, Coastal Commission and/or State Lands Commission may supply.
- C. **Referral.** Before issuing a Coastal Permit, the Coastal Commission will refer the application to the State Lands Commission for a determination whether a State Lands Commission permit or lease is required for the proposed development, and whether the State Lands Commission finds it appropriate to exercise the easement over that property. The Coastal Commission shall also refer the application to the County for review and comment.
- D. **County land use designations and zoning districts.** County land use designations and zoning districts on public trust lands and federal lands shall be advisory only for purposes of the Coastal Commission's review of a coastal permit application.

22.68.090 – Consolidated Coastal Permit

Consolidated County–Coastal Commission Coastal Permit. If a proposed development requires atwo separate Coastal Permits, one from ~~both~~ the County and one from the Coastal Commission, a consolidated Coastal Permit application may be considered by the Coastal Commission according to the following procedure.

- A. The Director, with agreement by the applicant, may request the Coastal Commission through its executive director to process a consolidated Coastal Permit. The standard of review for a consolidated Coastal Permit application shall follow Chapter 3 of the Coastal Act (commencing with Public Resources Code Section 30200), with the Local Coastal Program used as guidance. The application fee for a consolidated Coastal Permit shall be determined by reference to the Coastal Commission's permit fee schedule.

- B. Prior to making a request for a consolidated Coastal Permit, the Director shall first determine that public participation would not be substantially impaired by that review process. The Director may require public notice that is reasonably determined necessary to allow public review and comment on the proposed consolidated Coastal Permit.

CHAPTER 22.70 – COASTAL PERMIT ADMINISTRATION

Sections:

- 22.70.010 – Purpose of Chapter
- 22.70.020 – Applicability
- 22.70.030 – Coastal Permit Filing, Initial Processing
- 22.70.040 – Appeal of Permit Category Determination
- 22.70.050 – Public Notice
- 22.70.060 – Decision on Coastal Permit
- 22.70.070 – Required Findings
- 22.70.080 – Appeal of Coastal Permit Decision
- 22.70.090 – Notice of Final Action
- 22.70.100 – Notice of Failure to Act
- 22.70.110 – Effective Date of Final Action
- 22.70.120 – Expiration Date and Time Extensions
- 22.70.130 – Amendments to Coastal Permits
- 22.70.140 – Emergency Coastal Permits
- 22.70.150 – Coastal Zone Variances
- 22.70.160 – Coastal Zone Variance Exemptions
- 22.70.170 – Decision and Findings

22.70.010 – Purpose of Chapter

This Chapter provides procedures for the filing, processing, and action on Coastal Permits, De Minimis Waivers and Categorical Exclusions.

22.70.020 – Applicability

The provisions of this Chapter apply to the preparation, filing, review, and approval or denial of all Coastal Permit, De Minimis Waiver, and Categorical Exclusion applications for development in Marin County.

22.70.030 – Coastal Permit Filing, Initial Processing

- A. Application and filing.** Coastal Permit application submittals shall include all information and other materials required by the Coastal Permit application forms, provided by the Agency. The application and accompanying materials shall be filed with the Agency before or concurrent with an application for any land use permit required by this Article.
- B. Determination of permit category.** The Director shall determine if the proposed project is categorically excluded, qualifies for a De Minimis Waiver, or requires a Coastal Permit that does or does not require a public hearing, as follows. This determination may be appealed in compliance with Section 22.70.040 – Appeal of Permit Category Determination.
1. **Categorical exclusion.** A determination that a project is categorically excluded shall comply with Section 22.68.040 – Categorically Excluded projects.
 2. **De Minimis Waiver.** A determination that a project qualifies for a De Minimis Waiver shall comply with 22.68.070 – De Minimis Waiver of Coastal Permit.
 3. **Administrative applications.** A public hearing shall not be required when an application is not defined as appealable to the Coastal Commission by 22.70.080 - Appeal of Coastal Permit decision, unless a public hearing is required for another discretionary planning permit for the same project.
 4. **Public hearing applications.** A public hearing shall be required when a project is defined as appealable to the Coastal Commission by 22.70.080 - Appeal of Coastal Permit decision, unless the proposed project only entails the **development approval** of a second unit **use** or if it qualifies for a public hearing waiver. If a public hearing is held for another type of discretionary permit, the same review authority shall issue the decision on the Coastal Permit.
 5. **Public hearing waiver.** A public hearing that would otherwise be required for a minor development shall be waived if both the following occur:
 - a. Notice that a public hearing shall be held upon request by any person is provided to all persons who would otherwise be required to be notified of a public hearing as well as any other persons known to be interested in receiving notice, and
 - b. No **written** request for a public hearing is received within 15 working days from the date of sending the notice. *[may be revised - see note under “Items Continued” above]*
 - c. **The notice shall include 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 a coastal permit application.**

For purposes of this Section, “minor development” means a development that the County Director determines satisfies all of the following requirements:

- (1) Is consistent with the certified Local Coastal Program,
- (2) Requires no discretionary approvals other than a Coastal Permit, and
- (3) Has 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.

C. Initial processing. A Coastal Permit shall be processed concurrently with other permit applications required for the project, and shall be evaluated as provided by Chapter 22.40 (Application Filing and Processing, Fees).

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 determinations to the Coastal Commission-~~appeal procedure~~.** 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).

22.70.050 – Public Notice *[may be revised - see note under “Items Continued” above]*

Notice to the public of a pending action on a Coastal Permit or De Minimis Waiver shall be given as follows:

- A. Form of notice.** Permit applications shall be noticed at least 10 days prior to a hearing or action on the proposed project by posting notice in at least one location on or adjacent to the property which is the subject of the permit and by mailing notice to each applicant, all persons who

have requested to be on the mailing list for that development project or for coastal decisions within the County, all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed,;

1. The owner(s) or owner's agent of the property being considered, and the applicant;
2. Each local agency expected to provide essential facilities or services to the project, whose ability to provide the facilities and services may be significantly affected by the proposed project;
3. Any person who has filed a written request for notice with the Director and has paid the fee set by the most current County Fee Ordinance for the notice;
4. All owners of real property within three hundred feet of the property on which the development is proposed, as shown on the County's latest equalized assessment roll, if the zoning for such property requires a minimum lot area of less than twenty thousand square feet or a maximum density higher than two units per acre, or all owners of real property within six hundred feet of the property on which development is proposed, as shown on the County's latest equalized assessment roll, if the zoning for such property requires a minimum lot area of twenty thousand square feet or greater, or a maximum density of two units per acre or lower; and
5. The Coastal Commission.

These types of notice listed in 1. through 5. above shall be provided regardless of whether a hearing is required on the permit. If a hearing is required, notice shall also be published at least once in a local newspaper of general circulation in the County.

The Director may also require additional means of notice that is reasonably determined necessary to provide adequate public notice of the decision on the proposed project.

B. Content of notice. The required notice may be combined with other required project permit notice(s), but shall be mailed by First Class mail and shall include the following information:

1. A statement that the project is within the Coastal Zone, and that the project decision will include a determination on a Coastal Permit;
2. The date of filing of the application;
3. The name of the applicant;
4. The number assigned to the application;
5. A description of the proposed project and its location;
6. A determination of whether the project is appealable to the Coastal Commission under Section 30603(a) of the Public Resources Code;

7. The date, time and place of the hearing and/or decision on the application; ~~and~~
8. A brief description of the procedures for public comment and decision on the application including the system of appeal if applicable; ~~;~~
9. If no public hearing is held, a ~~statement that a~~ **description of the applicable** public comment period ~~of sufficient time will be held~~ to allow for the submission of comments by mail prior to the local decision; ~~and~~

10. If a public hearing is proposed to be waived, a description of the public hearing waiver process as provided in Section 22.70.030.B.5.

- C. Renoticing required.** If a decision on a Coastal Permit is continued by the review authority to a date or time not specific, the item shall be renoticed in the same manner and within the same time limits established by this Section. If a decision on a Coastal Permit is continued to a specific date and time, then no renoticing is required.
- D. State Lands Commission notification.** Notice shall be provided to the State Lands Commission when an application for a Coastal Permit is submitted to the County on property identified as potentially subject to the public trust.

22.70.060 – Decision on Coastal Permit

- A. Review authority.** A decision to approve, conditionally approve, or deny a Coastal Permit shall be by the applicable review authority.
 1. The Director shall take action on a non-hearing Coastal Permit application.
 2. Where the decision required for the permit by this Development Code or other County Code provision is to be by the Zoning Administrator, Commission, or Board, that review authority shall conduct a public hearing and take action on the Coastal Permit application.
 3. Where the decision required for the permit by this Development Code or other County Code provision is to be by the Director or other County officer, and a public hearing is required, the Zoning Administrator shall hold a public hearing and approve or deny the Coastal Permit application.
 4. For projects requiring multiple approvals under various provisions of the County Code, and where at least one approval is required by the Zoning Administrator or Commission, the Zoning Administrator or Commission may hold the public hearing and approve or deny the Coastal Permit application at the same time as taking action on the other applications.
 5. For appealable projects or other public hearing coastal projects for which the County permit requirements do not identify a review authority, the Coastal Permit application shall be heard, and approved or denied by the Zoning Administrator.

22.70.070 – Required Findings

Findings. The applicable review authority shall approve a Coastal Permit only when it first makes the findings below in addition to any findings required by this Article. Findings of fact establishing that the project conforms to the requirements and objectives of the Local Coastal Plan shall be made as enumerated below. The findings shall reference applicable policies of the Local Coastal Plan where necessary or appropriate.

- A. **Coastal Access.** The proposed project is consistent with the applicable policies contained in the Public **Coastal** Access section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.180 (Public Coastal Access Standards). Where the project is located between the nearest public road and the sea the findings shall include a determination of the project's conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act (commencing with Section 30200 of the Public Resources Code).
- B. **Biological Resources.** The proposed project is consistent with the applicable policies contained in the Biological Resources section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.050 (Biological Resources Standards).
- C. **Environmental Hazards.** The proposed project is consistent with the applicable policies contained in the Environmental Hazards section of the Marin County Local Coastal Program, including that new development during its economic life (100 years) is safe from and does not contribute to geologic or other hazards, and the specific standards contained in Section 22.64.060 (**Coastal Zone Environmental Hazards Standards**).
- D. **Agriculture and Mariculture.** The proposed project is consistent with the applicable policies contained in the Agriculture and Mariculture section **s** of the Marin County Local Coastal Program and the specific agricultural and maricultural land use standards contained in Chapter 22.32.
- E. **Water Resources.** The proposed project is consistent with the applicable policies contained in the Water Resources section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.080 (Water Resources).
- F. **Community Design.** The proposed project is consistent with the applicable policies contained in the Community Design section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.100 (Community Design).
- G. **Community Development.** The proposed project is consistent with the applicable policies contained in the Community Development section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.110 (Community Development).
- H. **Energy.** The proposed project is consistent with the applicable policies contained in the Energy section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.120 (Energy).

- I. **Housing.** The proposed project is consistent with the applicable policies contained in the Housing section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.130 (Housing).
- J. **Public Facilities and Services.** The proposed project is consistent with the applicable policies contained in the Public Facilities and Services section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.140 (Public Facilities and Services).
- K. **Transportation.** The proposed project is consistent with the applicable policies contained in the Transportation section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.150 (Transportation).
- L. **Historical and Archaeological Resources.** The proposed project is consistent with the applicable policies contained in the Historical and Archaeological Resources section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.160 (Historical and Archaeological Resources).
- M. **Parks, Recreation, and Visitor-Serving Uses.** The proposed project is consistent with the applicable policies contained in the Parks, Recreation, and Visitor-Serving Uses section of the Marin County Local Coastal Program and the specific standards contained in Section 22.64.170 (Parks, Recreation, and Visitor-Serving Uses).

22.70.080 – Appeal of Coastal Permit Decision

- A. **County appeal procedure.** Decisions of the County on a Coastal Permit (Section 22.70.060 – Decision on Coastal Permit) may be appealed to the Planning Commission and Board as provided by Chapter 22.114 – Appeals.
- B. **Appeals to the Coastal Commission.** Coastal Permits may be appealed to the Coastal Commission by an aggrieved person, including the applicant, or two members of the Coastal Commission, as follows:
 - 1. **Appealable Development.** For purposes of appeal to the Coastal Commission, appealable development includes the following:
 - a. Development approved between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance;
 - b. Development approved, not included in paragraph (a) above, that is located on tidelands, submerged lands, public trust lands, within 100 feet of any coastal wetland, estuary, or coastal stream, or within 300 feet of the top of the seaward face of any coastal bluff;
 - 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; and

- d. Any development which constitutes a major public works project or a major energy facility.
2. **Filing.** Appeals must be filed in the office of the Coastal Commission prior to the close of business on the 10th working day after ~~the action~~ receipt by the Coastal Commission of the Notice of Final Action issued by the County for the decision that is the subject of the appeal. In the case of an appeal by an applicant or other aggrieved person, the appellant must exhaust all appeals to the County in compliance with Subsection A above (County Appeal Procedure) to be considered an aggrieved person, unless the County charges an appeal fee.
3. **Appeal by Coastal Commissioners.** When two Coastal Commissioners bring an appeal against a project that was approved by other than the Board of Supervisors, the Board of Supervisors may elect to consider the appeal before any action by the Coastal Commission. The Board of Supervisors shall notify the Coastal Commission of its decision to consider an appeal within 12 days of the County's receipt of notice of an appeal by two Coastal Commissioners. County action on an appealable project shall not be deemed final if the Board elects to consider the appeal. Notice and hearing on these appeals by the Board of Supervisors shall comply with Chapter 22.114 – Appeals. After action by the Board of Supervisors (or failure or refusal to act), notice of final action shall be provided to the Coastal Commission pursuant to Section 22.70.090.

22.70.090 – Notice of Final Action

Within ~~10~~ 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, and to any persons who specifically requested notice and provided a self-addressed stamped envelope or other designated fee covering mailing costs. The notice shall include conditions of approval, written findings and the procedures for appeal of the County decision to the Coastal Commission.

22.70.100 – Notice of Failure to Act

- A. **Notification by applicant.** If the County has failed to act on an application within the time limits set forth in Government Code Sections 65950 et seq. (Approval of Development Permits), thereby approving the development by operation of law, the person claiming a right to proceed in compliance with Government Code Section 65950 et seq. (i.e., the applicant), shall notify the County and the Coastal Commission in writing of the claim that the development has been approved by operation of law. The notice shall specify the application which is claimed to be approved. Even if deemed approved in compliance with Government Code Section 65950, the project shall still comply with all applicable standards of this Development Code.
- B. **Notification by County.** Upon a determination that the time limits established in compliance with Government Code Section 69550 et. seq. have expired, the Director shall, within five days of the determination, notify persons entitled to receive notice in compliance with Section 22.72.080 (Notice of Coastal Permits) that it has taken final action by operation of law in compliance with Government Code Section 65956.

The appeal period for projects approved by operation of law shall begin only upon receipt of the County's notice in the office of the Coastal Commission.

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 unless any of the following occur:

- 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).
- 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.

22.70.120 – Expiration Date and Time Extensions

- A. Time limits, vesting, extensions.** Coastal Permit time limits, vesting requirements, and extension provisions shall comply with Section 22.56.050 – Time Limits and Extensions.
- B. Findings.** In addition to the requirements of Section 22.56.050, Coastal Permit extensions may be granted by the Director upon a finding that the project continues to be in conformance with the requirements and objectives of the Marin County Local Coastal Program.
- C. Appeal.** Coastal Permit extensions may be appealed in compliance with Section 22.70.080 (Appeal of Coastal Permit Decision).

22.70.130 – Amendments to Coastal Permits

A Coastal Permit may be amended in the same manner required for initial approval. Amendment requests shall be subject to the appeal provisions of Section 22.70.080 (Appeal of Coastal Permit Decision).

22.70.140 – Emergency Coastal Permits

In the event of an emergency, the Director may issue a permit to authorize emergency work in compliance with this Section, and Section 30624 of the Coastal Act and Section 13329 of Title 14 of the California Code of Regulations. The Director shall not issue an emergency permit for any work to be conducted on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled; requests for emergency work in these areas shall be referred to the Coastal Commission.

- A. Application.** An application for an emergency permit shall be filed with the Director in writing if time allows, or in person or by telephone if time does not allow.
- B. Required information.** The applicant shall report to the Director the following information, either during or as soon after the emergency as possible:
1. The nature and location of the emergency;
 2. The cause of the emergency, insofar as this can be established;
 3. The remedial, protective, or preventive work required to deal with the emergency; and
 4. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

The Director shall verify the facts, including the existence and nature of the emergency, as time allows.

- C. Notice.** The Director shall provide public notice of the proposed emergency work, and determine the extent and type of notice based on the nature of the emergency.
- D. Emergency permit approval.** The Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date, if the Director finds that:
1. An emergency exists that requires action more quickly than permitted by the procedures of this Article for a Coastal Permit, and the work can and will be completed within 30 days unless otherwise specified by the emergency permit;
 2. Public comment on the proposed emergency action has been reviewed, if time allows; and
 3. The proposed work is consistent with applicable Marin County Local Coastal Program policies.

The decision to issue an emergency permit is at the sole discretion of the Director, provided that subsequent Coastal Permits required for the project shall comply with all applicable provisions of this Development Code.

- E. **Coastal Permit required.** Within 30 days of the notification required in Subsection A. (Application), the applicant shall apply for a Coastal Permit. Failure to file the applications and obtain the required permits shall result in enforcement action in compliance with Chapter 22.122 (Enforcement)

22.70.150 – Coastal Zone Variances

This Section provides procedures for the adjustment from the development standards of Article V of this Development Code only when, because of special circumstances applicable to the property, including location, shape, size, surroundings, or topography, the strict application of this Article denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts. Any Coastal Zone Variance granted shall be subject to conditions that will ensure that the Variance does not constitute a granting of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is situated.

Coastal Zone Variances provide relief from standards relating to height, floor area ratio, and yard setbacks. Coastal Zone Variances cannot be granted for relief from use limitations or minimum lot size and density requirements.

- A. **Filing.** An application for a Coastal Zone Variance shall be submitted, filed, and processed in compliance with and in the manner described in Chapter 22.6840 (Application Filing and Processing, Fees). It is the responsibility of the applicant to establish evidence in support of the findings required by Section 22.70.070 – Required Findings.

Coastal Permit Variance applications are available at the Agency's public information counter.

- B. **Project review procedure.** Each application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Section.
- C. **Action on Variances.** Decisions on Coastal Zone Variances shall be issued by the Director or the same review authority that issues the decision on the Coastal Permit for the project.

ED. **Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Coastal Zone Variance application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions).

22.70.160 – Coastal Zone Variance Exemptions

In situations where development is proposed within the footprint of an existing structure the Director may ministerially find a project exempt from Coastal Zone Variance requirement subject to the following:

- A. The cubical contents of the structure shall not be increased with the exception of minor dormers and bay windows which provide headroom or circulation or projects that are addressed **below** in **s**Section 22.54.040.C, but do not add to the bulk and mass of the structure.
- B. The floor area ratio may increase, not to exceed **0.35 percent** maximum, or 300 square feet, whichever is more restrictive, except that such area limitations do not apply to circumstances in flood zones that are addressed **below** in **s**Section 22.54.040.C.
- C. The floor area ratio may increase above 30 percent if the increase in floor area is due to a Federal or County requirement that an existing structure be raised above the base flood elevation. In this instance, the finished floor of the first level above the base flood elevation shall not be more than 18 inches above the base flood elevation. Floor area beneath proposed additions does not qualify for this exemption.
- D. Existing legal non-conforming setbacks may be maintained if a structure is being raised to conform to a Federal or County requirement that an existing structure be raised above the base flood elevation. In this instance, the finished floor of the first level above the base flood elevation shall not be more than 18 inches above the base flood elevation. Development beneath proposed additions does not qualify for this exemption.
- E. The height of a roof of an existing structure that encroaches into a required setback is being lowered by any height or is being raised by not more than three feet in height above the existing roof, or to a maximum of **3025** feet above grade, whichever is more restrictive.
- F. The project shall be subject to Coastal Permit, in compliance with this Article.

22.70.170 – Decision and Findings

Following notice for an administrative Coastal Zone Variance, or a public hearing for a Public Hearing Coastal Zone Variance, the Review Authority shall issue a notice of decision in writing with the findings upon which the decision is based, in compliance with State law (Government Code Section 65906). The Review Authority may approve an application, with or without conditions, only if all of the following findings are made:

- A. There are special circumstances unique to the property (e.g., location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.
- B. Granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.
- C. Granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the real property is located.

- D. Granting the Variance will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.