

## Amendment 6

### IP SECTIONS RELATED TO PERMIT REQUIREMENTS AND ADMINISTRATION (Chapters 22.68 and 22.70)

CCC staff-suggested Modifications (April 2015 staff report including 4/15/15 Addendum) are shown as baseline (i.e. accepted into the text)  
CDA changes are indicated in blue by *italic strike-outs* and underlining

## 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 – Coastal Permit Not Required: Categorically Excluded Development
- 22.68.050 – Coastal Permit Not Required: Exempt Development
- 22.68.060 – Coastal Permit Required: Non-Exempt Development
- 22.68.070 – De Minimis Waiver of Coastal Permit
- 22.68.080 – Development Requiring a Coastal Commission Coastal Permit
- 22.68.090 – Consolidated Coastal Permit

### **22.68.010 – Purpose of Chapter**

This Chapter identifies Coastal Permit requirements for proposed development in the County's Coastal Zone.

### **22.68.020 – Applicability**

The provisions of this Chapter apply to proposed development in the Coastal Zone as defined by Article VIII.

### **22.68.030 – Coastal Permit Required**

A Coastal Permit is required for development in the Coastal Zone that is undertaken by any person, including a private entity or a state or local agency, unless the development is categorically excluded (per Section 22.68.040), exempt (per Section 22.68.050), or qualifies for a De Minimis Waiver (per Section 22.68.070).

Development ~~(coastal)~~, defined in Article VIII, Chapter 22.130 -of this Development Code, means:

On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase

of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code).

As used in this section, "structure" includes any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

## **22.68.040 – Coastal Permit Not Required: Categorically Excluded Development**

- A.** Development specifically designated as categorically excluded from the requirement for a Coastal Permit by Public Resources Code Section 30610(e) and implementing regulations is not subject to Coastal Permit requirements if such development is consistent with all terms and conditions of the Categorical Exclusion Order. A Coastal Permit is not required for the categories of development identified in Categorical Exclusion Orders E-81-2, E-81-6, and E-82-6 (see Appendix 7), and are only excluded provided that the Exclusion Orders themselves remain valid, the development is proposed to be located within the approved categorical exclusion area, and provided that the terms and conditions of the Exclusion Orders are met. [For those Categorical Exclusion Orders that require development to be consistent with the zoning ordinances in effect at the time the Categorical Exclusion Order was adopted, all local zoning ordinance in effect at the time each Categorical Exclusion Order was adopted are provided within Appendix 7a.](#)
- B. Categorical Exclusion Noticing.** The County shall post on the Community Development Agency's website and on the same day transmit to the applicant, the Coastal Commission, and any known interested parties (including those who have specifically requested such notice) a notice of development projects determined to be categorically excluded from the requirements of obtaining a Coastal Permit. The notice shall include the applicant's name, project description and location, the reasons supporting the categorical exclusion, [including appropriate supporting evidentiary information and other materials \(i.e., location maps, site plans, etc.\)](#), and the date of the Director's exclusion determination for each project, and the procedures for challenging the Director's determination.
- C. Categorical Exclusion Challenge.** The determination of whether a development is categorically excluded from the requirements for a Coastal Permit can be challenged pursuant to Section 22.70.040.

## **22.68.050 – Coastal Permit Not Required: Exempt Development**

[A.](#) The following development, ~~as determined by the Director,~~ shall be exempt from the requirements of Section 22.68.030 unless listed as non-exempt by Section 22.68.060.

- 1. Improvements to existing single-family residences.** Improvements to existing single-family residences are exempt from Coastal Permit requirements (see Sec. 22.68.060 for limitations). An existing single-family residence includes:
- a.** All fixtures and other structures directly attached to a residence;

b. Structures on the property 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

c. Landscaping on the lot.

**2. Improvements to existing structures other than a single-family residence or public works facility.** Improvements to existing structures other than a single-family residence or public works facility are exempt from Coastal Permit requirements (see Sec. 22.68.060 for limitations). An existing structure includes:

a. All fixtures and other structures directly attached to the structure.

b. Landscaping on the lot.

**3. Repair and maintenance.** Repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of repair or maintenance are exempt from Coastal Permit requirements (see Sec. 22.68.060 for limitations).

~~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 repair and maintenance, but instead constitutes a replacement structure requiring a Coastal Permit (see also "Redevelopment (coastal)" and "Redevelopment, Coastal (coastal)").~~

**4. 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;
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 floor area, height and bulk); and
4. Be sited in the same location on the site as the destroyed structure.

As used in this section:

(A): "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B): "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C): "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

**5. 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.

**6. 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 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.

**7. 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 11212 of the Calif. Business and Professions Code.

~~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.~~

**9. 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, which included the review of utilities connections, provided, however, that the Director may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

**10. Temporary event.** All temporary events, except those which meet all of the following criteria:

1. Are held between Memorial Day weekend and Labor Day; and
2. Would occupy all or a portion of a sandy beach; and
3. Would involve a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

The Planning Director (or the Coastal Commission's Executive Director if the Planning Director's determination is challenged) may determine that a temporary event, even an event that might otherwise not require a Coastal Permit per this section, shall require a Coastal Permit if he/she determines that the exercise of jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 of the Coastal Act, and/or that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

- a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;
- b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Chapter 22.130.
- c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or parking areas or otherwise significantly impact public use or access to coastal waters;

d) The event has historically required a Coastal Permit to address and monitor associated impacts to coastal resources.

**11. 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.

**12. Ongoing Agricultural Activities.** See Chapter 22.130 for definition.

**B. Exemption Challenge.** The determination of whether a development is exempt from the requirements for a Coastal Permit can be challenged pursuant to Coastal Act Section 30625 and Section 13569 of the Commission's regulations.

## **22.68.060 – Coastal Permit Required: Non-Exempt Development**

Notwithstanding the provisions of Section 22.68.050 – Exempt Development, a Coastal Permit shall be required for all of the following types of development unless the specific type of development in the specific geographic area is otherwise categorically excluded by a Commission adopted categorical exclusion order or qualifies for a De Minimis Waiver:

**A. Improvements to ~~an~~ existing structures including single family residences.** Improvements to ~~an existing~~any structure if the structure or improvement is located on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an ESHA; or within 50 feet of the edge of a coastal bluff.

**B. Improvements to a public works facility.**

**C. Improvements to an existing structure including single family residences not included in Paragraph A above.** 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, or in significant scenic resource areas as designated by the Coastal Commission, an improvement that would result in an increase of 10 percent or more of internal 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.~~

**D. Changes in intensity of use.** Improvements to a structure, ~~other than a single family residence,~~ which ~~increase or decrease~~changes the intensity of use of the structure, ~~as determined by the Director.~~

**E. Conversions.** Improvements carried out in conjunction with the conversion of an existing structure from a multi~~unit-family residential~~-rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold, including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

**F. 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.

**G. Water wells and septic systems.** The expansion or construction of water wells or septic systems.

**H. Landform alterations.** Any significant alteration of land forms, including grading (as defined in Section 22.130.030) and the removal or placement of vegetation, on a beach, or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff or stream; or in environmentally sensitive habitat areas (ESHA).

**I. Future Improvements.** Any improvements to a single-family residence or other structure where the Coastal Permit issued for the original structure indicated that any future improvements would require a Coastal Permit.

**J. Critically short water supply.** In areas which the Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use but not limited to swimming pools, or the construction and extension of any landscaping irrigation system.

**K. Repair and maintenance activities.** Repair and maintenance activities as follows:

1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves<sup>1</sup>:
  - (a) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;
  - (b) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;
  - (c) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or
  - (d) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or ESHA, or within 20 feet of coastal waters or streams.
2. Any method of routine maintenance dredging that involves:
  - (a) The dredging of 100,000 cubic yards or more within a twelve (12) month period;
  - (b) The placement of dredged spoils of any quantity within an ESHA, on any sand area, within 50 feet of the edge of a coastal bluff or ESHA, or within 20 feet of coastal waters or streams; or
  - (c) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the Coastal Commission has declared by resolution

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<sup>1</sup> Inquiries regarding permit requirements for maintenance of the Seadrift rock revetment permitted by Coastal Commission Permit #A-1-MAR-87-235-A issued August 31, 1994 should be referred to the Coastal Commission.

to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

3. Any repair or maintenance to facilities or structures or work located in an ESHA, any sand area, within 50 feet of the edge of a coastal bluff or ESHA, or within 20 feet of coastal waters or streams that includes:
  - (a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials; or
  - (b) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

4. 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 repair and maintenance, but instead constitutes a replacement structure requiring a Coastal Permit.

**L. Redevelopment, as defined in Section 22.130.**

**M. Any other development that is not explicitly and specifically exempt from coastal permit requirements by Section 22.68.050 above.**

**22.68.070 – De Minimis Waiver of Coastal Permit**

The Director may waive the requirement for a Coastal Permit through a De Minimis Coastal Permit Waiver in compliance with this Section upon a written determination that the development meets all of the criteria and procedural requirements set forth in A. through G. below:

- A. No Adverse Coastal Resource Impacts.** The development has no potential for adverse effects, either individually or cumulatively, on coastal resources.
- B. LCP Consistency.** The development is consistent with the certified Marin County Local Coastal Program,
- C. Not Appealable to CCC.** The development is not of a type or in a location where an action on the development would be appealable to the Coastal Commission; (For development appealable to the Coastal Commission, see Section 22.70.030(B)(6).)
- D. Notice.** Public notice of the proposed De Minimis Waiver of Coastal Permit and opportunities for public comment shall be provided as required by Section 22.70.050, including provision of notice to the Coastal Commission.
- E. Executive Director Determination.** The Director shall provide a notice of determination to issue a De Minimis Waiver to the Executive Director of the Coastal Commission no later than 10 days prior to the required Board of Supervisors hearing. If the Executive Director notifies the Director that a waiver should not be issued, the applicant shall be required to obtain a Coastal Permit if the applicant wishes to proceed with the development.
- F. Review and Concurrence.** The Director's determination to issue a De Minimis Waiver shall be subject to review and concurrence by the Board of Supervisors. The Director shall not issue a De Minimis Waiver until the public comment period, including at a minimum through

and including the required Board of Supervisor hearing, has expired. No De Minimis Waiver may be issued unless it has been reported to the Board of Supervisors at a regularly scheduled meeting where the public shall have the opportunity to testify and otherwise participate in a hearing on the De Minimis Waiver. If two or more Supervisors so request at this hearing, the De Minimis Waiver shall not be issued and, instead, an application for a Coastal Permit shall be required and processed in accordance with the provisions of this chapter. Otherwise, the Waiver shall be deemed approved, effective, and issued the day of the Board of Supervisors hearing. In addition to the noticing requirements above, within seven (7) [calendar](#) days of effective date of a De Minimis Waiver of Coastal Permit, the Director shall notify the Coastal Commission and any persons who specifically requested notice of such action via first class mail; a Notice of Final Action describing the issuance and effectiveness of the De Minimis Waiver.

- G. Waiver Expiration.** A De Minimis Waiver shall expire and be of no further force and effect if the authorized development is not completed within three years of the effective date of the waiver. In this event, a Coastal Permit shall be required for the development.

## **22.68.080 – Development Requiring a Coastal Commission Coastal Permit**

- A. Coastal Commission approval required.** Development, as defined in Article VIII, proposed on tidelands, submerged lands, or public trust lands, 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 both federal 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 Applicant, the County, Coastal Commission and/or State Lands Commission may supply.
- C. County land use designations and zoning districts.** [The LCP, including](#) County land use designations and zoning districts on lands defined above in (A), shall be advisory only for purposes of the Coastal Commission’s review of a coastal permit application, [other than for extensions and amendments of Coastal Permits within the County’s jurisdictions where the LCP shall be the standard of review.](#)
- D. County Approvals.** For Coastal Commission Coastal Permit applications, the Applicant shall still be required to obtain all other non-Coastal Permit approvals necessary for a proposed development, and any required non-ministerial approvals must be obtained and submitted as part of the Coastal Permit application to the Commission.

## **22.68.090 – Consolidated Coastal Permit**

**Consolidated Coastal Permit.** If a proposed development requires two separate Coastal Permits, one from 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 of 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 Marin County



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.

## 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 – Challenges to Processing\_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 – Non-Conforming Uses and Structures
- 22.70.175---Violations of Coastal Zone Regulations and Enforcement of LCP Provisions and Penalties (~~Coastal~~)
- 22.70.180 – Potential Takings Evaluation
- 22.70.190 – [Land Divisions](#) ~~Property Modifications~~

### 22.70.010 – Purpose of Chapter

This Chapter provides procedures for processing Coastal Permit applications, [as well as for processing including](#) Coastal Permit Exclusions, [Exemptions](#), and De Minimis Waivers as described in Chapter 22.68.

### 22.70.020 – Applicability

The provisions of this Chapter apply to the preparation, filing, review, and approval or denial of all applications for development in Marin County, whether such approval or denial occurs through a Coastal Permit, De Minimis Waiver, [Exemption](#), or Categorical Exclusion.

### 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, including any information identified as necessary for specific categories of development or for development proposed in specific geographic areas. 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. The Coastal Permit application shall include:

1. Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the Local Coastal Program;
2. Documentation of the applicant's legal interest in all the property upon which work is proposed to be performed, and all contiguous properties under the same ownership. The area subject to the Coastal Permit may include such contiguous properties where the Director finds that necessary to achieve the requirements of the Local Coastal Program. The reviewing authority shall consider all contiguous properties under

the same ownership when reviewing development in the C-APZ zoning district. The area covered by a proposed project may also include multiple ownerships.

3. A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application: and

**B. Determination of processing category.** The Director shall determine if the proposed development is categorically excluded, [exempt](#), qualifies for a De Minimis Waiver, is or is not appealable to the Coastal Commission and/or requires a Coastal Permit that does or does not require a public hearing as set forth below. [Notice of processing category determination shall be sent in compliance with the requirements specified for the particular permit category.](#) All such determinations regarding permit category may be challenged in compliance with Section 22.70.040 – Challenges to Processing Category Determination.

1. **Categorical exclusion.** A determination that development is categorically excluded shall comply with Section 22.68.040 – Coastal Permit Not Required: Categorically Excluded Development.
2. **Exemption.** [A determination that development is exempt from the requirement to obtain a Coastal Permit shall comply with Section 22.68.050 – Coastal Permit Not Required: Exempt Development and with Section 22.68.060 – Coastal Permit Required: Non-Exempt Development.](#)
3. **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.
4. **Non-public hearing applications.** A public hearing shall not be required when an application is not 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 or as determined by the Director.
5. **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 approval of a second unit in a residential zone or if it qualifies for a public hearing waiver.
6. **Public hearing waiver for minor development.** A public hearing that would otherwise be required for the below identified minor development 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, 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, ~~is~~ consistent with the certified Local Coastal Program,
- (2) Requires no discretionary approvals other than a Coastal Permit, and
- (3) As proposed, 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 – Challenges to Processing Category Determination**

Where an applicant or interested person disputes the Director's processing category determination (Section 22.70.030.B – Determination of Processing Category), the determination may be challenged 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, [or](#) public hearing application may be challenged.

~~**B. Timing of Challenge.** A determination regarding processing category by the Director may be challenged to the Coastal Commission within 10 working days ~~after~~ of the date of [the Commission receiving the sending](#) public notice as required by this Chapter. [The Director’s determination that a proposed development is to be processed as a public hearing waiver for minor development may be challenged to the Coastal Commission within 15 working days after the date of the Commission receiving the public notice as required by this Chapter.](#)~~

**C. Coastal Commission Challenge 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 within 10 working days of the County's request unless the applicant and the County agree to an extension.
  - (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.

## **22.70.050 – Public Notice**

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

- A. Form of notice.** Permit applications shall be noticed at least 10 days prior (15 working days for public hearing waiver applications) to a hearing or action on the proposed project by posting [one \(or more as necessary to ensure the public is made aware\)](#) notice in at least one location that is conspicuously visible to the general public on or adjacent to the property which is the subject of the permit and by mailing notice to:
  1. The owner(s) or owner's agent of all properties for which development is proposed, the applicant, and any applicant representatives;
  2. Each local agency expected to provide essential facilities or services to the project;
  3. Any person who has filed a written request for notice for a specific project or for a specific geographic area, [or a particular type of development](#) with the Director;
  4. All owners of real property within three hundred feet of the properties 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 properties 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.

5. Where home mail delivery is available, all occupants of real property located within 100 feet (not including roads) of the perimeter of the real properties on which the development is proposed.
6. All agencies for which an approval for the proposed development may be required.
7. The Coastal Commission.

Notices to the above recipients shall be provided whether or not a public hearing is required on the permit. If a public 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 application for the proposed project.

**B. Content of notice.** The required notice may be combined with other required project permit notice(s), 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;
8. A brief description of the procedures for public comment and decision on the application, including listing which review authority is to decide on the Coastal Permit application, as well as the system of challenge and appeal if applicable;
9. If no public hearing is held, a description of the applicable public comment period sufficient 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, Planning 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 Planning Commission, the Zoning Administrator or Planning 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~~ the Marin County Local Coastal Program. Findings of fact establishing that the project conforms to all requirements of the Marin County Local Coastal Program shall be made and shall include all of the findings enumerated below. The findings shall reference applicable policies of the Marin County Local Coastal Program where necessary or appropriate ~~including those in addition to the development standards-~~ identified below.

- A. Coastal Access.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Coastal Access section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.180 (Public Coastal Access). Where the project is located between the nearest public road and the sea, a specific finding must be made that the proposed project, as conditioned, is in 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, as conditioned, is consistent with the applicable policies contained in the Biological Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.050 (Biological Resources).
- C. Environmental Hazards.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Environmental Hazards section of the Marin County Land

Use Plan and the applicable standards contained in Section 22.64.060 (Environmental Hazards).

- D. Agriculture and Mariculture.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Agriculture and Mariculture sections of the Marin County Land Use Plan and the applicable agricultural and maricultural standards contained in Chapter 22.32.
- E. Water Resources.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Water Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.080 (Water Resources).
- F. Community Design.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Design section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.100 (Community Design).
- G. Community Development.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Development section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.110 (Community Development).
- H. Energy.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Energy section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.120 (Energy).
- I. Housing.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Housing section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.130 (Housing).
- J. Public Facilities and Services.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Facilities and Services section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.140 (Public Facilities and Services).
- K. Transportation.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Transportation section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.150 (Transportation).
- L. Historical and Archaeological Resources.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Historical and Archaeological Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.160 (Historical and Archaeological Resources).
- M. Parks, Recreation, and Visitor-Serving Uses.** The proposed project, as conditioned, is consistent with the applicable policies contained in the Parks, Recreation, and Visitor-Serving Uses section of the Marin County Land Use Plan and the applicable 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 follows:



1. Decisions made by the Director or Zoning Administrator may be appealed to the Planning Commission, and decisions made by the Planning Commission may be appealed to the Board of Supervisors. However, the Director may refer an appeal directly to the Board of Supervisors.
2. An appeal may be filed by any person.
3. All appeals for Coastal Permit decisions per 22.70.060 shall be filed with the Agency, in writing on a County appeal application form, prior to close of the Planning Division's public information counter on the tenth working day after the decision that is the subject of the appeal, and shall specifically state the pertinent facts of the case and the basis for the appeal.
4. When an appeal is filed, the Director shall prepare a staff report on the matter, and schedule the matter for a public hearing by the appropriate appeal authority. At the public hearing, the appeal authority may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal.
  - a. The appeal authority may affirm, affirm in part, or reverse the decision or determination that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or noncompliance of the subject of the appeal with the provisions of the LCP.
  - b. When reviewing a decision on a Coastal Permit application, the appeal authority may adopt additional conditions of approval that may address other issues or concerns than the basis of the appeal.
  - c. The action from which an appeal is taken may be reversed or modified only by the affirmative vote of a majority of the full membership of the Planning Commission (i.e. four affirmative votes). The action or appellate determination from which an appeal is taken may be reversed or modified by the affirmative vote of a majority of the membership of the Board.

**B. Appeals to the Coastal Commission.** An action on a Coastal Permit, [including amendments and extensions](#), 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 ([land divisions are a type of development that is not designated as the principally permitted use in any zoning district](#)); and

(d) Development approved or denied that 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 receipt by the Coastal Commission of the notice of final County action on the Coastal Permit that is the subject of the appeal. In the case of an appeal by an applicant or other aggrieved person [as defined in Article VIII, Chapter 22.130](#), the appellant must exhaust all appeals to the County in compliance with Subsection A above (County Appeal Procedure), unless:

(a) The County requires an appellant to appeal to more local appellate bodies than have been recognized by the Local Coastal Program as appellate bodies for permits in the coastal zone.

(b) An appellant was denied the right of the initial local appeal by a local ordinance<sub>2</sub> which restricts the class of person who may appeal a local decision.

(c) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Chapter.

(d) The County charges an appeal fee for the filing or processing of appeals.

3. **Appeal by Coastal Commissioners.** When two Coastal Commissioners file an appeal of a County action 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 such 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 22.70.080 – Appeals. After action by the Board of Supervisors (or failure or refusal to act within sixty days of the County's receipt of the appeal), [a new](#) notice of final action shall be provided to the Coastal Commission pursuant to Section 22.70.090, which shall trigger a new Coastal Commission appeal period. If the decision of the Board modifies or reverses the previous County decision, the Commissioners may be required to file a new appeal.

C. **Stay of Approval.** The operation and effect of an approved Coastal Permit shall be stayed until all applicable appeal periods expire or, if appealed, until all appeals, including any appeals to the Coastal Commission, have been exhausted.

[D. Delivery of Relevant Documents. Upon receipt of a Notice of Appeal from the Coastal Commission, the County shall, within five\(5\) working days, deliver to the Executive Director of the Coastal Commission all relevant documents used by the local government in its consideration of the Coastal Permit application.](#)

## 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-certified](#) mail to the Coastal Commission,

and by first class mail to any persons who specifically requested notice and provided a self-addressed stamped envelope or other designated fee covering mailing costs and shall provide additional public notice via the Community Development Agency's webpage. Both mailed and webpage notice shall include conditions of approval, written findings and the procedures for appeal of the County decision to the Coastal Commission. The notice 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, which shall be submitted electronically or by mail. The cover sheet / memo shall be sent to all recipients of the notice, and the cover sheet/memo shall be mailed to the Coastal Commission, with supporting documents sent either via hard copy or electronically (see below).

**A. Cover Sheet/Memo:** The cover sheet/memo shall be dated and shall clearly identify 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.
6. A list of all supporting materials provided to the Coastal Commission as part of the final local action notice (see subsection B below).
7. All recipients of the notice.

**B. Supporting Materials:** The supporting materials shall include the following information:

1. Final adopted findings and final adopted conditions.
2. Final staff report.
3. Approved project plans.
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.

A 10 working day appeal period to the 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.

## **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. any 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 development must still comply with all applicable standards of the LCP and this Development Code.

**B. Notification by County.** Upon a determination that the time limits established in compliance with Government Code Section 65950 et. seq. have expired, and the notice

required by Government Code Section 65950 et seq. has been provided by the Applicant, the Director shall, within five days of the determination, notify persons entitled to receive notice in compliance with Section 22.70.050 (Public Notice) that it has taken final action by operation of law in compliance with Government Code Section 65956. The Coastal Commission appeal period for development approved by operation of law shall begin only upon receipt of the County's final action notice (which notice shall comply with all requirements of Section 22.70.090) 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 unless either 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) or Section 22.70.100 (Notice of Failure to Act).

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 the following:
  - 1. Time limits, vesting. Coastal permits not vested within three years of the date of approval shall expire and become void. The permit shall not be deemed vested until the permit holder has actually obtained a Building Permit or other construction permit and has substantially completed improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval, or has recorded a Parcel or Final Map.
  - 2. Extensions of time. Upon request by the applicant, the Director may extend the time for an approved permit to be vested.
    - a. Filing. The applicant shall file a written request for an extension of time with the Agency, at least ten days prior to the expiration of the permit, together with the filing fee required by the County Fee Ordinance.
    - b. Review of extension request. The Director shall determine whether the permit holder has attempted to comply with the conditions of the permit. The burden of proof is on the permittee to establish, with substantial evidence, that the permit should not expire. The Director may instead refer the extension request to the [Planning](#) Commission for review.
  - 3. Action on extension.
    - a. If the Director (or the [Coastal-Planning](#) Commission if the request is referred) determines that the applicant has proceeded in good faith and has exercised due

diligence in complying with the conditions in a timely manner, the Director (or [Coastal Planning](#) Commission) may extend the permit for a maximum period of three years following the original expiration date. If the approval was granted concurrently with a Tentative Map, the maximum amount of time extensions would be determined by Section 22.84.140 (Extensions of Time for Tentative Maps).

4. Hearing on extension. If the Director finds that significant policy questions are at issue, including changed circumstances that may affect the consistency of the development with the policies of the LCP, the Director may refer the application to the [Planning](#) Commission for a public hearing in compliance with Section 22.70.060 and noticing requirements of 22.70.050.
5. Coordination of expiration date among multiple permits. If a Building Permit, or other permit or entitlement, is issued during the time the Coastal Permit remains in effect, the expiration date of the Building Permit or other permit or entitlement shall be automatically extended to coincide with the expiration date of the Coastal Permit.

- B. Findings.** In addition to the requirements of Section 22.70.120.A, 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 and Coastal Act as applicable.
- C. Appeal.** Coastal Permit extensions must be noticed (Section 22.70.090) and 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 an Emergency Coastal Permit to authorize emergency work in compliance with this Section, 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 Coastal Permit for any work to be conducted on any tidelands, submerged lands, on public trust lands, whether filled or unfilled, or any other area within the Coastal Commission's retained coastal permit jurisdiction; requests for emergency work in these areas shall be referred to the Coastal Commission. The emergency approval shall conform to the objectives of this chapter and the Local Coastal Program. The emergency permit process is intended to allow for emergency situations to be abated through use of the minimum measures necessary to address the emergency in the least environmentally damaging, short- and long-term manner. The Director may request, at the applicant's expense, verification by a qualified professional of the nature of the emergency and the range of potential solutions to the emergency situation, including the ways such solutions meet these criteria.

- A. Application.** An application for an Emergency Coastal 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 (and in all cases before the Emergency Coastal Permit expires):

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.
5. An application for an emergency shoreline protective device shall be accompanied by an engineering report as described in Section 22.64.060.A.4. If the applicant is unable to provide all such information due to the nature of the emergency, then the applicant shall provide at a minimum: (a) a description of what measures, if any, were taken in advance in order to mitigate the hazard and (b) an analysis of alternatives, including the “no action” alternative.
6. All required technical reports and project plans.

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. The Director shall notify the Executive Director of the Coastal Commission as soon as possible about potential emergency coastal permits, and shall report, in writing, to the Executive Director after the emergency coastal permit has been issued, the nature of the emergency, and the work involved.

**D. Emergency permit approval.** The Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a Coastal Permit application later, if the Director finds that:

1. An emergency (defined as a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential services) 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.
4. The proposed work is the minimum amount of temporary development necessary to abate the emergency in the least environmentally damaging short- and long-term manner.

The decision to issue an Emergency Coastal 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.** All emergency Coastal Permits shall expire ninety (90) days after issuance, unless extended for good cause by the Planning Director, such extension is limited as much as possible in duration, and such extension is subject to challenge provisions per Section 22.70.040. All emergency development pursuant to this section is considered temporary and must be removed and the affected area restored if it is not recognized by a regular Coastal Permit within 6 (six) months of the date of permit issuance, unless the Director authorizes an extension of time for good cause. Within 30 days of issuance of the Emergency Coastal Permit, the applicant shall apply for a regular Coastal Permit. Failure to file the applications and obtain the required permits shall result in enforcement action in compliance with Chapter 22.70.175 (Enforcement).

## **22.70.150 – Coastal Zone Variances**

- A. 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 shall not be granted for relief from use limitations or minimum lot size and density requirements, or any other LCP requirements.

1. **Filing.** An application for a Coastal Zone Variance shall be submitted, filed, and processed in compliance with and in the manner described in Chapter 22.70.030 (Coastal Permit Filing, Initial Processing). It is the responsibility of the applicant to establish evidence in support of the findings required by Section 22.70.070 – Required Findings.
  2. **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.
  3. **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.
  4. **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 22.70.050.
- B. Decision and Findings on Coastal Zone Variance.** 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:
1. 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.

2. Granting the Variance may only provide relief from standards relating to height, floor area ratio, and yard setbacks, and does not grant relief from the use limitations, ~~or~~ minimum lot size, ~~and~~ density requirements, or any other LCP requirements, governing the subject development.
3. 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.
4. 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.

### **22.70.160. Nonconforming Uses and Structures.**

- A. Application.** This section shall apply to: (1) any existing and lawfully established and authorized use of land; or (2) any existing and lawfully established and authorized structures, that do not conform to the policies and development standards of the certified LCP. Development that occurred after the effective date of the Coastal Act or its predecessor, the Coastal Zone Conservation Act, if applicable, that was not authorized in a coastal permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development, is not subject to the provisions of Section 22.70.160, but is subject to the provisions of Section 22.70.030 (Coastal Permit Filing, Initial Processing).
- B. Burden to Establish Legal Status on Owner.** Nonconforming uses and structures may be continued only in conformity with the provisions of this Section. The owner of property on which a nonconforming use or structure is claimed shall have the burden of proof in establishing to the satisfaction of the Director the legal nonconforming status claimed. The Director may charge a fee, as established in the County Fee Schedule, for the review of evidence submitted to meet the owner's burden of proof.
- C. Nonconforming Uses.** A nonconforming use means a use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of the Coastal Act and its predecessor statute (see Section A above) and certified LCP, but does not conform to the certified LCP use and/or density standards. A nonconforming use is not a nonconforming structure. Nonconforming uses shall not be expanded nor intensified. For nonresidential uses, intensification shall include, but not be limited to, any change or expansion which is determined by the Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation. If any nonconforming use is abandoned for a continuous period of 12 months or longer, the use shall relinquish its legal nonconforming status and any subsequent use of such land shall be in conformity with the regulations specified by the LCP.
- D. Nonconforming Structures.** A nonconforming structure means a structure that was lawfully erected prior to the adoption, revision, or amendment of the Coastal act and its predecessor statute (see Section A above) and the certified LCP, but that does not conform with standards of the LCP, including for lot coverage, setbacks, height, distance between structures, or floor area ratio prescribed in the certified LCP. Nonconforming structures may be repaired and maintained as defined in Article VIII, Chapter 22.130. However, ~~repair and maintenance involving demolition and/or~~ replacement of 50 percent or more of the nonconforming



structure, or that constitutes “Redevelopment” as defined in Chapter 22.130, is not permitted repair and maintenance but instead constitutes a replacement unless the entire structure is that must be brought into conformance with the policies and standards of the LCP. The 50 percent calculation shall be cumulative, so that any repair and maintenance of a structure after the effective date of this ordinance shall be counted towards the total calculation figure. For blufftop and shoreline structures, see Subsection F, below.

- E. Additions and Improvements.** Improvements which enlarge and/or expand a legal nonconforming structure, including additions, may be authorized, provided that the additions and/or improvements themselves comply with the current policies and standards of the LCP. However, improvements involving demolition and/or replacement of 50 percent or more of the existing structure, are not permitted unless the entire structure is brought into conformance with all applicable LCP policies. The 50 percent calculation shall be cumulative over time from the date of certification of this ordinance. For blufftop and shoreline structures, see Subsection F, below.
- F. Blufftop and Shoreline Development.** For legal nonconforming structures located on a blufftop or along the shoreline, including such structures that are nonconforming with respect to required blufftop and shoreline setbacks, such structures may be repaired, and maintained as defined in Article VIII, Chapter 22.130, and improved consistent with Subsections D and E, above. However, replacement of 50 percent or more of the nonconforming structure is not repair and maintenance but instead constitutes a replacement structure that must be brought into conformance with the policies and standards of the LCP.
- G. Natural Disasters.** If a nonconforming use or structure is destroyed by natural disaster, replacement shall be subject to provisions of 22.68.050(C) in accordance with LUP Policy C-EH 24 (Permit Exemption for Replacement of Structures Destroyed by Disaster).

## **22.70.175---Violations of Coastal Zone Regulations and Enforcement of LCP Provisions and Penalties (Coastal)**

- A. Any person who performs or undertakes development in violation of the LCP or inconsistent with any coastal permit previously issued may, in addition to any other penalties, be civilly liable in accordance with the provisions of Public Resources Code section 30820.
- B. In addition to all other available remedies, the County may seek to enforce the provisions of the LCP and the Coastal Act pursuant to the provisions of Public Resources Code section 30800-30822.
- C. Development may only be undertaken on a legal lot.
- D. No coastal development permit application (including all coastal permits, coastal permit exclusions and exemptions, and de minimis waivers) shall be approved unless all unpermitted development on the property that is functionally related to the proposed development is proposed to be removed or retained consistent with the requirements of the certified LCP.

## **22.70.180 – Potential Takings Evaluation**

If the application of the policies, standards or provisions of the Local Coastal Program to proposed development would potentially constitute a taking of private property, then a development that is not consistent with the LCP may be allowed on the property to avoid a taking, provided such development is as consistent as possible with all applicable policies and is the minimum amount of development

necessary to avoid a taking as determined through a takings evaluation, including an evaluation of the materials required to be provided by the applicant as set forth below. The applicant shall supplement their application materials to provide the required information and analysis as specified below.

- A. Filing.** The evaluation shall, at a minimum, include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. All other nearby property owned by the Applicant may also be considered. Before any decision on a coastal development permit, the applicant shall provide the following information, unless the Director determines that one or more of the particular categories of information is not relevant to the analysis:
1. The date the applicant purchased or otherwise acquired the properties, and from whom.
  2. The purchase price paid by the applicant for the properties.
  3. The fair market value of the properties at the time the applicant acquired them, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
  4. The general plan, zoning or similar land use designations applicable to the properties at the time the applicant acquired them, as well as any changes to these designations that occurred after acquisition.
  5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection (4) above, that applied to the properties at the time the applicant acquired it them, or which have been imposed after acquisition.
  6. Any change in the size of the properties since the time the applicant acquired them, including a discussion of the nature of the change, the circumstances and the relevant dates.
  7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the properties since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the properties that were sold or leased.
  8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the properties of which the applicant is aware.
  9. Any offers to buy all or a portion of the properties which the applicant solicited or received, including the approximate date of the offers and offered price.
  10. The applicant's costs associated with the ownership of the properties, annualized for each of the last five (5) calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
  11. Apart from any rents received from the leasing of all or a portion of the properties, any income generated by the use of all or a portion of the properties over the last five (5) calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
  12. Any additional information that the County requires to make the determination.

- B. Evaluation.** To evaluate whether application of the LCP would potentially result in a taking, an applicant shall provide information about coastal resources present on the properties and/or affected by the application sufficient to determine whether all of the properties, or which specific area of the properties, is subject to the restriction on development, so that the scope and nature of development that could be allowed on any portions of the properties that are not subject to the restriction can be determined.

Based upon this analysis, the least environmentally damaging feasible alternative shall be identified. Impacts to coastal resources that cannot be avoided through the implementation of siting and design alternatives shall be mitigated to the maximum extent feasible, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to mitigate impacts on-site. Mitigation shall not substitute for implementation of the feasible project alternative that would avoid LCP inconsistencies, including adverse coastal resource impacts.

- C. Supplemental Findings for Approval of Coastal Development Permit.** A Coastal Permit that allows a deviation from a policy or standard of the LCP to avoid a taking may be approved or conditionally approved only if the appropriate governing body, either the Planning Commission or Board of Supervisors, makes the following supplemental findings in addition to the findings required in Section 22.70.070 (Required Findings):

1. Based on the information provided by the applicant, as well as any other relevant evidence, there is no potential development consistent with the LCP policies, standards and provisions that would avoid a taking of the applicant's property.
2. The use proposed by the applicant is consistent with the applicable zoning.
3. The use and project design, siting, and size are the minimum necessary to avoid a taking.
4. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified LCP other than the provisions for which the exception(s) is (are) necessary to avoid a taking.
5. The development will not result in a public nuisance. If it would be a public nuisance, the development shall be denied.

## **22.70.190 – Land Divisions Property Modifications**

This section shall provide standards for the issuance of coastal permits for ~~development as a result of property modifications such as land divisions. Land division is a type of development, defined to include~~ subdivisions (through parcel map, tract map, grant deed), ~~resubdivisions,~~ lot line adjustments, ~~redivisions, mergers,~~ and ~~conditional~~ certificates of compliance.

A. Certificates of Compliance: A conditional certificate of compliance issued pursuant to Government Code section 66499.35 shall include a condition that requires any necessary Coastal Permit.

B. Criteria for Land Divisions of Land

- 12) Land divisions Divisions of land shall be designed to minimize impacts on coastal resources. ~~Except for environmental subdivisions pursuant to Section 66418.2 of the Subdivision Map Act, a land division of land~~ shall not be approved if it creates a parcel that would not contain an identified building site that can be developed consistent with all policies of the certified LCP.

- 2) Land divisions ~~Divisions of land outside existing developed areas~~ shall be permitted only in areas with adequate public services, and where they will not have a significant adverse effect, either individually or cumulatively, on coastal resources. In addition, land divisions outside village limit boundaries shall only be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding legal parcels, except that lease of a legal parcel at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited, and lot line adjustments that do not increase potential development intensity are allowed.
- 35) Land divisions shall be designed to cluster development in order to minimize site disturbance, landform alteration, and fuel modification.
- 4) Land divisions are development that is not designated as the principally permitted use in any zoning district.

C. Criteria for Lot Line Adjustments

Lot line adjustments are limited to four or fewer parcels. A Coastal Permit for a lot line adjustment shall not be approved or conditionally approved unless the existing parcels are legal and the new parcels resulting from the lot line adjustment will conform to the Local Coastal Program. In addition to all applicable LCP standards, a lot line adjustment shall only be approved with a finding that the resulting parcels protect coastal resources in a manner equal to or better than their existing configuration.