

Attachment #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 ~~Requirement for Development~~ 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

Comment [SFS1]: Changes have been made in these lines to conform the headings with the subsequent sections

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 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.

~~Development includes installation of water or sewage disposal systems, the closure of public accessways, changes in public access to the water including parking availability, and significant landform alteration. Significant landform alteration includes 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 environmentally sensitive habitat areas (ESHA).~~

~~For agricultural uses, a "change in the intensity of use of water, or access thereto" includes the development of new water sources such as construction of a new or expanded well or expansion of a surface impoundment.~~

Comment [SFS2]: Unnecessary additions; the definition of "development" relies on the Coastal Act definition.

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 Exclusions that require development to be consistent with the zoning ordinances in effect at the time the Categorical Exclusion Order was adopted, all local zoning ordinances in effect at the time each Categorical Exclusion Order was adopted are provided within Appendix 7.~~

Comment [SFS3]: Appendices will be added as necessary per CCC staff request

B. **Categorical Exclusion Noticing.** The County shall ~~provide notice of all categorical exclusion determinations within five working days of such determinations. The exclusion notice shall be provided 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 ~~or have requested to be kept informed regarding the type of development subject to the categorical exclusion and/or development at the location and/or within the particular zoning district~~). ~~In addition, (The Director shall maintain, post on the Agency's website at least weekly, and regularly transmit to the Coastal Commission a list and summary a notice~~ of development projects determined to be categorically excluded from the requirements of obtaining a Coastal Permit. The notice, ~~list and summary shall be available for public inspection and~~ shall include the applicant's name, project description and location, ~~the reasons supporting the categorical exclusion determination (including evidentiary~~

Comment [SFS4]: Deleted as requested by CCC staff; the Categorical Exclusion Orders include all the relevant provisions and thus this sentence is unnecessary

Comment [SFS5]: Phrase added as requested by CCC staff; it is unnecessary, however, to insert "evidentiary information" as the project file includes all such information

~~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

The following development, as determined by the Director, shall be exempt from ~~Coastal Permit the requirements of Section 22.68.030~~ unless ~~it is identified listed~~ as non-exempt by Section 22.68.060. ~~The County shall maintain a list of all exemption determinations, which shall be updated at least weekly and provided for public review at the Community Development Agency's front counter and webpage, transmitted weekly to the Coastal Commission, and made available upon request otherwise. The list shall include the applicant's name, project description and location, the reason supporting the exemption determination (including evidentiary information and other materials (i.e., location maps, site plans, etc.)), the date of the Director's determination for each project, and the procedures for challenging the Director's determination. The list shall identify its posting date, which shall be the date from which challenges are allowed within the next 30 days. The Director's determination of whether a proposed development is exempt from Coastal Permit requirements can be challenged pursuant to Section 22.70.040.~~

- A. **Improvements ~~on developed lots to existing single-family residences.~~ The following i** ~~Improvements on developed lots to existing single-family residences~~ are exempt from Coastal Permit requirements ~~(see Sec. 22.68.060 for limitations).~~ **An existing single-family residence includes:**

1. ~~Improvements to existing~~ **All** fixtures and other structures directly attached to ~~an existing structure, including improvements resulting in an increase of less than 10 percent of the floor area of the existing structure~~ **a residence;** and
2. ~~Improvements to existing~~ **S**structures on ~~a residential lot~~ **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
3. ~~Improvements to existing~~ **L**andscaping on the lot.

- B. ~~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:~~**

1. ~~All fixtures and other structures directly attached to the structure.~~
2. ~~Landscaping on the lot.~~

- ~~C. Repair and maintenance.~~** Repair and maintenance activities that do not result in ~~the an~~ addition to, or enlargement or expansion of, the object of repair or maintenance.

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)"*).

Comment [SFS6]: Activities exempt under the Coastal Act are not regulated by the law. The suggested notice and list are not supported by the CCC's regulations.

Comment [SFS7]: Changes here are proposed in order to align with the CCC's regs in Sec. 13250.

Comment [SFS8]: Although cross-references are generally avoided, here it seems to make sense to mention 22.68.060, which provides "non-exemptions" that modify the following provisions.

Comment [SFS9]: Aligns with CCC's regs in Sec. 13253.

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

Comment [SFS10]: Tracks PRC Sec. 30610(g)

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.

DE. 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.

EE. 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.

EG. 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.

EH. 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.

HI. 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, provided, however, that the Director may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

4J. 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.

4K. 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. ~~Exempt nuisance abatement only applies to temporary development that is the minimum necessary to abate the nuisance, and only provided such development is removed if a regular Coastal Permit is not obtained that authorizes such development.~~

4L. Ongoing Agricultural Activities. See Chapter 22.130 for definition. ~~Existing legally established agricultural production activities, including all ongoing grading and routine agricultural cultivation practices (e.g., plowing, tilling, planting, harvesting and seeding), which have not been expanded into never before used areas and have not been discontinued for more than the previous 10 years. Agricultural production activities may include the conversion of grazing to crop production or other ongoing activity involving a change in the intensity of use of land or water (such as ongoing rotational grazing or crop~~

Comment [SFS11]: "Significant" deleted as requested by CCC staff

Comment [SFS12]: PRC 30005(b) provides that no provision of the Coastal Act is a limitation on the power of a county to declare, prohibit, and abate nuisances.

~~farming) if the ongoing production activity has been part of a regular pattern of agricultural practices that has not been discontinued for more than the previous 10 years. If the ongoing production activity has been discontinued for more than the previous 10 years, the permit issuing authority may allow an Applicant to overcome the presumption that the agricultural production activity is no longer ongoing if the Applicant demonstrates his or her ongoing intention to reinstate the agricultural production activity based on the history of agricultural production on the property, the long term investment in the agricultural production activity on the property and the existence of infrastructure to support the agricultural production activity.~~

~~Conversion of grazing to crop production or any other new or expanded activity involving grading or a change in the intensity of use of land or water that has not been part of a regular pattern of agricultural practices or has been discontinued for more than the period of time prescribed herein is not an ongoing agricultural production activity but rather constitutes new development requiring a coastal permit consistent with Chapters 22.68 and 22.70, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order.~~

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. Improvements to an existing structure if the structure 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** ~~within specific areas~~ **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, an 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.

~~**D.**~~ ~~Shoreline protective devices. Those repair and maintenance activities which involve seawalls and similar shoreline structures.~~

~~**E.**~~ **Changes in intensity of use.** Improvements to a structure, other than a single-family residence, which increase or decrease 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.

Comment [SFS13]: Unnecessary here. See Ag policies, which are not before the Board of Supervisors at this time.

Comment [SFS14]: Microsoft Word formatting problem: there are some little “particles” that look like underlines or strikeouts, such as after the word “located” in this sentence that cannot be removed.

Comment [SFS15]: Aligns with CCC’s regs in Sec. 13250 and 13253.

Comment [SFS16]: Tracks CCC’s regs Sec. 13250(b)(4)

Comment [SFS17]: Unnecessary; see Paragraph J below.

Comment [SFS18]: Not done; the Director is responsible for implementing the Dev Code and thus must make such determinations.

6E. 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.

6G. Water wells and septic systems. The expansion or construction of water wells or septic systems.

6H. 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).

6I. 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.

6J. 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 involves¹:
 - (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 to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

¹ 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.

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.

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.
- 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 Supervisor's 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.

Comment [SFS19]: Paragraph C inserted at request of CCC staff.

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 ~~two~~ **three** years of the effective date of the waiver. In this event, a Coastal Permit shall be required for the development.

Comment [SFS20]: Three rather than two years inserted here, to better conform with County practice. PRC Sec. 30624.7 regarding such waivers does not specify a two-year time limit.

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, ~~or otherwise located within the California Coastal Commission's retained coastal permitting 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 both federal and non-federal projects on federal land.

Comment [SFS21]: Change made at request of CCC staff

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.

DC. County land use designations and zoning districts. County land use designations and zoning districts on ~~public trust lands and federal lands~~ **lands defined above in (A)** shall be advisory only for purposes of the Coastal Commission's review of a coastal permit application.

Comment [SFS22]: Change made at request of CCC staff

ED. 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 – ~~Appeal of Permit~~ 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 – ~~Coastal Zone Variance Exemptions~~ Non-Conforming Uses and Structures
- ~~22.70.170 – Decision and Findings~~
- 22.70.175 – Violations of Coastal Zone Regulations and Enforcement of LCP Provisions and Penalties (Coastal)
- 22.70.180 – Potential Takings ~~Economic~~ Evaluation
- 22.70.190 – Property Modifications

22.70.010 – Purpose of Chapter

This Chapter provides procedures for processing Coastal Permit applications, 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;

Comment [SFS23]: Exempt activities are by their very nature not regulated by the Coastal Act; therefore, such activities are not "processed".

Comment [SFS24]: See preceding comment

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.

Comment [SFS25]: Added for consistency.

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

~~4. Any additional information deemed by the Director to be required for specific categories of development or for development proposed from specific geographic areas.~~

Comment [SFS26]: Redundant; see Paragraph A above.

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 (i.e. within 5 working days of such determination for exclusions; at least 10 days prior to a hearing or action for de minimis waivers, non public hearing applications, and public hearing applications; and at least 15 working days before the required Planning Commission hearing for public hearing waiver applications), and for exemptions shall be posted (and challenges shall be allowed within 30 days of such posting date).~~ All such determinations regarding permit category may be challenged in compliance with Section 22.70.040 – Challenges to Processing Category Determination.

Comment [SFS27]: CCC regulations do not require provision of public notice of permit category determinations. Furthermore, the proposed challenge period for exemptions is not only non-required, but also unreasonable; someone undertaking a non-regulated, exempt activity would be barred from commencing work for a period of 30 days because of the possibility of challenge. Required public notice of proposed actions on permit applications is provided below in Sec. 22.70.050.

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.~~

Comment [SFS28]: Exempt activities are not regulated by the Coastal Act.

~~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. ~~Such applications shall be accompanied by a statement of why County decisions on the proposed development would not be appealable to the Coastal Commission, and the reasons supporting such a determination.~~

Comment [SFS29]: Not done; an applicant is not responsible for determining whether a development is appealable.

~~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. ~~Such applications shall be accompanied by a statement of whether County~~

~~decisions on the proposed development would be appealable to the Coastal Commission, and the reasons supporting such a determination.~~

Comment [SFS30]: See preceding comment

65. Public hearing waiver for minor development ~~including development appealable to the Commission.~~

Comment [SFS31]: Unnecessary phrase; "minor development" is defined herein.

A public hearing that would otherwise be required for the below identified minor development ~~including development appealable to the Commission under 22.70.080(B)~~ shall be waived if both the following occur:

- (a) Notice is provided as required by Section 22.70.050 – "Public Notice" that a public hearing shall be held upon request by any person, 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.

Comment [SFS32]: Good government practice requires such communications to be in writing.

Comment [SFS33]: "Working" rather than "business" days used here at the request of CCC staff

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. ~~Such applications shall be accompanied by a statement of whether County decisions on the proposed development would be appealable to the Coastal Commission, and the reasons supporting such a determination.~~

Comment [SFS34]: The applicant is not responsible for determining whether a development is appealable. Notice provisions in 22.70.050 provide that the County shall describe the hearing waiver procedure for everyone concerned.

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, ~~or public hearing waiver application~~ may be challenged.

Comment [SFS35]: De Minimis Waivers can be objected to per 22.68.070, hence it is unnecessary to provide here a parallel process allowing a "challenge" to a De Minimis Waiver. Similarly, it is unnecessary to provide for a challenge of a public hearing waiver, because any person can simply request a public hearing (which request must be granted) whenever a hearing is proposed to be waived for a minor development, per 22.70.030 B. 6.

B. Timing of Challenge. A determination regarding processing category by the Director may be challenged to the Coastal Commission within 10 ~~business~~ **working** days of the date of sending **public notice as required by this Chapter**; ~~the notice of determination for exclusions, within 10 days of the date of sending the notice for de minimis waivers, non-public hearing applications, and public hearing applications; within 15 working days of the date of sending the notice for public hearing waiver applications; and within 30 days of its posting date for exemptions.~~

Comment [SFS36]: "Working" rather than "business" days inserted at request of CCC staff

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 ~~as soon as possible~~ **within 10 working days of the County's request unless the applicant and the County agree to an extension.** ~~There are three possible outcomes of a challenge:~~
 - (a) If the Executive Director agrees with the County's determination, then the determination shall be final and shall apply to the proposed development;
 - (b) If the Executive Director disagrees with the County's determination, and the County then agrees with the Executive Director's opinion, then the review and permit procedures associated with the Executive Director's opinion shall apply to the proposed development; or
 - (c) If the Executive Director disagrees with the County's determination, and the County disagrees with the Executive Director's opinion, then the matter shall be set for public hearing for the Coastal Commission to make the final determination of applicable review and permit procedures, and the Coastal Commission's determination shall apply to the proposed development.
- (4) The challenge period shall be deemed concluded if no challenge is received within the time periods specified in 22.70.040(B), or when the Executive Director provides his or her opinion to the County in outcomes (a) or (b) above, or when the Executive Director provides the Coastal Commission's determination to the County in outcome (c) above.

Comment [SFS37]: A specific time limit should be included here, rather than the open-ended "as soon as possible." The option for a time extension has been added at the request of CCC staff

Comment [SFS38]: Phrase deleted as unnecessary; The three possible outcomes are described.

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 notice in at least one location that is conspicuously visible to the general public ~~(and as many locations as necessary to ensure that the public is appropriately provided notice)~~ on or adjacent to the property which is the subject of the permit ~~(where the contents of the notice shall at a minimum be consistent with the Content of Notice section below)~~ and by mailing notice to:

Comment [SFS39]: “Working” rather than “business” days used at the request of CCC staff

Comment [SFS40]: “Conspicuously visible to the general public” included at the request of CCC staff. Other suggested changes have not been made because they are vague and amenable to argument, such as how many locations for posted notice would be necessary to ensure that the public is “appropriately” provided notice.

Comment [SFS41]: Redundant

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 ~~(e.g., for the site, for the particular development, for the type of development, development in general)~~ with the Director;

Comment [SFS42]: “For a specific geographic area” added at the request of CCC staff

Comment [SFS43]: Unnecessary addition; the CDA website provides general notice to anyone who may be interested in all development proposals.

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, ~~but at a minimum all owners of real property adjacent to the properties on which the development is proposed shall be provided with notice.~~

Comment [SFS44]: Redundant; notice to all properties within 300/600 feet would necessarily require notice to adjacent properties.

5. ~~All owners and~~ Where home mail delivery is available, all occupants ~~of parcels~~ of real property located within 100 feet (not including roads) of the perimeter of the real properties on which the development is proposed.

Comment [SFS45]: Some West Marin communities have no home mail delivery; hence, it is not possible in every case to mail to “Occupants”

6. All agencies for which an approval for the proposed development may be required.

~~7. The Supervisor for the District.~~

Comment [SFS46]: Not required by CCC regulations

~~8. All known interested parties.~~

Comment [SFS47]: The above list of recipients of notice includes all those parties addressed by the CCC regulations, including those known to be interested

~~9.~~ 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 ~~what~~ **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.

~~11. All procedures for challenge and appeal associated with the type of application being considered.~~

Comment [SFS48]: Redundant; Item #8 above addresses procedures for challenge and appeal

- 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. 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 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).

~~N. LCP Consistency. The proposed project, as conditioned, is consistent with all applicable provisions of the Marin County LCP.~~

Comment [SFS49]: Redundant; the opening paragraph of 22.70.070 requires a finding of consistency with all requirements of the LCP.

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 **aggrieved** 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

Comment [SFS50]: “Aggrieved” deleted; the County’s practice is to accept all appeals for local consideration. Note that appeals to the CCC require an appellant to be “aggrieved”

the tenth ~~business~~ **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.

Comment [SF551]: Although the County's practice is to use "business" days, "working" is inserted here in order to maintain consistency throughout Chapters 22.68 and 22.70 and to avoid the implication that there is a difference in meaning between the terms.

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.

~~5. No such appeals shall require a fee.~~

Comment [SF552]: The County has the ability to charge an appeal fee; if an appeal fee is charged, then see 22.70.080 B. 2. (d) below

B. Appeals to the Coastal Commission. An action on a Coastal Permit 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 ~~(any use that also requires the granting of a Coastal Zone Variance shall not be considered a principal permitted use; land divisions are not the principally permitted use in any zoning district); and~~
 - (d) Development approved or denied that constitutes a major public works project ~~(including a publicly financed recreational facility and/or a special district development)~~ or a major energy facility.

Comment [SF553]: Not done. A Coastal Zone Variance, by definition, cannot alter the use allowable on a property, hence there is no basis to make a Variance automatically appealable (see 22.70.150 below). Furthermore, the underlying "development" that is the subject of a Variance may not be appealable in the first place per PRC Sec. 30603. Land divisions are addressed separately in 22.70.190.

Comment [SF554]: Unnecessary; the IP provides definitions for both "major public works project (coastal)" and "major energy facility (coastal)" in the Definitions chapter.

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, 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:

Comment [SFS55]: “Working” rather than “business” days used at the request of CCC staff

Comment [SFS56]: Phrase deleted at request of CCC staff.

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

Comment [SFS57]: “Certified” refers to the CCC’s, rather than the County’s, procedures

(+) (b) An appellant was denied the right of the initial local appeal by a local ordinance 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), 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.

22.70.090 – Notice of Final Action

~~Within 7 calendar days of a decision on an application for a Coastal Permit, the Director shall provide for public review a list of all decisions at the Community Development Agency’s front counter and webpage. The list shall include a project description, the reviewing authority’s decision, and procedures for appeal. After all local appeals have been exhausted, within 7 calendar days of a final County decision on an application for a Coastal Permit, the Director shall provide notice of the action by First Class mail to the Coastal Commission, and to any persons who specifically requested notice and provided a self-addressed stamped envelope or other designated fee covering mailing costs, and provided for public review at the Community Development Agency’s front counter and webpage and shall provide additional public notice via the Community Development Agency’s webpage. The 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. shall be in two parts: (1) a cover sheet or memo summarizing the relevant action information and (2) materials that further explain and define the action taken. The cover sheet/memo shall be~~

Comment [SFS58]: Provision of a “list” is not required by CCC regulations. Notice provisions are provided below.

Comment [SFS59]: Per County practice, “days” means “calendar days” unless specified otherwise

Comment [SFS60]: CCC regulations do not require provision of public notice at the “counter.”

Comment [SFS61]: Proposed notice is consistent with CCC regulations Sec. 13571. The proposed notice via the CDA webpage would expand considerably on what is required by the CCC’s regulations, which do not require provision of cover sheets, memos, and the other items suggested below.

sent to all recipients of the notice, and the cover sheet/memo shall be sent in hard copy to the Coastal Commission, with supporting materials 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 (must be provided hard copy).*
- 2. Final staff report (must be provided hard copy).*
- 3. Approved project plans (may be provided in hard copy and/or electronic format).*
- 4. All other substantive documents cited and/or relied upon in the decision including any environmental review documents prepared in accordance with the California Environmental Quality Act, technical reports (geologic reports, biological reports, etc.), correspondence, etc. (may be provided in hard copy and/or electronic format).*

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.

Comment [SFS62]: Provision of these materials in the manner suggested would essentially require every project file to be maintained at the front counter, which would be an inefficient use of limited County resources. Provision of paper copies of staff reports and related documents to the CCC for every coastal project would be time-consuming and inefficient; copies are certainly available when requested. Furthermore, most or all project files are open to public inspection upon request.

Comment [SFS63]: "Working" rather than "business" inserted at request of CCC staff

22.70.110 – Effective Date of Final Action

A final decision by the applicable review authority on an application for an appealable development shall become effective after the 10 working day appeal period to the Coastal Commission has expired ~~or after the 21st calendar day following the final County action if no appeal to the Coastal Commission is filed,~~ unless ~~any~~ **either** of the following occur ~~in which case the County action shall not be considered effective:~~

- A. An appeal is filed in compliance with Section 22.70.080 – Appeal of Coastal Permit Decision.
- B. The notice of final Coastal Permit approval does not meet the requirements of Section 22.70.090 (Notice of Final Action) or Section 22.70.100 (Notice of Failure to Act).

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.

Comment [SFS64]: Removed redundant phrase and the unclear and unnecessary reference to the “21 day” period. The relevant time period is the Commission’s 10-working-day appeal period; if an appeal is filed within that time, then the permit is not yet effective.

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 Commission for review.
- 3. Action on extension.
 - a. If the Director (or the Coastal 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 Commission) may extend the permit for a maximum period of three years following the original expiration date. If the approval

Comment [SFS65]: Extension procedures are included below as requested by CCC staff.

Comment [SFS66]: Three, rather than two, years included here, as recommended originally by CCC staff in April 2015 and also to better coordinate with County practice

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 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 eEmergency 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 eEmergency 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 amount of temporary 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.

Comment [SFS67]: Responses to some emergencies are not temporary in nature, for example the emergency removal of a fallen tree or an about-to-collapse house. Other provisions here ensure that an Emergency Coastal Permit addresses only what is immediately necessary, and furthermore a follow-up regular Coastal Permit is required.

A. Application. An application for an eEmergency 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 eEmergency 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 ~~(i.e.,~~ 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 ~~e~~Emergency ~~C~~Coastal ~~P~~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

Comment [SFS68]: Phrase added at request of CCC staff

Comment [SFS69]: Phrase added at request of CCC staff

Comment [SFS70]: Redundant. The opening paragraph states that Emergency Permits allow only the “minimum measures necessary to address the emergency”

area restored if it is not recognized by a regular ~~e~~C~~o~~a~~s~~t~~a~~l ~~p~~P~~e~~rmit within 6 (six) months of the date of permit issuance, unless the Director authorizes an extension of time for good cause, ~~where such extension of time may be challenged according to Section 22.70.040~~. Within 30 days of issuance of the ~~e~~E~~m~~e~~r~~g~~e~~n~~c~~y 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).

Comment [SFS71]: Changes are made here to avoid the unclear suggested reference to both a 90-day period and a 6-month period.

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 ~~Land Use Plan Policies~~, use limitations or minimum lot size and density requirements.

Comment [SFS72]: Deleted because of potential problems with interpretation; some Land Use Plan policies establish height limits for a structure, for which a Coastal Zone Variance may be suitable.

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 does not grant relief from the ~~Land Use Plan Policies~~, use limitations or minimum lot size and density requirements governing the subject parcel.

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.

~~C. **Appeal of Coastal Permit For Development Requiring a Coastal Zone Variance.** Any development that also requires granting of a Variance shall not be considered a Principally Permitted Use per 22.70.080(B)(1)(c) and approval of any coastal permits for development that also requires a coastal zone variance shall be appealable in compliance with Section 22.70.080.~~

Comment [SFS73]: A Coastal Zone Variance, by its very nature, cannot change an allowable use. Therefore, whether the use on the property is appealable or not is already determined consistent with PRC Sec. 30603, and this section is unnecessary.

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).~~

Comment [SFS74]: 22.70.160 addresses nonconforming uses and structures, not development that may have lacked a required Coastal Permit (including, in particular, a Coastal Permit for which the CCC was responsible, such as in the years between 1972 and the dates on which the County took over Coastal Permit jurisdiction (1981-82). Enforcement procedures are available elsewhere for addressing any such unpermitted development.

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 ~~current certified~~ LCP, but does not conform to the ~~current 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. ~~For residential uses, intensification shall be defined as an increase in the number of bedrooms.~~ 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.

Comment [SFS75]: "Current" is unclear.

Comment [SFS76]: Deleted. Some residential projects (e.g., additions to existing single-family residences in many locations) may be exempt from Coastal Permits; therefore, an increase in the number of bedrooms would not necessarily trigger nonconforming status.

D. Nonconforming Structures. A nonconforming structure means a structure that was lawfully erected prior to the adoption, revision, or amendment of the ~~current certified~~ LCP, but that does not conform with standards for lot coverage, setbacks, height, ~~number of stories,~~ distance between structures, or floor area ratio prescribed in the ~~current certified~~ LCP. Nonconforming structures may be repaired and maintained. However, repair and maintenance involving demolition and/or replacement of 50 percent or more of the nonconforming structure, ~~or that constitutes "Redevelopment (coastal)" as defined in Chapter 22.130,~~ is not permitted unless the entire structure is brought into conformance with the policies and standards of the

Comment [SFS77]: Deleted; the LCP does not address development in terms of "stories"

Comment [SFS78]: The County does not propose to use the concept of "Redevelopment (coastal)".

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.

Comment [SFS79]: Deleted; counting over time all repair and maintenance, some of which may be exempt from permits, would be impractical and is not required.

E. Additions and Improvements. Improvements which enlarge and/or expand a 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, ~~or that constitute "Redevelopment (coastal)" as defined in Chapter 22.130,~~ 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.

Comment [SFS80]: See preceding comment

F. Blufftop and Shoreline Development. For 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, maintained, and improved consistent with Subsections D and E, above. ~~However, when the repair, maintenance, and/or improvement constitutes "Redevelopment, Coastal (coastal)", as defined in Chapter 22.130, the repair, maintenance, and/or improvement is not permitted unless the entire structure is brought into conformance with all applicable LCP policies.~~

Comment [SFS81]: The CCC's regulations regarding repair and maintenance do not specify that an entire structure must be brought into conformance with all LCP policies.

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 affected by the application also is proposed to be removed or retained consistent with the requirements of the certified LCP, and the approval includes full resolution of violations associated with the property affected by the application.~~

Comment [SFS82]: Impractical; not supported by Coastal Act policies.

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, ~~redvisions, mergers,~~ and conditional certificates of compliance.

A. Certificates of Compliance:

A conditional certificate of compliance issued pursuant to Government Code section 66499.35 shall require a Coastal Permit.

~~1) For issuance of a certificate of compliance pursuant to Government Code section 66499.35 for a land division that occurred prior to the coastal permits being required (i.e., prior to February 1, 1973 for~~

~~certain properties pursuant to the Coastal Initiative (Proposition 20) of 1972, and prior to January 1, 1977 otherwise under the Coastal Act of 1976), where the parcel was created in compliance with the law in effect at the time of its creation and the parcel has not been subsequently merged or otherwise altered, no coastal development permit is required.~~

- ~~2) For issuance of a certificate of compliance pursuant to Government Code section 66499.35 for a land division that occurred prior to coastal permits being required (i.e., prior to February 1, 1973 for certain properties pursuant to the Coastal Initiative (Proposition 20) of 1972, and prior to January 1, 1977 otherwise under the Coastal Act of 1976), where the parcel was not created in compliance with the law in effect at the time of its creation, or the parcel has subsequently been merged or altered, a coastal development permit that complies with the certified LCP (or the Coastal Act if located in the Coastal Commission's permitting jurisdiction) is required to legalize the parcel.~~
- ~~3) For issuance of a certificate of compliance pursuant to Government Code section 66499.35 for a land division that occurred after the effective date of the Coastal Act, a coastal development permit that complies with the certified LCP (or the Coastal Act if located in the Coastal Commission's permitting jurisdiction) is required to legalize the parcel.~~

B. Criteria for Land Divisions of Land

- ~~1) Land divisions shall be prohibited if located outside of designated village limit boundaries and within an area found to have limited public service capacities (as specified by Section 22.64.140).~~
- ~~2) Land 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.~~
- ~~3) The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcel would be smaller than the average size of surrounding legal parcels.~~
- ~~4) Land 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.~~
- ~~5) Land Divisions of land shall be designed to cluster development in order to minimize site disturbance, landform alteration, and fuel modification.~~
- ~~6) Lot line adjustments are limited to four or fewer parcels. 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.~~
- ~~7) The reviewing authority shall not approve a land division if any parcel being created would not be consistent with the certified LCP, including the maximum density designated by the Land Use Plan.~~
- ~~8) Land Divisions of land are not the principally permitted use in any zoning district.~~

C. Criteria for Lot Line Adjustments

Comment [SFS83]: The term "division of land" is preferred for use in the IP.

Comment [SFS84]: The Coastal Act limits, but does not prohibit, land divisions outside developed areas.

Comment [SFS85]: The certified LCP, even prior to the proposed amendment, satisfies these tests for rural land divisions. That is, 50 percent of the usable parcels have already been developed, and the LCP zoning meets the test regarding the size of surrounding parcels. Hence, there is no need to perform this individual calculation for proposed land divisions. In support of this conclusion is the fact that the existing LCP, as certified by the CCC many years ago, contains no such provisions.

Comment [SFS86]: See preceding comment.

Comment [SFS87]: These provisions regarding lot line adjustments would be appropriately addressed in a separate section; see paragraph C below.

Comment [SFS88]: Redundant; see provisions above

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.

Comment [SFS89]: These provisions regarding lot line adjustments are appropriately placed here.