

## STAFF RECOMMENDATION

As described in the Board letter, staff recommends that your Board approve for Resubmittal to the California Coastal Commission:

- The Environmental Hazards Chapter of the Land Use Plan Amendments (LUPA) to the certified Marin County Local Coastal Program in Attachment 4;
- The Sections of the Marin County Development Code comprising the Implementation Program Amendments (IPA) relating to Environmental Hazards in Attachment 5;
- Development Code Chapters 22.68 and 22.50 that comprise the Coastal Permitting and Administration IPA in Attachment 6, and
- All other provisions of the Development Code that complete the LCPA Implementation Program Amendments (other than the IPA provisions for Agriculture already approved by your Board) in Attachment 7.

Over the past year, County and Coastal Commission staff have worked to resolve differences between the Environmental Hazard (EH) policies and IPA originally approved by your Board in 2013, the Suggested Modifications to the LUPA approved by the Coastal Commission in 2014, and Modifications to the IPA proposed by Commission staff in 2015. The Commission staff's recommendations on the IPA have not yet been acted upon or adopted by the Coastal Commission, thus they do not have the status of "Suggested Modifications" within the meaning of the Coastal Act. Nevertheless, to minimize potential policy conflicts between the County and the Commission staff and maximize the potential for the Commission approving Marin's LCPA, CDA staff has taken the CCC staff's proposed Modifications as the "base" for preparing our recommendation, thereby accepting the vast majority of the CCC staff's positions and specific language, even where your staff may have written provisions differently.

The primary areas of disagreement remain related to Environmental Hazards policies (and their implementation), as well as Implementation Program provisions related to Coastal Permitting and Administration. The substantive issues related to these two general topics are discussed in Part I and II below. In addition, Part III provides a discussion of substantive issues that occur elsewhere in the Implementation Program, in particular, certain provisions related to public and private services supporting development. Finally, additional specific recommended staff changes are noted and explained with margin comments where appropriate throughout the LUPA and IPA Attachments.

### **Part 1 Environmental Hazards**

1. Timeline for Environmental Hazard Analysis
2. Replacing the Concept of "Coastal Redevelopment"
3. Flood Hazards
4. Geologic Hazards
5. Blufftop and Shoreline Development
6. Additional Requirements to Elevate Structures in Flood Hazard Areas
7. Allowing Additional Building Height in Flood Hazard Zones
8. On-going Work to Respond to Sea Level Rise

### **Part 2 Implementation Plan Provisions related to Coastal Permitting and Administration (Development Code Chapters 22.68 and 22.70)**

1. Coastal Permit Exclusions: Categorical Exclusion Noticing

2. Coastal Permit Exemptions: Determining Which Developments are Exempt from a Coastal Permit; Providing Public Notice of Exemptions
3. Coastal Permit Exemptions: Determining Which Developments are Not Exempt from a Coastal Permit
4. Coastal Permit Filing Procedures
5. Challenges to Permit Processing Category Determination
6. Public Notice of Coastal Permits
7. Notice of Final Action on Coastal Permits
8. Minor changes and clarifications

**Part 3 Other Implementation Plan Provisions (not addressed in Part 1 or 2)**

1. Section 22.64.110 – Community Development
2. Section 22.64.140 – Public Facilities and Services
3. Section 22.64.170 – Parks, Recreation, and Visitor-Serving Uses

**Part I. Environmental Hazards**  
Environmental Hazards (EH) Chapter of the LUPA and  
Environmental Hazards Implementing Program Section 22.64.060

**Background**

The LUPA policies and IPA provisions related to Environmental Hazards (EH) adopted as part of Marin's LCPA have significant implications for Marin County's coastal residents and visitors. The EH chapter of the LUPA and corresponding portions of the Implementation Plan approved by your Board in 2013 carried forward and refined policies of the existing certified LCP intended to assure the safety of residents in potentially hazardous areas, manage the response to changing sea level and climate conditions to account for and minimize risk of natural hazards without significant adverse effects to other coastal resources.

In its May 2014 action on Marin's LUPA, the Coastal Commission adopted a number of significant Modifications to the EH policies approved by your Board. In addition, suggested Modifications to the IPA were proposed by Commission staff in 2015. However, throughout the process, staff has consistently expressed concerns that the actual implementation of Commission approved and proposed LUPA and IPA revisions related to environmental hazards may prove to be unnecessarily restrictive and cumbersome, create conflicts with Coastal Act provisions, and may deter coastal property owners from taking reasonable steps to protect their property without excessive procedural and processing requirements. These concerns are at the heart of our recommendations.

Staff is proposing a number of relatively significant changes to key EH policies and associated IPA provisions with the intention of creating regulations that are effective, fair, feasible to enforce, legally defensible, and supported at the local level. Striking this balance is not an easy proposition given the complexities of Coastal Act regulations, their interface with the County's local regulations and the evolving nature of sea level rise planning. The key issues are discussed in detail below (in the general order they appear in the Land Use Plan) along with the recommended policy and IPA revisions that would resolve those concerns. Topic areas addressed in this section include:

1. Timeline for Environmental Hazard Analysis
2. Replacing the Concept of "Coastal Redevelopment"
3. Flood Hazards
4. Geologic Hazards
5. Blufftop and Shoreline Development
6. Additional Requirements to Elevate Structures in Flood Hazard Areas
7. Allowing Additional Building Height in Flood Hazard Zones
8. On-going Work to Respond to Sea Level Rise

In addition to this discussion, the complete set of policy and IPA provisions related to Environmental Hazards are provided in the following attachments:

**Attachment 4** shows the text of the LUPA Environmental Hazards Chapter recommended for Resubmittal to the Coastal Commission. This text incorporates the Suggested Modifications adopted by the Coastal Commission in 2014. Changes to those Modifications recommended by staff are shown in blue text (double-underline for additions and italicized strike out for deletions). To show all the Coastal Commission Modifications to the text your Board adopted in 2013 that will become part of the LCPA unless changed by the Board, a separate version of the documents before you has been created (**Attachment 3**), and is posted at [www.MarinLCP.org](http://www.MarinLCP.org) and available on request. In this copy, Commission Suggested Modifications shown in ~~crossout/underline~~ format in black text, and your staff's recommended changes to those Modifications are shown in blue text with deletions ~~italicized and struck out~~ and additions double underlined.

**Attachment 5** provides text of the Environmental Hazards-related Implementation Program Amendments (Development Code Section 22.64.060 and related Definitions) recommended for Resubmittal to the Coastal Commission. This text accepts as the base text all recommendations made by CCC staff in April 2015 (although these were not formally acted on by the Coastal Commission itself). As above changes recommended by CDA staff to the CCC staff Modifications are in blue text (double-underline for additions and ~~italicized strike out~~ for deletions). Again, Attachment 3 shows the 2015 Coastal Commission staff Modifications to your Board's adopted text in black ~~crossout/underline~~ format, with staff's proposed revisions in blue.

## 1. Timeline for Environmental Hazard Analysis (C-EH-2 and throughout)

LCPA policies and IPA provisions require applicants for development to demonstrate through a hazard analysis that proposed development is safe from and does not contribute to geologic hazards. Marin's existing certified LCP incorporates an assumption that the expected economic life of a structure is 40 years. Under these provisions for example, an analysis addressing a coastal hazard such as bluff retreat would need to demonstrate that proposed development would be safe for at least 40 years.

During the LCPA update process, Coastal Commission staff recommended extending the timeline of analysis from 40 to 100 years to acknowledge that the lifetime of development extends well beyond 40 years in most cases. This recommendation was supported by the Planning Commission and your Board. However, predicting the property's vulnerability to geologic hazards 100 years into the future is difficult given the uncertainty of climate change. For instance, work on the County's C-SMART program has shown that sea level rise projections become increasingly uncertain in the long term. In 2050, for example, sea levels in the San Francisco Bay Region are projected to rise between 4.7 inches and 24 inches, which represent a range of 1.6 feet. However, by 2100, the difference between the low end (16.6 inches) and high end (65.8 inches) of the range of projections increases to over 4 feet. While the extent of sea level rise has obvious implications for flood hazards, this increasing variability in the long term creates similar uncertainties for geologic hazards such as bluff erosion rates, which could vary considerably depending on the extent of sea level rise that occurs by the end of the century.

To account for the likelihood of increasing hazards over time while also providing design standards for new development based on sea level rise projections that have a higher degree of certainty to occur, staff is recommending that a more predictable analysis timeline for designing development would be 50 years, which currently corresponds to a projected sea level rise of approximately 2 feet. As seen in the currently-definitive National Research Council Report, *Sea-Level Rise for the Coasts of California, Oregon and Washington: Past, Present, and Future* and Table 1 below, 2 feet of sea level rise is at the extreme upper end predicted through 2050 and above the lower end of the wider range indicated for 2100 (this chart has been incorporated into the Coastal Commission’s *Sea Level Rise Policy Guidance*). Thus the 2 feet benchmark is a reasonable, conservative estimation for a given 50-year point in time given the considerable degree of inherent uncertainty. As a result of the understandings gained through C-SMART and other SLR work, staff’s recommended approach to dealing with sea level rise will not rely on picking a single unchanging point in time, but rather engaging in adaptive management on continuous basis to deal with evolving issues of SLR and anticipated adjustment in regulations.

In addition to the 50-year basis for design, the recommended policy seeks to ensure that applicants are aware of potential hazards over the longer term, and to assure that private actions in relation to sea level rise do not impose unreasonable risks or costs on the public. Therefore staff is also recommending revisions to Policy C-EH-2 that would require disclosure of potential 100 year time frame sea level rise as determined by the County at the time of approval.

Finally, the long-term adaptation planning already begun by the County has brought into focus difficult issues coastal communities will need to face in the future, including impacts of sea level rise on utilities, septic systems and road access that will come in future years if the status quo is maintained. But the County and its residents have time to carefully and methodically address these issues in an open, collaborative and thoughtful way. The inherent risks of sea level rise are reflected in the hazard policies; however, the future we are planning toward is aimed at minimizing those risks as we gather and marshal critical information, innovate new approaches, and manage rather than succumb to sea level rise and other challenges.

Table 1. Sea Level Rise Projections for California (NRC 2012)

TIME PERIOD*	NORTH OF CAPE MENDOCINO	SOUTH OF CAPE MENDOCINO	
by 2030	-2 – 9 in (-4 – +23 cm)	2 – 12 in (4 – 30 cm)	
by 2050	-1 – 19 in (-3 – + 48 cm)	5 – 24 in (12 – 61 cm)	
by 2100	4 – 56 in (10 – 143 cm)	17 – 66 in (42 – 167 cm)	

.\*with Year 2000 as a baseline

**C-EH-1 Safety of New Development.** Ensure that risks to life are minimized and that new development is safe from, and does not contribute to, geologic, sea level rise, or other hazards for a period of at least 50 years 100 years.

**C-EH-32 Applicant's Assumption and Disclosure of Risk.** As a condition of coastal permit approval for development in hazardous areas, require the applicant to record a document ~~exempting the County from liability for any personal or property damage caused by geologic or other hazards on such properties and acknowledging that future shoreline protective devices to protect structures authorized by such coastal permit are prohibited~~

1. Acknowledging that the site is subject to coastal hazards which may include coastal erosion, shoreline retreat, flooding, and other geologic hazards;
2. Acknowledging that future shoreline protective devices to protect authorized structures are prohibited;
3. Acknowledging that public funds may be insufficient or unavailable to remedy damage to public roadways, infrastructure, and other facilities resulting from natural events such as sea level rise and bluff erosion;
4. Acknowledging that Housing Code provisions prohibit the occupancy of structures where sewage disposal or water systems are rendered inoperable; and
5. Assuming all risks and waiving any claim of damage or liability against the County for personal or property damage resulting from such coastal hazards.

The recorded document shall also disclose potential vulnerability of the development site to long term sea level rise by incorporating the County's 100 year time frame sea level rise hazard map for the subject property and surrounding area, where applicable.

## 2. Replacing the Concept of "Coastal Redevelopment"

One of the most significant LUPA Modifications approved by the Coastal Commission in 2014 incorporated the concept of "coastal redevelopment" into multiple Environmental Hazard policies. Coastal Commission staff has since proposed to insert related provisions into the IPA. Simply stated, "coastal redevelopment" would consist of the alteration of 50 percent or more of any single major structural component, or a 50 percent increase in floor area, or any alterations exceeding 50 percent of the structure's market value, all of which would need to be tracked cumulatively from the date of LCP certification. Development meeting this definition would require Coastal Permit approval and full compliance with all LCP provisions, rather than being exempt from a Coastal Permit.

Staff recommends omitting the concept of "redevelopment," from the LCPA for legal and practical reasons as explained below. Instead, staff recommends adoption of LUPA and IPA provisions that in staff's opinion squarely reflect Coastal Act policies and related regulations, which together define those developments that require Coastal Permits, while specifying those that are exempt.

As a point of background, the Coastal Act provides a general exemption from Coastal Permits for improvements to existing structures, including single-family residences. Also generally exempt are repair and maintenance projects that do not add to or enlarge an existing structure (PRC Sec. 30610). Those general exemptions are limited in scope by the Coastal

Commission's regulations, which specify that in sensitive areas such as a beach or wetland, certain improvements and repairs to existing structures are not exempt after all, but instead require a Coastal Permit (CCR Sec 13250–13253).

Coastal Commission staff has proposed two virtually identical definitions for addition to the Implementation Plan: "Redevelopment" and "Coastal Redevelopment" Both would be defined as a type of "development," the term which underpins the Coastal Act's regulation of land use activities in the coastal zone. "Redevelopment" is proposed to apply to projects outside of blufftop or shoreline areas, whereas "Coastal Redevelopment" is proposed to apply to projects located on "blufftops or at or near the ocean/sand interface and/or at very low-lying elevations along the shoreline."

The full definition for the latter as proposed by Coastal Commission staff is as follows:

**Redevelopment, Coastal (coastal).** *Development that is located on blufftops or at or near the ocean- sand interface and/or at very low lying elevations along the shoreline that meet criteria A or B below:*

**A.** *Development that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff home or other principal structure, or portions thereof, which results in:*

**(1)** *Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.*

**(2)** *Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.*

**B.** *Development that consists of any alteration of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction, as per National Flood Insurance Program (NFIP) requirements administered by the Federal Emergency Management Agency (FEMA).*

*For the purposes of this definition:*

*An exterior wall is considered to be altered 50% or more when any of the following occur either above or below grade:*

**(a)** *Exterior cladding and/or framing systems are altered in a manner that requires removal and/or replacement of 50% or more of the elements of those cladding and framing systems, normally considered as linear length of wall.*

**(b)** *Reinforcement is needed for any remaining portions of the wall to provide structural support in excess of 50% of existing support elements (e.g. addition of 50% or more of beams, shear walls, or studs whether alone or alongside the existing/retained elements).*

*A floor or roof structure is considered to be altered 50% or more when any of the following occur:*

(a) *The roof or floor framing is altered in a manner that requires removal and/or replacement of structural elements (e.g. trusses, joists, rafters) supporting 50% or more of the square footage of the roof or floor.*

(b) *The roof or floor structural framing system requires additional reinforcement to any remaining portions of the roof or floor system to provide structural support (e.g. addition of 50% or more of beams, joists, and/or rafters, etc., whether alone or alongside existing/retained system elements).*

*A foundation is considered to be altered 50% or more when any work is done on any of the following:*

(a) *50% or more of the horizontal surface area of a slab foundation.*

(b) *50% or more of the floor area of a structure supported by a pier/post and/or caisson/grade beam foundation.*

(c) *50% or more of a perimeter foundation.*

*Major structural component alterations generally do not include changes to roof coverings; replacement of glass or doors in existing window or door openings; replacement of window or door framing when the size and location of the window/door remains unchanged; repair of roofs or foundations without any change to structural supporting elements; changes to exterior siding; repair, maintenance, and replacement of chimneys; and interior changes to non-structural interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements.*

“Redevelopment,” as proposed by Coastal Commission staff, would encompass certain additions to an existing structure, exterior and/or interior renovations, and/or demolition. As noted, only one of the virtually identical definitions of “Redevelopment” and “Coastal Redevelopment” is reproduced above. The Suggested Modification added to C-EH-5 section “C” states that “Coastal Redevelopment” is development along bluffs, or low-lying elevations, but does not mention inland sites, leaving it ambiguous if the separate “Redevelopment” definition is intended to apply to such sites. The inclusion of two separate definitions, along with proposed additions to 22.68.050.B. regarding Repair and Maintenance and to 22.70.160.D. Nonconforming Structures seem to point to the intent to apply “redevelopment” across the whole coastal zone, whether blufftop/shoreline or not. In any event, additional clarity is required here.

The extent of alterations that would bring a project into the category of “redevelopment,” would include the alteration of 50 percent or more of a structural component, specifically including exterior walls, floor and roof structure, and foundation, or a 50 percent increase in floor area. As proposed, alteration of less than 50 percent of a structural component would also constitute “redevelopment” if it was considered cumulatively with previous alterations to the same component. For example, alterations of 30 percent of a structural component in one year followed by a 30 percent alteration in a subsequent year would cumulatively exceed 50 percent, thus constituting “redevelopment.” The proposed definitions also include an alternate measure of the scale of alterations, namely the cost of the work. Thus, alterations with a cost that equals or exceeds 50 percent of the market value of the structure before the start of construction would constitute “redevelopment.” The term “redevelopment” describing this new formulation of rules does not appear in the Coastal Act, or in the Administrative Regulations that govern the application of the Act. The regulations do not address alterations to existing homes and other structures by dividing the work into separate components, such as exterior cladding, roof structure, and foundation.

The Modification also applies to “**A. Development that consists of alterations including ... (2) ... interior renovations,**” Such interior renovations have not heretofore required coastal permits.

Among the problems raised by the proposed definitions is the vague terminology used (“near the shoreline” and “at very low-lying elevations”) that lacks precision to make the definitions easy to understand and implement by location or geographic area. Furthermore, the definitions mix “demolition” with “construction” which creates an apparent conflict with existing Coastal Act regulations exempting repair and maintenance of existing structures. The Coastal Act exempts “repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities...” (PRC Sec. 30610(d)). Under the proposed definitions, the demolition alone of a significant portion of an existing dwelling would result in “redevelopment,” thus requiring a Coastal Permit. That outcome would be contrary to the intent of the Coastal Act.

Replacement of the “exterior cladding” of an existing home would also require a Coastal Permit, again contrary to the provisions of the Coastal Act that exempt repair activities that do not make the structure larger. Note that the proposed definition states also that “changes to exterior siding” would “generally” not be considered as alteration of a major structural component, although that provision seems to contradict the provision regarding “exterior cladding.” In sum, there are fundamental inconsistencies between the definition of “coastal redevelopment” proposed by CCC staff Modification and provisions of the Coastal Act which in most cases specifically exempt certain categories of development such as improvements to existing structures and “repair and maintenance.”

Moreover, the proposed inclusion of the concept of “redevelopment” to apply to the entire coastal zone and not only to property in the most sensitive areas, such as blufftop lots, is contrary to the Coastal Act and regulations that treat improvements and repairs to existing structures differently depending on the site’s sensitivity. That is, in locations inland of Highway One, away from bluffs and wetlands, the Coastal Act provides that an addition of any size to an existing single-family residence is exempt from a Coastal Permit. The proposed definition of “redevelopment (coastal)” would contradict that by treating a large improvement as if it were new development on a vacant lot.

Furthermore, apparent unfairness among similarly situated homeowners may result from the adoption of “redevelopment.” For instance, a structure subject to alteration of 45 percent of the walls, 45 percent of the floor structure, and 45 percent of the foundation would be exempt from a Coastal Permit (these components would not be “additive”), while a neighbor who proposes to replace 55 percent of the roof would be subject to a Coastal Permit. This type of negative public sentiment can hinder community acceptance of local land use regulations that is important for code compliance.

Perhaps more critical is that the proposed provisions related to “coastal redevelopment” would make it difficult and costly to carry out safety improvements needed to minimize flood hazard (such as raising a home, thereby altering 100 percent of the foundation) or to strengthen a home’s foundation against seismic shaking. Such complex and detailed provisions would be challenging to calculate and track over time, thereby making it difficult for staff to provide clear and definitive direction to property owners seeking guidance about the County’s permit review process (the County’s existing regulations, as well as some of the proposed staff revisions, are already challenging in this regard).

“Redevelopment” would be subject to the same LCPA requirements as entirely new construction on a vacant lot. Thus introducing the concept of “redevelopment” would have the effect of transforming “existing” structures into “new” development over time. Doing so would

appear to contradict certain Coastal Act provisions that apply specifically to existing residences. For instance, Coastal Act Sec. 30212(b) provides that demolition and reconstruction of a single-family residence does not constitute “new development” for purposes of providing public access to the shoreline, contrary to the proposed concept of “redevelopment.”

The County’s proposed Implementation Plan fully addresses the Coastal Act’s requirement for Coastal Permits for “development,” while acknowledging the exemptions provided by the Act and the accompanying regulations. Sec. 22.68.050.A, B., and C. specifies the improvements to existing structures, as well as repair and maintenance activities, which are exempt from a Coastal Permit in full conformance with the Coastal Act and its Administrative Regulations. Sec. 22.68.050.C. goes on to provide a way to measure the scale of repair and maintenance work that would trigger a Coastal Permit requirement, consistent with Coastal Act Regulations. That is, replacement of 50 percent or more of a single-family residence, or other structure, would not be considered “repair and maintenance,” but would instead require a Coastal Permit. Sec. 22.68.060 provides that improvements of any scale to an existing structure in a highly sensitive area, such as on a beach or in a wetland, would require a Coastal Permit, while for properties located between the sea and the first public road or within 300 feet of the inland extent of a beach, improvements that would result in an increase of 10 percent or more of floor area or an increase in height by more than 10 percent would also trigger a Coastal Permit.

Furthermore, Sec. 22.68.060 recognizes the possibility of small improvements that, cumulatively over time, become significant; thus a Coastal Permit would be required for an increase of less than 10 percent where a previous increase of less than 10 percent had been determined to be exempt. Finally, Sec. 22.68.040.A. provides that an addition of no more than 50 percent of the floor area or 1,000 square feet, whichever is less, to an existing single-family dwelling in many cases is “categorically excluded” from the Coastal Permit requirement (not including shoreline lots).

The Implementation Plan provisions proposed by the County fully address the Coastal Act’s requirements for Coastal Permits for “development,” while recognizing the improvements and repair or maintenance activities (except those in the most sensitive areas) exempt from Coastal Permits. The IPA provisions also provide tools for measuring the scale of proposed improvements and repair or maintenance projects, such as measuring increases in floor area or building height. Such measurements are routinely applied by the Community Development Agency to projects both within and outside the coastal zone using accepted techniques. In sum, Coastal Commission staff’s proposed definition of “coastal redevelopment” creates new rules that extend beyond the four corners of the Coastal Act and add complexities that would be unnecessarily difficult to administer and follow. While the County’s IP Amendments are intended to avoid these problems by reducing the regulatory intricacies and staying closely aligned with the proposed LUPA and the Coastal Act itself.

### 3. Flood Hazards (C-EH-3 and IPA Section 22.64.060.A.1.b)

As approved by your Board and the Coastal Commission, the LUPA included a single policy that addressed avoidance of a variety of different hazards (geologic, shoreline retreat, flooding, steep slopes, etc.). To more clearly articulate the issues and standards related to different types of hazards, staff is proposing to establish two “new” policies to separately address the hazard of flooding (Policy C-EH-3) as shown below, and hazards resulting from geologic factors (Policy C-EH-4), discussed in the following section (Item 4). In both cases, the new policies carry forward elements of the previously approved policy, with revisions to clarify their intent and applicability.

In general, staff’s approach is to integrate the best available science and practice in flood hazard adaptation established by the Federal Emergency Management Agency (FEMA) as implemented in collaboration with the County’s Department of Public Works (DPW), with the best available science made available through the US Geological Survey (USGS) CoSMoS sea level rise model into an effective, consistent, and coordinated program that can be readily understood and feasibly implemented by the public and all agencies involved. Utilizing and relying on the substantial amount of advanced research and analysis performed by FEMA and USGS scientists assures that the best available science is applied to managing storm and sea level rise flood risk, rather than relying on a uniform requirement for individual hazard reports suggested in the CCC Modifications that may be very costly, may duplicate hazard information already available through public agencies and other sources, and may vary in their scope, analysis and conclusions from one project consultant to another.

As shown in the text below, proposed Policy C-EH-3 would clearly define flood hazard areas as those properties located within either FEMA flood zones or within areas mapped by the County as potentially inundated by potential SLR. In addition, the policy defines standards that must be met by development in such areas. Specifically, development must comply with the construction standards contained in the County’s Floodplain Management Ordinance (Chapter 23.09), which implements the construction standards and requirements of FEMA (see C-EH-3.1).

In addition to the County standards already in place, the policy also incorporates a new requirement for additional “freeboard” height incorporated into a structure to accommodate sea level rise (see C-EH-3.2), as explained in more detail in the discussion of policy C-EH-8 (see Item 6). Finally, it should be noted that the specific erosion-related hazards impacting development in close proximity to bluff edges and along shorelines are separately addressed in Policy C-EH-5 (see Item 5). The requirements of this policy are carried out through provisions contained in IPA Section 22.64.060.A.1.b (see Attachment 5, page 1).

#### C-EH-3 Flood Hazards. Require applicants for development in flood hazard areas to demonstrate that:

1. The development will comply with construction standards contained in Chapter 23.09 (Floodplain Management);
2. The minimum floor elevation of development incorporates additional freeboard to accommodate potential sea level rise as provided for by Policy C-EH-8 (Minimum Floor Elevations in Flood Hazard Areas);
3. The development will not create a hazard or diminish the stability of the area; and

4. Shoreline development, conforms to Policy C-EH-5.B.

Flood hazard areas are defined as: 1) those areas shown on Federal Emergency Management Agency (FEMA) "Flood Insurance Rate Maps" (FIRM) and "Flood Boundary Water Maps" for Marin County which have been determined to be subject to flooding from a flood which has a one percent chance of occurrence in any one year (further designated as Zone A, AO, A1-30, AE, A99, AH, VO, V1-V30, VE, or V); and 2) those areas potentially inundated by sea level rise as shown on "Potential Sea Level Rise Maps" prepared and adopted by the County of Marin.

To minimize risks to life and property, and assure stability and structural integrity of existing structures, modifications of such structures consistent with this Policy shall be facilitated by application of Coastal Permit Exemptions, Categorical Exclusions, and Coastal Permits. Raising the structure as provided in Policies C-EH-5,8 and 9 and limiting the height to that required to provide for BFE and/or sea level rise elevation shall be deemed sufficient to comply with coastal hazard, public view, community character and related provisions of the LCP.

**4. Geologic Hazards (C-EH-4 and IPA Section 22.64.060.A.1.b)**

As described previously, staff is proposing a new policy to focus on the issues and standards related to geologic hazards, Policy C-EH-4. This policy clearly identifies the areas that would be considered subject to geologic hazards and incorporates relevant construction standards that are applicable in each case. The requirements of this policy are carried out through provisions contained in IPA Section 22.64.060.A.1.b (see Attachment 5, page 2).

**C-EH-4 Seismic Geologic Hazards Standards.** Require applicants for development in areas potentially subject to geologic hazards (which include Alquist-Priolo earthquake hazard zones and areas subject to landslides, liquefaction, steep slopes averaging greater than 35%, and unstable slopes regardless of steepness) to evaluate the extent of those hazards and demonstrate that:

1. Require The development shall comply with ~~to meet~~ the seismic safety standards of the Alquist Priolo Act (Calif. Public Resources Code Section 2621. et seq.) and all applicable seismic provisions and criteria contained in the most recent version of State and County codes;
2. Development shall incorporate construction and siting techniques to mitigate the geologic hazards identified above;
3. The development shall not create a hazard or diminish the stability of the area; and
4. Blufftop development, conforms to Policy C-EH-5.A.

## 5. Blufftop and Shoreline Development (C-EH-5 and IPA Section 22.64.060.A.2)

As originally approved by your Board in 2013, Policy C-EH-5 (New Blufftop Development) was intended to ensure that new development near bluffs is safe from bluff retreat by requiring structures to maintain an adequate setback from bluff edge to ensure stability for 100 years. The Coastal Commission Suggested Modifications of 2014 would revise and expand this policy in a number of significant ways. Specifically, the Modifications:

- Incorporated new provisions for “shoreline development” including a requirement that development must be setback a sufficient distance from the shoreline to ensure safety for 100 years;
- Specified that the elevating of structures to ensure safety or meet FEMA requirements would only be permitted until April 2017 unless the LCP was further amended;
- Prohibited the consideration of existing shoreline protective devices as part of stability analyses for either blufftop or shoreline development; and
- Created the new concept of “coastal redevelopment”

As described at length earlier in this report, the concept of “coastal redevelopment” is problematic for a number of reasons (see Item 2). Staff concerns with other Modifications include the following:

- The requirement for “setting back” as a response to flooding hazards is not an effective option for low lying shoreline areas such as Stinson Beach or along the East Shore of Tomales Bay where level topography in combination with relatively small lot sizes would not result in appreciable attenuation of flood waters or waves.
- The limitations on elevating structures beyond the year 2017 would conflict with FEMA provisions which require buildings to be elevated in some cases;
- It would be unrealistic and potentially problematic to do a hazard analysis that does not take into account existing shoreline protective devices;
- It is unclear where the policy would apply since “shoreline development” and “blufftop development” have to date not been defined in greater detail.

In response to these concerns, staff is proposing a number of significant revisions to Policy C-EH-5 which are intended to:

- Clearly define geographic areas where development would be considered “shoreline” or “blufftop”;
- Allow existing shoreline protective devices to be factored into the stability analysis for either blufftop or shoreline development;
- Add provisions which allow compliance with new standards to satisfy the Coastal Permit analysis requirement in cases where proposed work consists solely of raising a structure to meet FEMA and/or sea level rise safety standards;
- Clarify that hazard analyses shall rely on sea level rise estimates prepared, adopted, and periodically updated by the County (not determined on a case by case basis by individual applicants or their consulting engineers);
- Eliminate the concept of “coastal redevelopment” for the legal and practical reasons described previously(see Item 2)

## C-EH-5 New Shoreline and Blufftop Development

- A. **Blufftop Development.** Ensure that new blufftop development, ~~including coastal redevelopment (see below) and additions to existing structures,~~ is safe from ~~shoreline~~ bluff retreat and other coastal hazards without a reliance on shoreline protective devices. Except as provided for by Policies C-EH-7, C-EH-15, and C-EH-16, and C-EH-19, new blufftop development shall be set back from the ~~shoreline and~~ bluff edge a sufficient distance to ensure its stability and structural integrity for a minimum of ~~100 years~~ 50 years and to eliminate the need for shoreline protective devices. A coastal hazards analysis shall evaluate the effect of erosion, geologic and other hazards at the site to ensure ~~its stability and~~ structural integrity for a minimum of ~~100 years~~ 50 years. The coastal hazards analysis shall include a quantitative slope stability analysis demonstrating a minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic,  $k=0.15$  or determined through analysis by the geotechnical engineer). Safety and stability must be demonstrated for the predicted position of the ~~shoreline~~ bluff following ~~shoreline~~ bluff recession over at least ~~100 years~~ 50 years. The predicted ~~shoreline~~ bluff position shall be evaluated considering not only historical ~~shoreline and~~ bluff retreat data, but also acceleration of ~~shoreline and~~ bluff retreat due to continued and accelerated sea level rise, and other climate impacts according to potential sea level rise estimates prepared and adopted by the County of Marin for use in coastal hazards analyses, best available science. The effect of any existing shoreline protective devices shall not be factored into the required stability analysis.
- B. **Shoreline Development:** Ensure that new shoreline development (defined as development located in a VO, V1-V30, VE or V zone as mapped by the Federal Emergency Management Agency (FEMA)) ~~(including new development on vacant/undeveloped lots, additions to existing structures, and coastal redevelopment (see below))~~ shall be set back a sufficient distance from the shoreline to ensure stability and structural integrity is safe from shoreline erosion for a minimum of ~~100~~ 50 years without the need for new shoreline protective devices. ~~For coastal redevelopment, if there is insufficient space on a property to feasibly meet the setback requirements, then such development may meet the minimum 100-year stability and structural integrity requirement through setting back as far as feasible in tandem with.~~ Allow the use of caisson/pier foundations and elevation (including if elevation of the structure is necessary to meet Federal Emergency Management Agency (FEMA) flood requirements,) ~~but no other type of shoreline protective device is allowed.~~ Any approval for new shoreline development shall be accompanied by conditions necessary to achieve compliance with this policy ~~(e.g., appropriate provisions to ensure that all permitted development is relocated and/or removed before shoreline protection (other than caisson/pier foundations and elevation where allowed for redevelopment) is needed).~~ A ~~coastal~~ hazards analysis shall evaluate the effect of geologic and other hazards to ensure stability and structural integrity for the minimum ~~100~~ 50 year period, ~~and such analysis shall not factor in the presence of any existing shoreline protective devices.~~ The ~~coastal~~ hazards analysis shall also evaluate the effect of the project over time on coastal resources. Where development consists solely of raising an existing structure to meet the Base Flood Elevation (BFE) established by FEMA and any additional elevation required by Policy C-EH-8, compliance with C-EH-3 shall be deemed sufficient to comply with coastal hazard, public view, community character, and related provisions of the LCP.

~~including in terms of protecting public access, shoreline dynamics, natural landforms, and public views, including as project impacts continue and/or change over time, including in response to sea-level rise), including in terms of not only the impacts associated with the elevated structure, but also in terms of the effects of related development, such as required ingress/egress to structures and the provision of services (e.g., water, wastewater, etc.). The provisions of this subsection allowing the use of caisson/pier foundations and elevation for shoreline redevelopment in certain circumstances shall apply until April 30, 2017 or until this subsection is amended, whichever occurs first. If a complete LCP amendment to amend this subsection is not submitted as of April 30, 2017 (including where subsequent withdrawal of such LCP amendment will deem it to have not been submitted), then shoreline redevelopment will no longer be allowed to meet minimum 100-year stability and structural integrity requirements through the use of caisson/pier foundations and elevation. The April 30, 2017 deadline may be extended for good cause by the Executive Director of the Coastal Commission.~~

~~C. Coastal Redevelopment. Coastal redevelopment must be found consistent with all applicable LCP policies. Coastal redevelopment is development that is located on top of bluffs or at or near the ocean-sand interface and/or at very low lying elevations along the shoreline that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff home or other principal structure, or portions thereof, which results in:~~

~~(1) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.~~

~~(2) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.~~

#### **6. Additional Requirement to Elevate Structures in Flood Hazard Areas (C-EH-8, and IPA Section 22.64.060.A.1.b)**

The Federal Emergency Management Agency (FEMA) is responsible for preparing flood maps, known as Flood Insurance Rate maps (FIRMS) that identify the level of flooding risk for a particular area. Within high risk areas, property owners who are building a new structure or doing “substantial improvements” (which equal or exceed 50% of the market value of the structure) must comply with FEMA requirements and build such that the lowest finished floor level of the structure is at or above the designated base flood elevation (BFE) for the area in which it is located. In particularly hazardous areas near the shoreline (known as “V” zones) the

building must be constructed so that the bottom of the lowest horizontal structural member is at or above the BFE. It is important to note that while FEMA determines flood hazard risks based on current and historic flood conditions, and does not currently factor in anticipated future sea levels or climate change, the staff recommendation, as discussed below, adds in provisions to account for the projected sea level rise factor.

In Marin County, FEMA standards and requirements are implemented through the County's Floodplain Management Ordinance (Title 23.09). In 2013, the County adopted higher regulatory standards than required by either FEMA or Title 23.09 for construction in flood hazard areas. Among other things, these more stringent standards require that dwellings and most other buildings incorporate one foot of additional "freeboard" above the height that otherwise would be required to compensate for uncertainties in flood levels. In other words, a structure that would have been required to be built with a finished floor elevation at or above the BFE would now need to be built with a finished floor elevation of BFE+1 foot.

As part of the revised EH policies, staff is proposing to add an innovation with a new policy that would require additional "sea level rise" elevation of structures in mapped FEMA flood zones as well as those areas that are not currently within a designated FEMA flood zone, but are shown to be potentially impacted by sea level rise maps prepared as part of the C-SMART project. The intent of this policy is to build on FEMA scientific and technical analysis and existing governmental mechanisms to incorporate sea level rise while providing an additional margin of safety from storm flooding in the interim.

**C-EH-8 Minimum Floor Elevations in Flood Hazard Areas. For new development within Flood Hazard Areas as defined by Policy C-EH-3, the minimum elevation of construction shall incorporate additional height to accommodate potential sea level rise as follows:**

1. Within flood hazard areas mapped by the Federal Emergency Management Agency (FEMA), additional freeboard up to a maximum of three feet to accommodate identified sea level rise as depicted on "Potential Sea Level Rise Maps" prepared and adopted by the County of Marin, shall be added to the Base Flood Elevation (BFE) when establishing the minimum elevation required for proposed construction.
2. Within areas that are not within FEMA mapped flood zones but are shown as potentially inundated by sea level rise identified on "Potential Sea Level Rise Maps" prepared and adopted by the County of Marin, new development shall be constructed such that the lowest finished floor exceeds the highest natural elevation of the ground surface next to the proposed walls of the structure prior to construction (i.e., "highest adjacent grade") by an amount equal to or greater than the projected sea level rise as depicted on the above referenced maps.

As described previously, FEMA's requirement to elevate existing structures is triggered when proposed improvements equal or exceed 50% of the market value of the structure. Under Policy C-EH-8 and corresponding IPA provisions as currently proposed, the requirement to raise a structure (including the additional sea level rise factor) in mapped flood hazard or SLR areas would apply whenever a Coastal Permit is required. In other words, any work in these areas which does not otherwise qualify for a Coastal Permit Exemption or Exclusion, would be required to demonstrate safety from flood hazards and sea level rise for a period of at least 50 years (per Policy C-EH-1) through compliance with Policy C-EH-8. These provisions would likely result in situations where someone is proposing work that is NOT required to be elevated by FEMA (i.e. the work represents less than 50% of the market value of the structure), but IS required to be elevated by LCP provisions (i.e., requires Coastal Permit approval). In order to

bring the County's LCP provisions into closer alignment with FEMA's requirements, the Board may wish to consider an alternative whereby the requirement to elevate a structure is only triggered if proposed work equals or exceeds 50% of the market value. In this alternate scenario, home improvements which are substantial enough to require Coastal Permit approval, but not costly enough relative to the market value of the home to trigger FEMA's requirement to elevate would not be required to meet the County's additional elevation requirements (the rationale being that national policy in the form of FEMA National Flood Insurance Program (NFIP) does not regard such areas as imposing such a high risk to life and property that elevation is required). While this approach would ensure that the County's requirements more closely track with that of FEMA, it may be argued to fall short of adequately conforming to the Coastal Act's Section 30253 requirement to "*Minimize risks to life and property in areas of high ... flood...hazard.*"

## **7. Allowing Additional Building Height in Flood Hazard Zones (C-EH-9)**

In the Coastal Zone, building heights are generally limited to 25 feet above grade. Under normal circumstances, a 25 foot height limit is sufficient to accommodate up to a two story structure relatively easily. However, in flood hazard areas, a property owner who wishes to or is required to raise their home to meet FEMA requirements may be unable to do so without exceeding the applicable height limit and triggering a requirement for Variance approval. This problem may be further exacerbated by the proposed policy discussed above (see Item 6) which would mandate additional elevation (beyond what currently would be required) in anticipation of future sea level rise.

To address this concern, staff is proposing a new policy establish strictly limited adjustments in height standards to only accommodate flood safety elevation for properties within flood hazard areas mapped by FEMA or areas subject to potential sea level rise mapped by the County. The intent of this policy is to avoid penalizing homeowners who are simply trying to comply with federal and proposed LCP mandates to raise their homes for safety purposes.

Some homeowners who have to elevate their homes will not require a Coastal Permit at all due to Coastal Act/LCP exemptions or Categorical Exclusions. Figure 1 illustrates these situations. In other cases, as discussed below, work done through the C-SMART/LCP process has addressed the issue in a community-wide basis, and those findings will be carried over to the permit process. As proposed in C-EH-9 below, where the required elevation of an existing home maintains a height of less than 30 feet, those facts will meet required findings for compliance with community character and public view policies (illustrated in Figure 1 as "standard findings.")

Where an existing home would exceed 30 feet as a consequence of complying with the minimum elevation standards, the permit process could not rely solely on the comprehensive findings of the LCP process, but would undergo an individual evaluation of conformity to community character and public view standards. These projects would also be subject to Design Review, which takes into account the proposal's relationship to surrounding properties

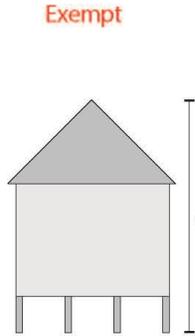
New development (as defined by this staff recommendation) or new homes on a vacant lot would be limited to a height of 25 feet above grade or 15 feet above the minimum floor elevation required by Policy C-EH-8, whichever is greater. This allowance would mirror

existing requirements within the Seadrift Subdivision where height requirements were established based on a overall height limit of 15 feet above finished floor.

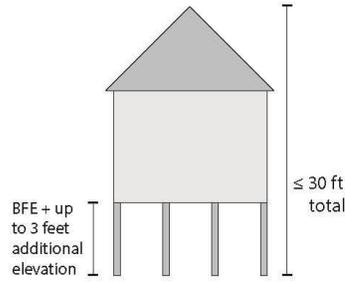
# Development Requirements

Marin County Community Development Agency, April 2016

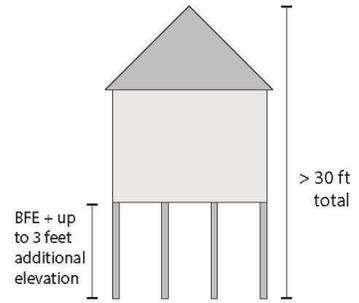
**22.68.060**  
Improvements to existing structures. Exempt if NOT in an appeal zone & NOT on a beach; in a wetland, stream or lake; seaward of the mean high tide line; in an ESHA; within 50 feet of the edge of a coastal bluff; or additions resulting in an increase of less than 10 percent of the floor area.



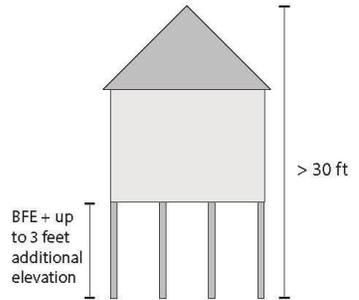
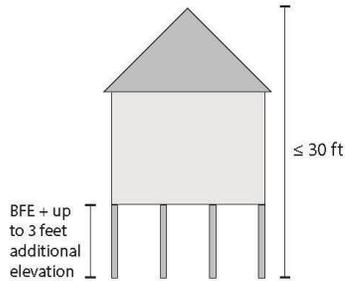
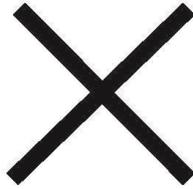
**Coastal Permit (Standard Findings)**



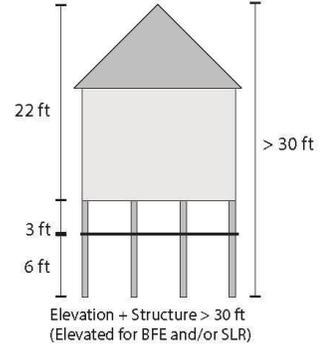
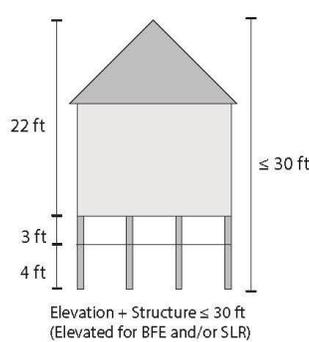
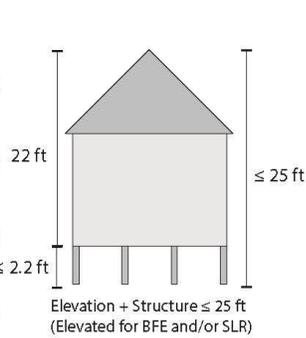
**Coastal Permit**



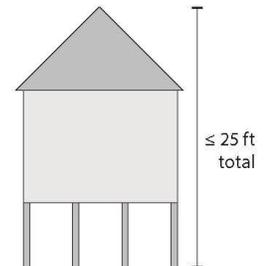
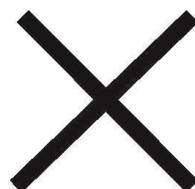
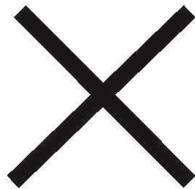
ON a beach; IN a wetland, stream or lake; seaward of the mean high tide line; IN an ESHA; or within 50 feet of the edge of a coastal bluff



IN APPEAL ZONE property that is located between the ocean and the first public road. Increase of no more than 10% of floor area of existing structure increase in height of no more than 10% of an existing structure.



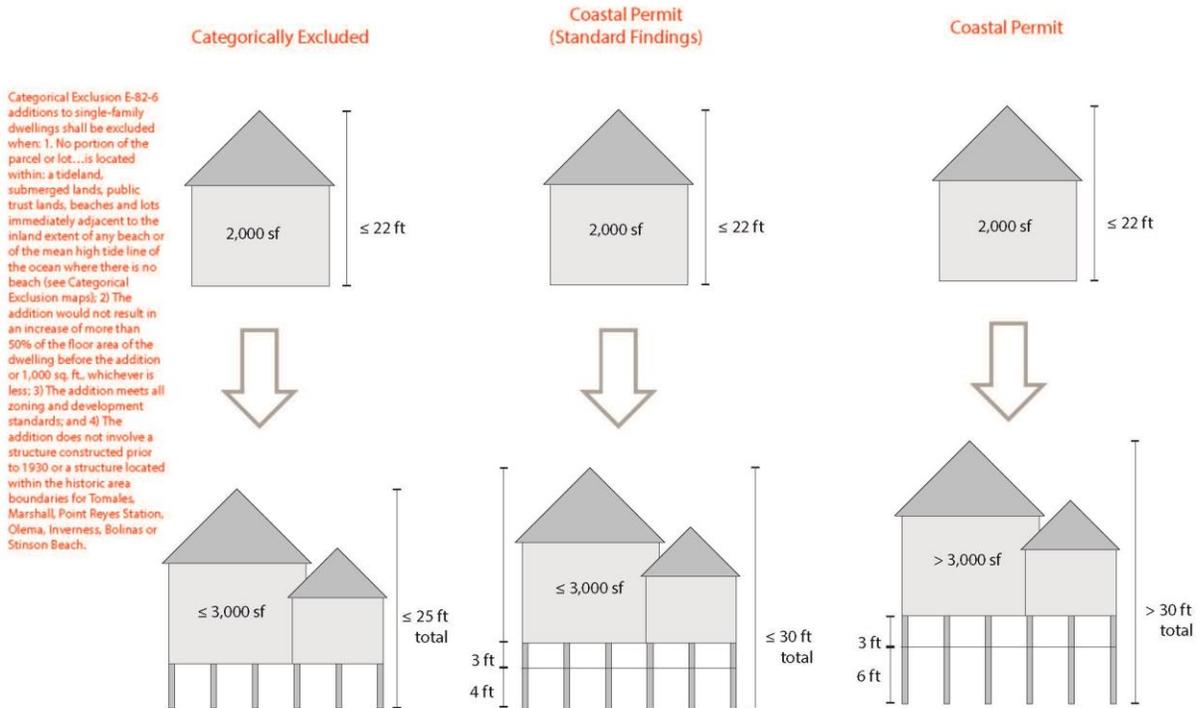
New Development on Vacant Lot or Non-Exempt, Non-Excluded Expansion.



**Fig. 1a. Development Requirements: Elevating Homes for Flood Safety**

Development Requirements

Marin County Community Development Agency, April 2016



**Fig. 1b. Development Requirements: Elevating Homes for Flood Safety**

**C-EH-9 Maximum Building Heights in Flood Hazard Areas.** For new development within Flood Hazard Areas as defined by Policy C-EH-3, the maximum allowable building height shall be 25 feet above grade, or 15 feet above the minimum floor elevation as required by Policy C-EH-8, whichever is greater (see Policy C-EH-11 for Maximum Building Heights within the Seadrift Subdivision) , except:

Where development consists solely of raising an existing structure by the minimum amount necessary to meet the Base Flood Elevation (BFE) established by FEMA plus any additional elevation required by Policy C-EH-8.:

1. A resulting building height of up to 30 feet above grade shall be deemed sufficient to comply with coastal hazard, public view, community character and related provisions of the LCP. Such Coastal Permits shall be subject to conditions of approval prohibiting future increases in the height, mass, and bulk of the structure.

2. A resulting building height which would exceed 30 feet above grade may only be permitted after an individual evaluation of conformance with public view, community character and related provisions of the LCP.

Changes are also added in the IPA (in Attachment 7) to implement this Policy as follows:

**22.64.045--Property Development and Use Standards...**

**3. Height Limits and Exceptions...**

**D. Height Exceptions:**

**3. Flood Hazard and Sea Level Rise Safety. Where an increase in height in the coastal zone consists solely of raising an existing structure by the minimum amount necessary to meet the Base Flood Elevation (BFE) established by FEMA plus any additional elevation required by Policy C-EH-8, the maximum height limit allowable (without a variance) shall be increased by that height.**

Similar text is also added to **TABLE 5-4-b – COASTAL ZONE DEVELOPMENT STANDARDS** (Continued) at footnote (4)

Staff acknowledges there is a tension between the desire to protect lives and property and the concerns about possible effects of elevating structures on community character and public views. Along Marin's coastline, by far the highest current base flood elevations (BFEs effective May 2009), and therefore the greatest potential for visual impacts, occur in the community of Stinson Beach, where current BFE's range from 19 to 22 feet NAVD along the Seadrift Subdivision and up to 26 feet NAVD in areas near the Calles and Patios. These BFE's have resulted in "understory" heights in a few cases of up to 12 to 14 feet above natural grade for homes built or raised to comply with FEMA elevation standards.

Several policies in the LUPA address the need to protect community character. For example, Stinson Beach Community Specific Policy C-SB-1 states:

**C-SB-1 Community Character of Stinson Beach.** Maintain the existing character of residential, small-scale commercial and visitor-serving recreational development in Stinson Beach. New development must be designed to be consistent with community character and protection of scenic resources.

At the same time, the Coastal Act establishes the imperative in Section 30253.a to "Minimize risks to life and property in areas of high geologic, flood, and fire hazard". The proposed Environmental Hazard policies seek to carry out the crucial Coastal Act requirement to minimize risk to life and property in harmony with maintaining community character.

While Coastal Act section 30251 specifies that "Permitted development shall be sited and designed ... to be visually compatible with the character of surrounding areas," the term "character" is not defined. As part of the C-SMART process, the County hosted a design charrette where local residents worked with County staff and volunteer architects, planners, engineers and other design professionals to articulate Stinson Beach's "community character". Common themes that emerged included the diversity of building styles and relationships to nature. Words such as 'funky' and 'eclectic' have been used to describe the community and a

diversity in building heights, roof types, materials, colors, etc. are already prevalent throughout the town, even on houses adjacent to one another (see Figures 2-4). In addition, staff field studies and observations revealed that views to and along the shoreline in these developed areas are already limited and raising structures would not additionally block such views. For example, along the Calles and Patios neighborhood of Stinson Beach, the vegetation, not the development, is the primary obstructor of views from Shoreline Highway (see Figure 5).

In site visits and workshops with local residents similar conditions were found along the East Shore of Tomales Bay. A number of homes in these areas have already been elevated and contribute to the eclectic character. Where existing development already blocks views in certain areas of the Tomales Bay communities, elevating these homes would have no additional viewshed impacts.

Therefore, provisions allowing buildings to be elevated will not necessarily result in negative impacts on community character. It should also be noted that the new 2015 FEMA maps currently under review (expected to go into effect in 2017) show a significant reduction in the required BFE in a critical areas such as the Calles.



Figure 2



Figure 3



Figure 4



Figure 5

#### 8. Ongoing Work to Respond to Sea Level Rise (Program C-EH-22.a)

In approving EH policies and programs in 2013, your Board approved a Program which recognized that on-going work would be needed to address sea level rise. As a result of C-SMART, staff is proposing to refine and expand this Program as shown below to reflect the findings of C-SMART, support additional work to respond and adapt to sea level rise and climate change, and incorporate it into future LCP Amendments as necessary.

Commission staff have suggested that a number of policies throughout the LCPA be revised to specifically address sea level rise impacts on other coastal resources (such as biological resources, public facilities, and public access). Policies outside of the Environmental Hazards Chapter were approved by your Board in 2015 and are not before you at this time. More significantly, hazard policies reflect differing conditions on the ground, which may or may not be present in specific locations. In this way they are similar to policies that apply to wetlands, or riparian areas, or habitat of endangered species, or specific coastal accessways, or even points of particular scenic value. If the County were to follow the Modification and attempt to address how to respond to the presence or absence of the resources or conditions in each policy that may have a relationship to them, the resulting redundancy, length and complexity of the bloated language that would result would obscure, rather than advance the objectives of the LCP. It is not necessary to modify each policy to reflect how it may be affected by every other Coastal Act concern since all policies throughout the LCPA are considered in conjunction with each other during review of a particular project. While there will be an opportunity for Commission staff to propose revisions to specific policies of concern through "Suggested Modifications" when the full LCPA and IPA are subsequently considered by the Coastal Commission later this year.

**C-EH-22 Sea Level Rise and Marin's Coast.** The County shall consider the best available and most recent scientific information with respect to the effects of long-range sea level rise when establishing sea level rise maps, scenarios, and assumptions for use in shall be considered in the preparation of findings and recommendations for all geologic, geotechnical, hydrologic and engineering investigations, including the coastal hazards analysis identified in C-EH-5. Support scientific studies that increase and refine the body of knowledge regarding potential sea level rise in Marin, and possible responses to it.

***Program C-EH-22.a Research and Respond to the Impacts of Sea Level Rise on Marin County's Coastal Zone Shoreline.***

1. Building upon the C-SMART Vulnerability Assessment, cContinue to gather information on the effects of sea level rise on Marin County's Coastal Zone shoreline, including identifying the most vulnerable areas, structures, facilities, and resources; specifically areas with priority uses such as public access and recreation resources, including the California Coastal Trail, Highway 1, significant ESHA such as wetlands or wetland restoration areas, open space areas where future wetland migration would be possible, and existing and planned sites for critical infrastructure.

Updates to the Any vulnerability assessment shall use best available science and multiple scenarios including best available scientific estimates of expected sea level rise, such as by the Ocean Protection Council [e.g. 2011 OPC Guidance on Sea Level Rise], Nation Research Council, Intergovernmental Panel on Climate Change, and the West Coast Governors Association.

2. Update potential Sea Level Rise Maps (referenced in Policy C-EH-8). Modify the current and future hazard areas on a five to ten year basis or as necessary to allow for the incorporation of new sea level rise science, monitoring results, and information on coastal conditions.
3. Research the potential for relocation of existing or planned development to safer locations. Explore the feasibility of a managed retreat program, which may involve protecting vacant land through zoning or conservation easements and/or removing development from areas vulnerable to sea level rise and restoring those areas to a natural state for open space or recreation. Identify potential mechanisms and incentives for implementation, which may include:
  - a. Acquire vacant vulnerable properties.
  - b. Acquire developed vulnerable properties before damage occurs.
  - c. Acquire developed vulnerable properties only after significant damage by storms or high tides.
  - d. Explore the feasibility of a public parkland exchange programs that encourage landowners to move out of hazardous areas.
  - e. Identify and make available (eg. through rezoning) land outside the hazard areas to allow owners of vulnerable properties to relocate nearby.
  - f. Explore Transferable Development Credit programs.

- g. Explore possibility of amortization of homes in coastal hazard areas.

Work with entities that plan or operate infrastructure, such as Caltrans and PG&E, to plan for potential realignment of public infrastructure impacted by sea level rise, with emphasis on critical accessways including affected segments of Shoreline Highway and Sir Francis Drake Boulevard.

- 4. Support efforts to monitor sea level rise impacts to natural resources and ESHA, including Bolinas Lagoon, Tomales Bay, Esteros San Antonio and Americano and other wetland areas; and Lagunitas, Walker, Estero Americano, Dillon, Stemple and other creeks; rocky intertidal areas, beaches and other habitat types vulnerable to sea level rise. Collaborate with Greater Farallones National Marine Sanctuary (GFNMS), Tomales Bay Watershed Council and other local, regional, state and federal entities to establish monitoring methods and track the effects of sea level rise.
  - 5. Promote green infrastructure pilot projects (horizontal levees, dune restoration, etc.) with environmental benefits that may help protect assets from sea level rise and increased storm surges. Study and monitor such projects over time and share lessons learned with other jurisdictions.
  - 6. Update standards for ESHA buffers and setbacks to account for sea level rise, based on the best available science and considering the effects of shoreline development on landward migration of wetlands.
- ~~2. Based on information gathered over time, propose additional policies and other actions for inclusion in the LCP in order to address the impacts of sea level rise. As applicable, recommendations may include such actions as:~~
- ~~a. relocation of existing or planned development to safer locations, working with entities that plan or operate infrastructure, such as Caltrans;~~
  - ~~b. changes to LCP land uses, and siting and design standards for new development, to avoid and minimize risks;~~
  - ~~c. changes to standards for wetland, ESHA, and stream buffers and setbacks;~~
  - ~~d. changes to standards for erosion rates;~~
  - ~~e. modifications to the LCP Access Component to ensure long term protection of the function and connectivity of existing public access and recreation resources; and~~
  - ~~f. modifications to the Regional Transportation Plan.~~

**Program C-EH-22.b Study Periodically Update Retreat Analysis.** ~~The County shall seek funds for a study to identify threats of bluff shoreline retreat, including bluff retreat, taking into account accelerated sea level rise. Analysis of increased erosion potential and shoreline retreat due to sea level rise is included in the Marin Ocean Coast Vulnerability Assessment. The coastal erosion hazard maps present the results of models that predict the geomorphic evolution of cliffs, beaches, marshes, Easkoot Creek flooding and FEMA flood hazards. Update the shoreline retreat analysis every 5 to 10 years or as needed.~~

**Part II. Implementation Plan Provisions Related to  
Coastal Permitting and Administration**  
Development Code Chapters 22.68 and 22.70

**1. Coastal Permit Exclusions: Categorical Exclusion Noticing (Sec. 22.68.040.B)**

Developments with minimal impact on coastal resources can be “categorically excluded” from the requirement to obtain a Coastal Permit, pursuant to Coastal Act Sec. 30610(e). Three categorical exclusion orders have been adopted by the Coastal Commission for Marin County’s coastal zone. The exclusion orders identify a list of development types in specific locations that are subject to the exclusion. Although established by the Coastal Commission, the categorical exclusion orders are administered by the County. The Coastal Commission’s regulations provide for potential “challenges” when the County determines that a particular development is excluded under the exclusion orders. Thus, provision of notice to the public and to the Coastal Commission of categorical exclusion determinations is appropriate.

Coastal Commission staff has proposed that notice be provided by means that include maintaining a “list and summary” of categorically excluded developments at the Community Development Agency’s public counter, along with “evidentiary information and other materials (i.e., location maps, site plans, etc.)” (See Attachment #6, Sec. 22.68.040.B.) Coastal Commission staff has also proposed providing notice not only to the applicant and the Coastal Commission, but also to persons interested in development in specific locations or more broadly in specific zoning districts. In considering this proposed change, staff acknowledged the public benefit of increased transparency around categorical exclusions, but with some concern over noticing and disclosure procedures that may be overly complex for a decision making process intended to be streamlined and efficient for projects that, by definition, involve little risk to coastal resources and should be routinely approved if they meet all applicable criteria. . For example, the Community Development Agency does not routinely track development types by zoning district. How the content of the recommended “list” and “summary” differed was also unclear. The following County staff recommendation will expand the County’s current practice of providing public information for categorical exclusions, consistent with its current and anticipated e-government capabilities, while also addressing the intent of the CCC staff recommendation.

**Recommendation:**

Coastal Commission staff has proposed additions to Sec. 22.68.040.A. that would reference the specific Categorical Exclusion Orders approved by the Coastal Commission for Marin County’s coastal zone. Staff recommends approval of the additions, with exception of the final sentence about the contents of the orders, which is unnecessary in this context. In discussions with the Commission staff, a means was crafted to provide such notice but in a more efficient manner that nevertheless would allow anyone who is interested to monitor categorical exclusion determinations. (See Attachment #6 for complete recommended text.) As recommended, notice would be provided by mail to the applicant, the Coastal Commission, and any person who requests such notice. (Under current practice, which will continue, interested persons can request mailed notice at no charge for a specific project. Those who would like mailed notice of projects in a specific geographic area or of all projects that are under review by the Community Development Agency can “subscribe” for a modest annual fee.) Furthermore, categorical

exclusion determinations would be posted on the Community Development Agency's website, available to anyone who looks there.

Staff proposes that such notice include not only the project location and description, but also a brief statement of the reason for determining that the development is appropriately excluded. Any person interested in obtaining further information from project files would have the opportunity to do so. Staff's recommended approach would provide substantial information to persons interested generally in categorically excluded developments, without creating unnecessary paperwork.

## **2. Coastal Permit Exemptions: Determining Which Developments are Exempt from a Coastal Permit; Providing Public Notice of Exemptions (Sec. 22.68.050)**

Certain developments are exempt under the Coastal Act from the requirement to obtain a Coastal Permit. Various types of exemptions are listed in Sec. 22.68.050, as authorized by the Coastal Act and accompanying regulations (Public Resources Code Sec. 30610 and Calif. Code of Regulations Sec. 13250 and 13253). Typical exempt projects in Marin include small scale additions to existing single family homes (no more than 10% of the existing floor area), fences and landscaping, and agricultural accessory buildings. The exemption provisions that appear in Sec. 22.68.050 must be read together with the provisions in Sec. 22.68.060, which provides for "non-exemption" of a certain subset of developments. The exemption and non-exemption provisions of the Implementation Plan mirror the manner in which the Coastal Act presents them. That is, the Coastal Act generally exempts from a Coastal Permit certain broad categories of development (for instance, improvements to existing single-family residences), while the regulations go on to specify exceptions to the general rule, or "non-exemptions," (for instance, improvements to single-family residences that are located on a beach or in an environmentally sensitive habitat area).

Coastal Commission staff proposed to revise the list of exempt developments contained in Sec. 22.68.050, paragraphs A. through K. (See Attachment #6.) Similar to the above staff concerns regarding categorical exclusions, the proposed revisions to procedures for issuing exemption determinations would add unnecessary complexity, and thus more room for interpretation and argument, to a decision that should by legislative intent be straightforward and predictable. For instance, for the purpose of defining those improvements to existing single-family residences that are exempt, the proposed revisions would use hard to understand phrases such as "improvements to existing fixtures and other structures directly attached to an existing structure..." (sub-paragraph A.1.) By contrast, the Coastal Act and accompanying regulations are much more direct. Improvements to existing single-family residences are generally exempt from a Coastal Permit, and the Coastal Commission's regulations expand on that exemption by defining what is considered to be a part of an "existing single-family residence" (for instance, fixtures directly attached to the residence, garages, and landscaping are considered to be part of the residence for purposes of Coastal Permit exemptions). Internal remodeling that does not expand the structure beyond specified dimensions are also exempt, while other similar development is Categorical Excluded from permit requirements.

Coastal Commission staff has proposed to add to the first paragraph of Sec. 22.68.050 certain procedural steps involved in determining that an activity is exempt from a Coastal Permit,

including a new requirement for public notice whenever the County determines an activity is exempt from a Coastal Permit. But because exempt activities are not regulated by the Coastal Act, the provision of such notice would go beyond what is actually required by statute. Going beyond the minimum legal standards for public notice is not in itself inappropriate or impossible. Existing procedures in the County Development Code allow for expanded notice, however, it's reserved for discretionary projects subject to a standard notice requirement rather than exempt projects that are on their face are ministerial, not subject to appeal and should be processed through a building permit. The type of notice proposed by Coastal Commission staff would result in a major shift away from this distinction in process and would essentially move exempt projects closer to discretionary review as if the projects were in fact regulated through a public process.

Coastal Commission staff has asserted that Coastal Act Sec. 30625 authorizes Coastal Commission review of every determination by the County that a proposed activity is exempt from a Coastal Permit. But Sec. 30625 addresses who may appeal an appealable action on a coastal development permit or claim of exemption. That provision addresses much narrower situations than day-to-day determinations by the County that particular activities are simply exempt under the law. Not every coastal development permit is appealable, as provided by Coastal Act section 30603, and not every determination that an activity is exempt from permit requirements amounts to an appealable action on a claim of exemption. In County staff's opinion, the above Coastal Act provision allows the appeal of "claims of exemption" from property owners seeking development approvals when the owner's "claim" is rejected by the County and a Coastal Permit is therefore required.

#### **Recommendation:**

To improve clarity, staff recommends that the list of exempt developments closely align with the Coastal Act and accompanying regulations, such as those addressing improvements to existing single-family residences and other structures, as discussed with Coastal Commission staff. Staff also recommends deleting Coastal Commission staff's proposal to limit nuisance abatement activities (numbered as paragraph K.) to temporary developments. The Coastal Act provides that no provision of the Coastal Act is a limitation on the power of a county to declare, prohibit, and abate nuisances (Public Resources Code Sec. 30005(b)). Furthermore, rather than Coastal Commission staff's proposed inclusion of a lengthy paragraph about "Ongoing Agricultural Activities" (numbered as paragraph L. below), staff recommends simply providing a reference to the definition of that term, to be found in Chapter 22.130. (The definition of "Ongoing Agricultural Activities" was previously approved as part of the Board of Supervisors action on August 25, 2015, and thus does not require further action by the Board.) Along with various revisions (see Attachment #6), staff recommends appropriate renumbering.

County staff also recommends against requiring providing public notice of Coastal Permit exemptions as proposed by Coastal Commission staff. Requiring public notice of exempt activities is supported by the contention that exempt activities are appealable (the County does not require public notice in both the coastal and non-coastal areas of the County for projects that are exempt from Coastal Permits and other discretionary entitlements). In County staff's opinion, however, projects determined to be exempt by the County and other local agencies should not be subject to standard procedures for appeals or challenges that warrant a public notice procedure. If a project is determined to be exempt under the Coastal Act and local implementing criteria, it should be processed strictly in the manner intended by the statute for exempt activities. Applying public notice and appeal procedures would have the effect of

treating exemption determinations as discretionary projects, thereby extending what is a relatively quick decision-making process by weeks or months, It would also divert scarce staff resources to an activity that is not required by the Coastal Act or regulations. Staff therefore does not recommend including public noticing of exemption determinations in the Implementation Plan.

Staff notes, however, that notice is routinely provided to the Coastal Commission of developments that are categorically excluded from a Coastal Permit or that require a Coastal Permit (either appealable or non-appealable to the Coastal Commission). In discussions with Coastal Commission staff, Community Development Agency staff agreed to expand on this noticing by also providing notice to the Coastal Commission of proposed activities that require some form of County review, such as Design Review, but which are exempt from a Coastal Permit either because the activity does not constitute a “development” or because the activity is a listed “exempt development.” In these instances, information about the County permit (Design Review or a zoning permit) that is posted online could also include a statement regarding the exemption status from a Coastal Permit, effectively providing notice to the public. Such notice would provide an effective alternative to the unwieldy noticing procedures originally proposed by Coastal Commission staff. The process would not require handling an entirely exempt activity as if it were regulated, because it would apply to projects that already require some other form of County review. Because such noticing would not be part of the Coastal Permit process, staff does not recommend including it in the Implementation Plan.

### **3. Coastal Permit Exemptions: Determining Which Developments are Not Exempt from a Coastal Permit (Sec. 22.68.060)**

Coastal Commission staff has proposed to revise the list of non-exempt developments contained in Sec. 22.68.060, paragraphs A. through K. (See Attachment #6.)

#### **Recommendation:**

Staff recommends that revisions be made, but in an alternate way, as discussed with Coastal Commission staff. As with Sec. 22.68.050 discussed under Issue #2 above, staff recommends aligning the list of non-exempt developments as closely as possible with the Coastal Commission’s regulations. Staff also recommends deleting from the list “Shoreline Protective Devices” (originally numbered as paragraph D.) because the provision is redundant. Such devices are already addressed by “Repair and maintenance activities” (originally paragraph K.)

### **4. Coastal Permit Filing Procedures (Sec. 22.70.030)**

Coastal Commission staff proposed several clarifications in Sec. 22.70.030.A., which addresses materials required for a Coastal Permit application. (See Attachment #6.) While several of the clarifications are appropriate, sub-paragraph 4. would create a redundancy. Furthermore, in paragraph B., Coastal Commission staff proposed various changes that would address Coastal Permit-exempt activities, which as noted above, are not regulated by the Coastal Act. Other

proposed changes would duplicate public noticing provisions for Categorical Exclusions and for other types of Coastal Permit action, which are found in other parts of the Implementation Plan.

**Recommendation:**

As discussed with Coastal Commission staff, County staff recommends changing the description of staff determinations regarding Coastal Permit applications to include only those that are appropriately made under the Coastal Act, such as classifying developments as Categorically Excluded, suitable for a De Minimis Waiver, or appealable or non-appealable to the Coastal Commission. Furthermore, because public noticing provisions for various types of Coastal Permit actions are contained elsewhere in the Development Code (such as in Sec. 22.70.050), it would be redundant to repeat them in the paragraph concerning Determination of Processing Category. Aside from the issue of redundancy, County staff generally employs a code convention of avoiding or minimizing the practice of stating the same requirement in two places in the Development Cod since it raises the risk that one version might inadvertently contain slightly different wording from the other, leading to subsequent problems in interpretation.

Furthermore, Coastal Commission staff proposed to require that applicants state whether their projects are appealable to the Coastal Commission or not. That determination is the County's responsibility and not that of the applicant, and thus staff recommends deletion of that requirement. Finally, staff recommends other minor wording changes, including deletion of redundant provisions, along with the recommended inclusion of the word "written" with respect to requests for a public hearing, in order to maintain an appropriate public record of such requests.

**5. Challenges to Permit Processing Category Determination (Sec. 22.70.040)**

Coastal Commission staff has proposed various changes to Sec. 22.70.040, which addresses the ability of applicants or interested persons to dispute, or "challenge," the Community Development Agency Director's determination regarding the appropriate Coastal Permit processing category for each project. One proposed change would be to include the full description of "challenge" procedures in Sec. 22.70.040, rather than to simply refer to existing, non-coastal procedures found in Development Code Chapter 22.114, as originally proposed by the County. (See Attachment #6.)

**Recommendation:**

Including the full set of challenge procedures in Sec. 22.70.040, as proposed by Coastal Commission staff, would improve clarity, and staff recommends approval of that general approach. However, staff recommends several changes in order to bring Sec. 22.70.040 into conformity with other provisions of the Implementation Program. First, staff recommends that Coastal Permit exemptions not be construed as "challengeable" for the reason described under Issue #2 above, which is that exemptions are not regulated by the Coastal Act. Staff recommends also deletion of the references to "de minimis waiver" and "public hearing waiver" on the basis that potential challenges to those processing categories are already enabled by other provisions of the Implementation Program (see Sec. 22.68.070 and 22.70.030.B.6,

respectively). Similarly, the deadlines for providing public notice are also recommended for deletion from paragraph B. because public notice requirements are already stated in Sec. 22.70.050 and should not be repeated to avoid redundancy.

In Sec. 22.70.040.C, which concerns the Coastal Commission's procedures upon receiving a challenge to the County's determination (for instance, that a particular development is categorically excluded), staff recommends a further clarification regarding the timing of the Coastal Commission's response. As proposed by Coastal Commission staff, the Executive Director of the Coastal Commission would be required to respond "as soon as possible." As an alternative to that open-ended phrase, staff recommends that the period for response be "within 10 working days unless the applicant and the County agree to an extension." Thus a reasonable time limit (one that could be extended as necessary), would be included in the process. (See Attachment #6).

## **6. Public Notice of Coastal Permits (Sec. 22.70.050)**

Providing public notice of pending actions on Coastal Permit matters is a key step in maximizing public participation. The Implementation Plan, as adopted by the County, provides for public notice by means of posting at the project site, first-class mail, and other means (see Sec. 22.70.050). County staff supports continuation of posting public notices at the project site even though the Coastal Commission's regulations (CCR Sec. 13565 and 13568) do not specifically require site posting, whether by means of one posted notice or by multiple posted notices.

Coastal Commission staff proposed several additional provisions regarding public noticing. For instance, Coastal Commission staff suggested requiring posting of a notice on the project site in a way that is "conspicuously visible to the general public." (See Attachment #6.) Requiring visible public notice is appropriate, as it would ensure that the required posted notice could be seen. However, the Coastal Commission staff's proposal to require posted notice in "as many locations as necessary to ensure that the public is appropriately provided notice" is vague and could invite disputes (e.g., how many locations would be necessary?).

### **Recommendation:**

Staff recommends adoption of robust public notice provisions, supporting community participation in Coastal Permit decisions, while enabling efficient administration by the Community Development Agency. For instance, Coastal Commission regulations require public notice to "persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction." Staff recommends that noticing procedures currently in effect should continue, enabling interested persons to request notice for specific projects, for specific geographic areas, and for all projects. Staff notes that additional public notice, even beyond that contemplated by the Coastal Commission's regulations, is afforded via the Community Development Agency's website and free subscription notice system where interested parties can specify any and all geographic areas for which they wished to be notified of applications and permits being processed. . Information about pending permit actions is provided there for anyone who chooses to look for it. (See Attachment #6.) Other revisions recommended by staff would eliminate redundancy in certain noticing provisions.

## 7. Notice of Final Action on Coastal Permits (Sec. 22.70.090)

Following a decision on a Coastal Permit, the County provides to the Coastal Commission and other interested parties a “Notice of Final Action.” Coastal Commission staff Modifications would expand significantly the content of the Notice of Final Action that is required by Sec. 22.70.090. The proposed changes would require a Notice that identifies the project, applicant, location, and decision (as is provided currently by the County and is proposed to continue), but would also require mailing to the Coastal Commission paper copies of staff reports and project plans along with paper or electronic copies of technical reports and correspondence. In essence, the required Notice of Final Action would need to include much or all of a project file.

### **Recommendation:**

Mailing extensive file materials for every Coastal Permit decision, including those made for minor or uncontroversial projects, would divert scarce staff resources from other essential tasks. Moreover, doing so would exceed what is required by the Coastal Commission’s regulations (see Calif. Code of Regulations Sec. 13571). Staff recommends instead, following discussions with Coastal Commission staff, the provision of Notices of Final Action in a way that meets the requirements of the regulations, while minimizing unnecessary staff work. As recommended, Sec. 22.70.090 would provide for prompt mailed notice that includes essential information (such as conditions of approval, written findings, and procedures for appeal to the Coastal Commission, if applicable). In addition, Notices of Final Action would be posted on the Community Development Agency’s webpage. In that way, interested persons, project applicants, and Coastal Commission staff all could readily find information on all projects under review, whether or not they were the recipients of mailed notice. (See Attachment #6.)

## 8. Other Changes and Clarifications

### Item 8.a. Purpose, Applicability, and Coastal Permit Required (22.68.010, 22.68.020)

Coastal Commission staff has proposed several other clarifications to Sec. 22.68.010 and 22.68.020. Staff recommends approval of these changes. Coastal Commission staff has also proposed including the definition of “development.” While staff concurs with that addition, staff recommends deletion of unnecessary phrases that are not contained in the Coastal Act definition of “development.” (See Attachment #6.)

### Item 8.b. De Minimis Waiver of Coastal Permit (22.68.070)

Coastal Commission staff has proposed several changes to the procedures in Sec. 22.68.070 that authorize issuance of De Minimis Waivers for minor developments with no potential impact to coastal resources. Those changes would provide for review and concurrence by the Board of Supervisors prior to a De Minimis Waiver becoming effective. Staff recommends two minor changes to the De Minimis Waiver provisions in order to better conform with existing County practice. The term “calendar days” should be revised to simply “days” in paragraph F, because

the County's Development Code already specifies "days" to mean calendar days. The other change, to paragraph G, would apply a three-year, rather than two-year, time limit for De Minimis Waivers, to conform to County practice which generally provides that entitlements must be vested within three years. Furthermore, Public Resources Code Sec. 30624.7 that addresses such waivers does not specify a two-year time limit. (See Attachment #6)

Item 8.c. Development requiring a Coastal Commission Coastal Permit (22.68.080)

Coastal Commission staff has proposed several clarifications to Sec. 22.68.080 with the goal of clarifying the Coastal Commission's permanent coastal permitting jurisdiction, in contrast to the County's jurisdiction, and making other procedural changes. Staff recommends the adoption of those clarifications, but with an additional change to delete a redundant phrase describing the Coastal Commission's jurisdiction area. (See Attachment #6.)

Item 8.d. Consolidated Coastal Permit (22.68.090)

Coastal Commission staff has proposed minor clarifications to Sec. 22.68.090 regarding developments that require two Coastal Permits, one from the County and one from the Coastal Commission. Staff recommends approval of the proposed changes. (See Attachment #6.)

Item 8.e. Required findings (22.70.070)

Coastal Commission staff has proposed minor changes to Sec. 22.70.070, including the addition of paragraph N. regarding the findings to be adopted by the review authority when approving a Coastal Permit. That proposed addition would be redundant, as other provisions already require that a project be consistent with all provisions of the LCP in order to be approved. Therefore staff recommends deletion of that paragraph. (See Attachment #6.)

Item 8.f. Appeal of Coastal Permit Decision (22.70.080)

Coastal Commission staff has proposed to make several changes to Sec. 22.70.080, which provides for appeals of certain projects at the County level and also to the Coastal Commission. First, the Coastal Commission staff has proposed to include a full description of the County's appeal process, rather than rely on a reference to separate Chapter 22.114 of the County's Development Code. Including the description of procedures in 22.70.080 would heighten clarity, and staff recommends doing so. However, it would be inappropriate to include paragraph 5 as proposed by Coastal Commission staff, because that paragraph would prohibit the County from charging an appeal fee. By contrast, Coastal Commission regulations do not prohibit a local government from charging an appeal fee. Instead, those regulations provide that where a local government does charge an appeal fee, a potential appellant can simply file an appeal directly with the Coastal Commission. As proposed by the County, the Implementation Plan would allow such direct appeals (see Sec. 22.70.080.B.2(d) in Attachment #6.) Staff also recommends deleting the term "aggrieved" person from Sec. 22.70.080.A.2, on the basis that County practice is to accept all appeals. Staff notes in passing that appellants to the Coastal Commission must be determined to be "aggrieved," under the Coastal Commission's definition, and thus the term appropriately appears in Sec. 22.70.080.B.

Coastal Commission staff also has proposed changes that would prohibit both Coastal Zone Variances and land divisions from being considered the “principally permitted use.” Without the status of principal permitted use, Coastal Zone Variance and land division approvals would become appealable to the Coastal Commission. However, inserting that requirement into Coastal Permit appeal provisions would address a substantive, rather than a procedural, matter. Thus, the change would be inappropriate for insertion in Sec. 22.70.080. Substantive requirements for Coastal Zone Variances are addressed elsewhere, in Sec. 22.70.150, and requirements for land divisions are addressed in Sec. 22.70.190. Furthermore, as discussed with Coastal Commission staff, proposed changes to Tables 5-1 through 5-3 will indicate that a land use that does not meet applicable standards without variance will be considered as a “permitted use” rather than the “principal permitted use.” Permitted uses, as defined by the LCP, are automatically appealable to the Coastal Commission.

In sum, staff recommends approval of Sec. 22.70.080, with several minor changes intended to avoid redundancy and enhance clarity. (See Attachment #6.)

Item 8.g. Notice of Failure to Act (22.70.100)

Coastal Commission staff has proposed several minor clarifications to Sec. 22.70.100. Staff recommends approval of those changes. (See Attachment #6)

Item 8.h. Effective Date of Final Action (22.70.110)

Coastal Commission staff has proposed to make several additions to Sec. 22.70.110 that explain when an action on a Coastal Permit application becomes final. While minor, the additions would add redundancy and unnecessary wording. Therefore, staff recommends adoption of alternate provisions that would accomplish the required steps. (See Attachment #6.)

Item 8.i. Coastal Permit Time Extensions (22.70.120)

Coastal Commission staff has proposed inserting a full description into Sec. 22.70.120 of the procedures for time limits, vesting, and possible extensions for Coastal Permits, rather than relying on other chapters of the Development Code to guide decisions. Including the procedures in the “coastal” chapter would enhance clarity and ease of use, and staff recommends approval of the changes. Staff recommends adoption of the provisions as proposed. (See Attachment #6)

Item 8.j. Emergency Coastal Permits (22.70.140)

Coastal Commission staff has proposed to make changes in Sec. 22.70.140 that governs the issuance of Emergency Coastal Permits, which are used when a hazardous situation does not allow time for processing a regular Coastal Permit application.

Staff recommends approval of the changes, while making certain clarifications and adjustments. For instance, staff recommends broadening the scope of Emergency Coastal Permits slightly by

removing the reference to “temporary” measures since the nature of an emergency (such as a structure that is threatening to collapse) may call for an action that is not strictly temporary.

Staff also recommends clarifying the period during which an Emergency Coastal Permit would remain valid, as well as the time during which the applicant would be required to apply for a regular Coastal Permit to authorize the project on a permanent basis. Finally, although staff ordinarily recommends that all definitions of terms be grouped in the Definitions chapter, rather than placed elsewhere in the Development Code, in this instance, when emergency conditions may prevail, it would minimize the chance of misinterpretation to include the definition in Sec. 22.70.140.D.1. as proposed. (See Attachment #6.)

Item 8.k. Coastal Zone Variances (22.70.150, 22.70.170)

Coastal Commission staff has proposed a number of changes to the provisions for Coastal Zone Variances (Sec. 22.70.150 and 22.70.170), along with deletion of the provisions for Coastal Zone Variance Exemptions (originally numbered as Sec. 22.70.160). Staff recommends approval of the changes, with two minor revisions. One would delete Coastal Commission staff’s proposed restriction in Sec. 22.70.150.A. against issuance of a Coastal Zone Variance for relief from any Land Use Plan policies. Coastal Zone Variances are stated to be for relief from standard relating to height, floor area ratio, and yard setbacks. But in some cases, height limits or other such standards are established by Land Use Plan policies, and thus it would create an inconsistency to rule out such variances.

Staff also recommends deletion of Coastal Commission staff’s proposal to make any development that also requires granting of a variance automatically appealable to the Coastal Commission. Such a change would be inappropriate and is unsubstantiated. By definition, a Coastal Zone Variance cannot change an allowable use on a property but instead may only provide relief from standards relating to the height, floor area ratio, or yard setback of a structure. Whether the use itself is appealable to the Coastal Commission or not is already determined by other provisions of the Implementation Plan, either by the nature of that use (e.g., if it is not the principal permitted use) or by the geographic location of the project site. If the proposed land use and/or the project site are not appealable, then there is no basis to require that the project become appealable through issuance of a Coastal Zone Variance. (See Attachment #6)

Item 8.l. Non-Conforming Uses (22.70.160)

Coastal Commission staff has proposed to add a set of provisions governing Nonconforming Uses and Structures (numbered below as Sec. 22.70.160). Although the County has provisions that address the subject in other parts of the Development Code, Coastal Commission staff has proposed placing them within the coastal chapter

Staff recommends approval of that approach, but recommends also several clarifications. The subject of one such change is the provision suggested by Coastal Commission staff in paragraph A. that would address a development that occurred after the effective date of the Coastal Act but was not subsequently authorized under the Act. Staff recommends deletion of that provision on the basis that Sec. 22.70.160 addresses nonconforming uses and structures, not development that may have lacked a required Coastal Permit. For instances of the latter,

enforcement provisions are available elsewhere in the Development Code. Staff also recommends deletion of the references to “Redevelopment (coastal),” because that concept is not recommended for inclusion in the Land Use Plan. (See Attachment #6; see also Part 1 of the Staff Recommendation, Item 2 Replacing the Concept of “Coastal Redevelopment”.)

Item 8.m. Violations and Enforcement (22.70.175)

Coastal Commission staff has proposed adding provisions for pursuing violations of coastal zone requirements (Sec. 22.70.175). Such provisions would be based on legal remedies provided by the Coastal Act (such as in Sec. 30820–30822).

Staff recommends approval of including violation procedures, with the exception of the final paragraph that would prohibit approval of any Coastal Permit or related permitting mechanism on property that contained any unpermitted development. That provision would be nearly impossible to apply, because the permit history, if any, of many older structures may be unknown. For the oldest structures, no permit requirements may have been in effect at the time of construction. Deleting that paragraph, as recommended by staff, would not limit the ability to use other enforcement provisions to require Coastal Permit review for unpermitted development, where such provisions apply. (See Attachment #6.)

Item 8.n. Potential Takings Evaluation (22.70.180)

Coastal Commission has suggested various changes to Sec. 22.70.180 regarding the analysis that would be required to avoid a taking of private property, when a proposed development would not be fully consistent with LCP policies. The proposed changes would broaden the scope of developments subject to the “takings” analysis and make other changes. Staff recommends approval of the provisions, as suggested by Coastal Commission staff. (See Attachment #6.)

Item 8.o. Property Modifications (including Divisions of Land) (22.70.190)

Coastal Commission staff has proposed adding provisions regarding divisions of land, to be numbered as Sec. 22.70.190. The added provisions would address the matter of certificates of compliance, which in some cases constitute a “development” that requires a Coastal Permit. Other added provisions would state various criteria for land divisions

While staff recommends inclusion of Section 22.70.190 that addresses the subject of divisions of land, staff also recommends several changes. First, the heading of the section would more appropriately be Property Modifications, because that would be a broader, more inclusive term than “land divisions.” Secondly, staff recommends inclusion in paragraph A. only of the provisions regarding conditional certificates of compliance, because issuance of unconditional certificates of compliance is a ministerial action that does not recognize any new or illegal division of land and therefore does not constitute a “development.”

In Sec. 22.70.190, paragraph B., staff recommends deletion of sub-paragraph 1), because the Land Use Plan and the Coastal Act do not prohibit divisions of land outside of designated village limit boundaries, but instead limit such divisions in various ways. Sub-paragraphs 3) and 4), with

changes proposed by Coastal Commission staff, reflect provisions of Public Resources Code Sec. 30250(a), which states that land divisions outside existing developed areas shall be permitted only 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 parcels. Sub-paragraphs 3) and 4) should also be changed, as recommended by staff, because the criteria stated there regarding the size of proposed parcels and the calculation of how many parcels in the area have been developed are already reflected in the LCP. That is, 50 percent of usable parcels in the Marin coastal zone have already been developed, and the LCP zoning meets the applicable test regarding the size of surrounding parcels. Hence, there is no need to perform these calculations for each individual proposed land divisions. The existing LCP, as certified by the Coastal Commission in 1981 and 1982, contains no such provisions, because they are unnecessary. Staff also recommends other minor changes in organization of the criteria stated in paragraph B. and inclusion of a separate paragraph C. that would address lot line adjustments. (See Attachment #6.)

## Part 3. Other Implementation Plan Provisions (not addressed in Part 1 or 2)

### 1. Section 22.64.110 - Community Development

On August 25, 2015, your Board directed staff to retain Land Use Policy C-CD-15, which discourages the conversion of residential to commercial uses in coastal villages. Staff recommends modifying the respective implementation language in Section 22.64.110 – Community Development, item number 11, to be consistent with the provisions in Land Use Policy C-PK-3, as follows:

11. **Residential character in villages.** Consistent with the limitations to the village core commercial area outlined in C-PK-3, ~~Discourage~~ the conversion of residential to commercial uses in coastal villages per Land Use Policy C-CD-15.

### 2. Section 22.64.140 - Public Facilities and Services

Public Facilities and Services Policy C-PFS-4 addresses the availability of water and other services for visitor-serving and recreational uses. As approved by your Board, the policy requires this issue to be addressed at the time there is a proposal to extend or enlarge a community water or community sewage treatment facility. It is important to recognize this policy does not apply to private individual wells or private onsite wastewater treatment (septic) systems. Staff had recommended your Board omit language modified by CCC staff that would have imposed additional requirements in areas with limited service capacity. In their letter dated March 23, 2016, CCC staff requested restoring the deleted language in order to comply with Coastal Act Section 30250, which requires that service capacity be reserved for certain priority land uses, including agriculture, public recreation, and visitor-serving uses. Policy C-PFS-4 reads as follows, with the omitted CCC staff proposed modification crossed out in blue:

**C-PFS-4 High-Priority Visitor-Serving and other Coastal Act Priority Land Uses.** In acting on any coastal permit for the extension or enlargement of community water or community sewage treatment facilities, determine that adequate capacity is available and reserved in the system to serve VCR- and RCR-zoned property, other visitor-serving uses, and other Coastal Act priority land uses (i.e. coastal-dependent uses, agriculture, essential public services, and public recreation). ~~In areas with limited service capacity (including limited water, sewer and/or traffic capacity), new development for a non-priority use, including land divisions, not specified above shall only be allowed if adequate capacity remains for visitor-serving and other Coastal Act priority land uses, including agricultural uses.~~

[Adapted from Unit I Public Services Policies 6 and 12, pp. 48-49]

Since this policy is not before your Board for consideration at this time, staffs recommends maintaining the language as shown above and, instead, address the Coastal Commission staff's concern regarding limited service capacity, as well as other suggested modifications, in Section 22.64.140, which implements this and other Public Facilities and Services policies as discussed in the next section below. While this implementing language puts in place measures to require the various service providers to allocate water and wastewater resources for priority land uses,

the service providers do not currently have a system in place to comply. As such, staff will need to work with the service providers to develop such standards. Given this new effort, staff recommends your Board consider a new Implementation Program as follows:

[Program 22.64.140 Reservation of Capacity for Priority Land Uses. Coordinate with water service and wastewater service providers to develop standards to allocate and reserve capacity for Coastal Act priority land uses.](#)

#### Section 22.64.140 – Public Facilities and Services

Section 22.64.140.A.1 also provides standards addressing how the availability of adequate public services will be provided. Prior to release of the Commission staff's Suggested Modifications your staff had worked collaboratively with Commission staff to reduce differences and develop mutually agreeable language, and had succeeded in introducing the continued use of "Will-Serve" letters as an implementation measure. Staff's concerns were prompted by the language of the proposed CCC Modification (sec. 22.64.140.A.1):

No permit for development may be approved unless it can be **demonstrated, in writing and supported by substantial evidence** that it will be served with adequate water supplies and wastewater treatment facilities, consistent with the subsections below:

- a. Development receiving water from a water system operator and/or wastewater treatment from a public/community sewer system shall only be approved if there is:
  - (i) sufficient water and wastewater public works capacity within the system to serve the development given the outstanding commitments by the service provider; or, (ii) **evidence** that the entity providing the service can provide such service for the development. **(emphasis added)**

This could be construed as requiring an individual applicant to gather "substantial evidence" sufficient to independently "demonstrate" that the service provider had sufficient capacity to serve them. It is the public service provider who is in the position to determine their capacity, and the issuance of a "Will-Serve" is the typical and accepted way public service providers give the County evidence of ability to serve new development. Staff suggests changes to Section A.1.a. to clarify that the practice of water and wastewater providers providing will-serve letters is sufficient "substantial evidence" to document their ability to deliver adequate services.

#### Section A.1.a.

- a. Development receiving water from a water system operator and/or wastewater treatment from a public/community sewer system shall only be approved if there is: (i) sufficient water and wastewater public works capacity within the system to serve the development given the outstanding commitments—by the service provider; or, (ii) evidence that the entity providing the service can provide such service for the development. [Such evidence may include a A will-serve letter from the service provider shall constitute substantial evidence that adequate service capacity is available.](#)

## Wells

Section A.1.b. pertains to development receiving domestic water supply from a well. As the CCC staff Modification is written, any development receiving water from a well would be required to prepare a report that makes a number of findings, including that the well will not adversely impact other wells within 300 feet, or adversely impact adjacent biological resources including streams, riparian habitats, and wetlands; and not adversely impact service capacity for agricultural production or for other priority land uses, including, visitor-serving uses. Staff recommends a change in A.1.b.3 to add a consideration specified in Coastal Act Section 30254 that was omitted: “basic industries vital to the economic health of the region, state, or nation.”

Such analyses will be time-consuming and expensive. A public service provider with many users could potentially perform the studies, hire the analytical experts, and carry out the agency and public review process involved in meeting such requirement. But a single homeowner seeking an individual well or septic system would be faced with a burden simply disproportionate to their use or potential impact, especially since the number of vacant properties is limited and the number of wells and septic systems proposed is relatively small and widely dispersed. Staff recommends a change to clarify this measure applies to wells only used for the purposes of receiving water from a public water supply, as follows:

### Section A.1.b.

Water Supply from Wells. The application for development receiving water from a public water supply well shall include a report prepared by a State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists, California Registered Geologist or Registered Civil Engineer which demonstrates, to the satisfaction of the Director, that:

- 1) The sustainable yield of the well meets the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute) and must be equal to or exceed the project’s estimated water demand.
- 2) The water quality meets safe drinking water standards.
- 3) The extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent biological resources including streams, riparian habitats, and wetlands; and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses (i.e. coastal-dependent uses, public recreation, essential public services basic industries vital to economic health of the region, state, or nation, and, within village limit boundaries only, visitor-serving uses and commercial recreation uses).

A more appropriate regulatory framework for individual private wells already exists at both a local and State level. Such wells are subject to the standards in Marin County Code Section 7.28, which in turn incorporates the State of California Well Standards to establish minimum standards for domestic water wells (see Attachment 8). Section 7.28 includes standards for setbacks, minimum seal depths for well types and conditions, sustained yields, qualifications of persons making yield tests, and water quality. Staff recommends new language in Section A.1.b

to clarify that new development receiving water from a private well shall meet all standards in Marin County Code Section 7.28. Similarly, for public wells staff recommends a minor change to clarify that yield tests for these wells shall may be made by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologist, consistent with Marin County Code Section 7.28. This new language is as follows:

- c. The application for a development receiving water from a private well shall include a report prepared by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists. The report shall demonstrate, to the satisfaction of the Director, all standards in Marin County Code Chapter 7.28, are met. The sustainable yield of private wells shall also meet the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute).

### Limited Public Service Capacity

Section A.1.d addresses the issue of limited public service capacity, which was added as part of Coastal Commission staff Modifications. These Modifications impose additional requirements when the projected demand for service based on outstanding commitments and existing and proposed development exceeds available supply (for water system operators) or capacity (for wastewater service providers). Further, it requires new development for non-priority uses only shall be allowed if adequate capacity remains for priority land uses. Coastal Act priority uses include visitor-serving and commercial recreational uses, coastal-dependent uses, and agriculture, consistent with Section 30222.

Staff conducted an analysis of the commercial and mixed use zoning districts in the Coastal Zone to determine their locations relative to water and wastewater service areas. These include the C-VCR, C-H1, C-CP, C-RMPC, and C-RCR zoning districts. This analysis concluded that in terms of water, all of the areas containing visitor-serving zoning are served by a water district, except for the village of Tomales and two small commercial areas located in the East Shore/Marshall areas along Tomales Bay, which rely on wells for water service. With regards to wastewater, many of the areas with visitor-serving zoning are not within the boundaries of wastewater service district and, thus, are served by individual septic systems. This includes the mixed use areas in Dillon Beach, Point Reyes Station, East Shore/Marshall, Inverness, Olema, and Muir Beach. However, the commercial areas in Tomales, Stinson Beach, and Bolinas are provided wastewater services from the Tomales Village Community Services District, Stinson Beach County Water District, and the Bolinas Community Public Utility District, respectively.

Most of the water and wastewater service providers have sufficient water on an average annual basis and expect to meet existing and future water demand. Those that do not, such as the Bolinas Community Public Utility District and the privately run California Water Service Company (formerly Coast Springs Water Company) serving Dillon Beach, have moratoriums on new service hookups and expect to maintain them. However, some of the water service providers are strained to meet peak demands during the summer or would experience supply deficits during extended drought periods Coastal Commission staff modifications mandate project applicants in areas of limited public water service capacity must offset their anticipated water usage through the retrofit of existing water fixtures. Staff recommends adding new language to allow water service providers additional flexibility to select appropriate methods to offset water usage beyond replacement of water fixtures, given the diversity of incentives and programs utilized by the different water service providers. Water in the Coastal Zone is

provided by a number of small community water districts, each of which may offer a variety of incentives and programs to encourage water conservation tailored to budget and customer needs. This approach offers more flexibility than the one size fits all approach suggested by CCC staff Modification, given the circumstances of water management and delivery in western Marin. Finally, staff recommends a change to clarify the County shall require water service providers to certify that all measures to offset water usage have been implemented. These recommendations are all shown below.

Section A.1.d.

In areas with limited water service capacity, when otherwise allowable, new development for a non-Coastal Act and LCP priority use (i.e., a use other than agricultural production, coastal-dependent uses, public recreation, essential public services, and, within village limit boundaries only, visitor-serving uses and commercial recreation uses) shall only be allowed if adequate capacity remains for the above-listed priority land uses. In such limited service capacity areas, in order to minimize the reduction in service for and reserve capacity to priority land uses, applications for non-priority uses shall be required to offset their anticipated water usage through the retrofit of existing water fixtures or other appropriate measures within the same service area of the water system operator or the public/community sewer system of the proposed development, whichever is applicable. All Coastal Permits authorizing development that results in increased water usage shall be conditioned to require applicants to provide to the Reviewing Authority for review and approval the following:

- 1) A list of all existing fixtures to be retrofitted and their present associated water flow (e.g. gallons/second);
- 2) A list of all proposed fixtures to be installed and their associated water flow; and;
- 1) The estimated annual water savings resulting from the proposed retrofit, showing all calculations and assumptions.

The County shall require certification from water service providers that all measures to reduce existing water usage has been implemented inspect the water fixtures prior to and following the retrofit to confirm that the retrofit has reduced existing water use in an amount equal or greater to the anticipated water use of the proposed project.

Expansion of Public Services

Section 22.64.140.A.2 implements Land Use Policy C-PFS-2, which addresses the expansion of public services. This policy requires limiting new or expanded roads, flood control projects, utility services, and other public service facilities to the minimum necessary to adequately serve planned development. Coastal Commission staff substantially modified this section to add implementation language in A.2.a and A.2.b. Staff recommends a change to omit minor public works facilities (defined in the LCPA and the Coastal Act as valued at less than \$100,000) as these would be unlikely to throw the phasing of service out of synch with development authorized by the LCP.

In addition, staff recommends deleting Coastal Commission language that requires the phasing of development for public works facilities. First, Land Use Policy C-PFS-2 already requires limiting new or expanded facilities to the minimum necessary to adequately serve planned development. Second, Coastal Act Section 30254, which addresses public works facilities, does not require the phasing of projects. Rather, it requires facilities be designed and limited to accommodate needs by development or uses. Staff further recommends deleting A.2.b since it is redundant to the last sentence in A.2.a.

2. **Expansion of public services.** Limit new or expanded roads, flood control projects, utility services, and other public service facilities, whether publicly owned or not, to the minimum necessary to adequately serve planned development per Land Use Policy C-PFS-2.
  - a. Permit requirements: Every new major public works facility or capacity expansion shall be required to go through the Coastal Permit review process. ~~Any Coastal Permit for development of public works facilities shall require that the development be phased if necessary in order to ensure that permitted public works capacity is limited to serving needs generated by development that is consistent with the Land Use Plan policies.~~ Expansion of major public works facilities, including but not limited to water supply and transmission, sewage treatment and transmission, and the regional transportation system, shall only be permitted after considering the availability of other public works facilities, and establishing whether capacity increases would overburden the existing and probable future capacity of those other public works facilities.
  - b. ~~Timing for New or Expanded Public Works Facilities. The amount of new or expanded capacity shall be determined by: (i) considering the availability of related public works to establish whether capacity increases would overburden the existing and probable future capacity of other public works; (ii) considering the availability of funding; and (iii) considering all applicable policies of the LUP.~~

**Recommendation:**

**22.64.140 – Public Facilities and Services**

[Program 22.64.140 Reservation of Capacity for Priority Land Uses. Coordinate with water service and wastewater service providers to develop standards to allocate and reserve capacity for Coastal Act priority land uses.](#)

- A. **Public facility and service standards.** Development, as defined in Article VIII, shall be consistent with all Public Facilities and Services Policies of the LUP, including, but not limited to:
  1. **Adequate public services.** Adequate public services (that is, water supply, on-site sewage disposal or sewer systems, and transportation, including public transit as well as road access and capacity if appropriate) shall be available prior to approving new development per Land Use Policy C-PFS-1.

No permit for development may be approved unless it can be demonstrated, in writing and supported by substantial evidence, that it will be served with adequate water supplies and wastewater treatment facilities, consistent with the subsections below:

- a. Development receiving water from a water system operator and/or wastewater treatment from a public/community sewer system shall only be approved if there is: (i) sufficient water and wastewater public works capacity within the system to serve the development given the outstanding commitments-by the service provider; or, (ii) evidence that the entity providing the service can provide such service for the development. Such evidence may include a ~~A~~ will-serve letter from the service provider shall constitute substantial evidence that adequate service capacity is available.
  
- b. The ~~An~~ application for ~~new or increased well production to increase development receiving water from a public water supply well~~ shall include a report prepared by ~~a State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists, California Registered Geologist or Registered Civil Engineer~~ which demonstrates, to the satisfaction of the Director, that:
  - 1) The sustainable yield of the well meets the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute) and must be equal to or exceed the project's estimated water demand.
  - 2) The water quality meets safe drinking water standards.
  - 3) The extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent biological resources including streams, riparian habitats, and wetlands; and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses (i.e. coastal-dependent uses, public recreation, essential public services basic industries vital to economic health of the region, state, or nation, and, within village limit boundaries only, visitor-serving uses and commercial recreation uses).
  
- c. The application for a development receiving water from a private well shall include a report prepared by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists. The report shall demonstrate, to the satisfaction of the Director, all standards in Marin County Code Chapter 7.28, are met. The sustainable yield of private wells shall also meet the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute).
  
- d. The application for development utilizing a private sewage disposal system shall only be approved if the disposal system:
  - 1) Is approved by the Environmental Health Services Division of the Community Development Agency or other applicable authorities.

- 2) Complies with all applicable requirements for individual septic disposal systems by the Regional Water Quality Control Board.

ed. Limited Public Service Capacity. Limited service capacity shall be defined as follows:

- 1) For water system operators, when projected demand for service based upon both outstanding water commitments to existing development and projected development exceeds available supply.
- 2) For public/community sewer systems, when projected demand for service based upon both outstanding sewer commitments to existing development and projected development exceeds available capacity.

In areas with limited water service capacity, when otherwise allowable, new development for a non-Coastal Act and LCP priority use (i.e., a use other than agricultural production, coastal-dependent uses, public recreation, essential public services, and, within village limit boundaries only, visitor-serving uses and commercial recreation uses) shall only be allowed if adequate capacity remains for the above-listed priority land uses. In such limited service capacity areas, in order to minimize the reduction in service for and reserve capacity to priority land uses, applications for non-priority uses shall be required to offset their anticipated water usage through the retrofit of existing water fixtures or other appropriate measures within the same service area of the water system operator or the public/community sewer system of the proposed development, whichever is applicable. All Coastal Permits authorizing development that results in increased water usage shall be conditioned to require applicants to provide to the Reviewing Authority for review and approval the following:

- 1) A list of all existing fixtures to be retrofitted and their present associated water flow (e.g. gallons/second);
- 2) A list of all proposed fixtures to be installed and their associated water flow; and;
- 3) The estimated annual water savings resulting from the proposed retrofit, showing all calculations and assumptions.

The County shall require certification from water service providers that all measures to reduce existing water usage has been implemented inspect the water fixtures prior to and following the retrofit to confirm that the retrofit has reduced existing water use in an amount equal or greater to the anticipated water use of the proposed project.

**2. Expansion of public services.** Limit new or expanded roads, flood control projects, utility services, and other public service facilities, whether publicly owned or not, to the minimum necessary to adequately serve planned development per Land Use Policy C-PFS-2.

- a. Permit requirements: Every new major public works facility or capacity expansion shall be required to go through the Coastal Permit review process. Any Coastal Permit for development of public works facilities shall require

~~that the development be phased if necessary in order to ensure that permitted public works capacity is limited to serving needs generated by development that is consistent with the Land Use Plan policies.~~ Expansion of major public works facilities, including but not limited to water supply and transmission, sewage treatment and transmission, and the regional transportation system, shall only be permitted after considering the availability of other public works facilities, and establishing whether capacity increases would overburden the existing and probable future capacity of those other public works facilities.

- b. ~~*Timing for New or Expanded Public Works Facilities. The amount of new or expanded capacity shall be determined by: (i) considering the availability of related public works to establish whether capacity increases would overburden the existing and probable future capacity of other public works; (ii) considering the availability of funding; and (iii) considering all applicable policies of the LUP.*~~

### 3. Section 22.64.170 - Parks, Recreation, and Visitor-Serving Uses

In 2013 your Board approved language to Land Use Policy C-PK-3, which addresses mixed uses in the Coastal Village Commercial/Residential (C-VCR) zoning district. This policy allowed both commercial and residential as principal permitted uses within this zoning district; however, a Use Permit was required for residential uses proposed on the ground floor of a new or existing structure on the road-facing side of the property. The replacement, maintenance, and repair of any legal, existing residential use were exempt from this provision.

Since the C-VCR zoning district allows for both commercial and residential uses, in seeking to assure sufficient opportunities for visitor-serving uses in coastal village areas, Coastal Commission staff suggested Modifications to define a new “village commercial core area” where residential uses would be limited. In this new village commercial core area, commercial uses remain “principal permitted” while residential is now a “permitted” use. Further, residential uses are limited to: a) the upper floors, and/or b) the lower floors if not located on the road-facing side of the property. A Use Permit continues to be required for residential uses on the ground floor of a new or existing structure on the road facing side of the property. Furthermore, the Modification limits the maintenance of existing, legal residential uses to those on the ground floor and road-facing side of the property. The policy reads as follows:

**C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone.** Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas. Principal permitted use of the C-VCR zone shall include commercial uses. Residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing side of the property. Residential uses on the ground floor of a new or existing structure of the road-facing side of the property shall only be allowed subject to a use permit where a finding can be made that the development maintains and/or enhances the established character of village commercial areas. Existing legally established residential uses in the C-VCR zone on the ground floor and road-facing side of the property can be maintained where otherwise LCP consistent.

[\[Adapted from Unit I Recreation and Visitor-Serving Facilities Policy 14, p. 13\]](#)

Implementation Plan Section 22.64.170.A.3 addresses how the provision will be carried out:

3. **Mixed uses in coastal village commercial/residential zones.** A mixture of residential and commercial uses shall be permitted in the C-VCR zoning district per Land Use Plan Policy C-PK-3.

Staff has prepared draft maps to identify these potential village commercial areas. Notices have also been mailed to respective property owners describing the pending policy and the opportunity to comment at today's hearing. Following adoption of the Implementation Plan and certification of the Local Coastal Program Amendments by the Coastal Commission, staff will commence with a public outreach process to develop a new C-VCR zoning overlay to establish these regulations for the commercial core areas.