CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Updating LCP Implementation Plan (IP) Procedures

Table of Contents

Introduction 3
Purpose of this Guide 4
Using this Guide-- Local and Legal Context Matters 4
Contents of this Guide 6
Section I. Local Coastal Permit Requirements 11
A. Determine if a Proposed Project Is Within Local Permitting Jurisdiction 12
1. Recommendation: Clarify Permit Jurisdiction 13
2. Additional Updates, Procedures and Practices to Consider 14
B. Determine if a Proposed Project Is "Development" 19
1. Recommendation: Clarify What Is Development 19
2. Additional Updates, Procedures and Practices to Consider 20
C. Determine if a Development Proposal is Exempt from Permit Requirements 24
1. Recommendation: Clarify Exemptions from Coastal Permits 24
2. Additional Updates, Procedures, and Practices to Consider 25
D. Determine if a Proposed Project is Appealable to the Coastal Commission 29
1. Recommendation: Clarify if a Project Is Appealable 30
2. Additional Updates, Procedures, and Practices to Consider 30
E. Resolve Disputes over Whether Permits Are Required or Appealable 33
1. Recommendation: Clarify How to Resolve Disputes over Whether Permits Are Required or Appealable 34
2. Additional Updates, Procedures, and Practices to Consider 34
Section II. Local Coastal Permitting Procedures 36
A. Specify Application Contents 37
1. Recommendation: Require a Coastal Permit Application 38
2. Additional Updates, Procedures, and Practices to Consider 38
B. Specify Noticing to Perform 42
1. Recommendation: Specify Noticing Requirements 43
2. Additional Updates, Procedures and Practices to Consider 43
C. Decide on Coastal Permit Application 45

1. Recommendation: Specify Who Decides on a Coastal Permit Application 46
2. Additional Updates, Procedures and Practices to Consider 46
D. Address Potential Conflicting Code Provisions 51
1. Recommendation: Include Provisions that Affect Coastal Permits ... 52
2. Additional Updates, Procedures and Practices to Consider 52
E. Address Other State Laws 57
1. Recommendation: Accommodate Second Unit Law 57
2. Additional Updates, Procedures, and Practices to Consider 58
F. Memorialize Action Taken on a Coastal Permit 59
1. Recommendation: Memorialize the Action Taken on a Coastal Permit 60
2. Additional Updates, Procedures and Practices to Consider 60
Section III. Local Responsibilities in the Appeal Process 68
A. State Any Fees to Appeal Local Coastal Permit Decisions 69
1. Recommendation: State If There Is a Fee for an Appeal 69
2. Additional Updates, Procedures, and Practices to Consider 70
B. Transmit Complete Files for Appealed Projects 70
1. Recommendation: Ensure Files Are Transmitted for Appealed Coastal Permits 71
2. Additional Updates, Procedures, and Practices to Consider 71
C. Complete Local Process in Coordination with the Coastal Commission Action on Appeals 72
1. Recommendation: Accept Coastal Commission Appeal Decisions .. 73
2. Additional Updates, Procedures, and Practices to Consider 73
Appendix A: Drafting a New Implementation Plan 78
Appendix B: Examples and Citations for Some Recommendations and Suggestions 81
Section I. Local Coastal Permit Requirements 81
A. Determine if a Proposed Project Is Within Local Permitting Jurisdiction 81
1. Recommendation: Clarify Permit Jurisdiction 81
2. Additional Updates, Procedures and Practices to Consider 82
B. Determine if a Proposed Project Is “Development” 87
1. Recommendation: Clarify What Is Development 87
2. Additional Updates, Procedures and Practices to Consider 88
C. Determine if a Development Proposal is Exempt from Permit Requirements 88
1. Recommendation: Clarify Exemptions from Coastal Permits 88
2. Additional Updates, Procedures, and Practices to Consider 95
D. Determine if a Proposed Project is Appealable to the Coastal Commission 98
1. Recommendation: Clarify if a Project Is Appealable 98
2. Additional Updates, Procedures, and Practices to Consider 101

E. Resolve Disputes over Whether Permits Are Required or Appealable 102
1. Recommendation: Clarify How to Resolve Disputes over Whether Permits Are Required or Appealable 102
2. Additional Updates, Procedures, and Practices to Consider 103
Section II: Local Coastal Permitting Procedures 103
A. Specify Application Contents 103
1. Recommendation: Require a Coastal Permit Application 103
2. Additional Updates, Procedures, and Practices to Consider 104
B. Specify Noticing to Perform 120
1. Recommendation: Specify Noticing Requirements 120
2. Additional Updates, Procedures and Practices to Consider 122
C. Decide on Coastal Permit Application 124
1. Recommendation: Specify Who Decides on a Coastal Permit Application 124
2. Additional Updates, Procedures, and Practices to Consider 125
D. Address Potential Conflicting Code Provisions 132
1. Recommendation: Include Provisions that Affect Coastal Permits . 132
2. Additional Updates, Procedures, and Practices to Consider 132
E. Address Some Other State Laws 137
1. Recommendation: Accommodate Second Unit Law 137
2. Additional Updates, Procedures, and Practices to Consider 137
F. Memorialize Action Taken on a Coastal Permit 137
1. Recommendation: Memorialize the Action Taken on a Coastal Permit 137
2. Additional Updates, Procedures, and Practices to Consider 139
Section III. Local Responsibilities in the Appeal Process 151
A. State Any Fees to Appeal Local Coastal Permit Decisions 151
1. Recommendation: State If There Is a Fee for an Appeal 151
2. Additional Updates, Procedures, and Practices to Consider 151
B. Transmit Complete Files for Appealed Projects 151
1. Recommendation: Ensure Files Are Transmitted for Appealed Coastal Permits 151
2. Additional Updates, Procedures, and Practices to Consider 151
C. Complete Local Process in Coordination with the Coastal Commission Action on Appeals 152
1. Recommendation: Accept Coastal Commission Appeal Decisions 152
2. Additional Updates, Procedures, and Practices to Consider 152

Introduction

This document contains guidance for local governments that may be considering an update of the Implementation Plan (IP) component of their Local Coastal Program (LCP). The California Coastal Act of 1976

requires that local governments prepare and implement LCPs to carry out the Act's policies to protect coastal resources and maximize public access to the shoreline. An LCP consists of a Land Use Plan (LUP), which details the kinds, locations and intensity of land uses, and resource protection and development policies in the coastal zone, and an Implementation Plan, which includes land use zoning and other implementing ordinances that conform with and carry out the Land Use Plan. Effective zoning ordinances and procedures (the IP) ensure that the objectives of the Land Use Plan are achieved.

Purpose of this Guide

Frequently Used Acronyms

LCP: Local Coastal Program

LUP: Land Use Plan

IP: Implementation Plan (zoning ordinances, zoning district maps, and other implementing actions)

Since the first IPs were written in the 1980s, the Coastal Commission and local governments have encountered numerous procedural issues that can undermine effective implementation of LCPs. These issues range from questions about what activities require a permit or whether a project is appealable to the Commission, to disputes over projects due to problems with public notification or disagreements about the appropriate level of review of a local permit. Questions and disputes such as these slow down the development review process and require more staff resources to resolve. Although sometimes necessary, procedural conflicts also take resources away from the core LCP objective of coastal resource protection.

This report was prepared with financial assistance from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, under provisions of Section 309 of the Coastal Act Reauthorization Amendments of 1990.

Some IPs have been updated or were certified more recently, and thus they may address many of the issues in this guidance. Other IPs, though, have never been updated, and do not reflect the knowledge and experience gained over the years by the Commission and local governments through LCP implementation. It may be beneficial, therefore, to update an IP to improve the coastal resource management process. Just as an LCP needs to be updated to address policy and land use issues, so should the implementing ordinances and procedures be reviewed and revised as appropriate to address new issues and the need for clarification. This Guide is a companion volume to the Commission's Land Use Plan Update Guide, and suggests ways for local government to keep ordinances and procedures current and responsive to changed circumstances and new issues.

Using this Guide-- Local and Legal Context Matters

Local Coastal Program implementing ordinances address both development standards and coastal permit procedures. This guide discusses certain priority procedural topics and provides general planning assistance for jurisdictions that have certified coastal implementation plans and are considering updates. If you do not have an IP yet or are planning to revise your entire IP, please refer to Appendix A ("Drafting a New Implementation Plan"). The following are some recently certified coastal

implementation plans that you can review to obtain ideas about format and content:

- Malibu (certified in 2002): available at http://www.qcode.us/codes/malibu-coastal/ (click on "Local Implementation Plan" and also "Coastal maps from the City of Malibu Local Coastal Program")
- Carmel-by-the-Sea (certified in 2004): staff report is on line at http://www.coastal.ca.gov/sc/F5c-2-2004.pdf as is the zoning ordinance (Title 17) at http://www.codepublishing.com/CA/carmel.html. Other components of the Implementation Plan include Shoreline Management Plan, Significant Tree Evaluation, Design Guidelines, Archaeological Reports, Storm Water Standards, and Historic Building Rehabilitation Standards.
- Point Arena (certified in 2006): available at http://documents.coastal.ca.gov/epacket/2006/4/F5a-4-2006-a1.pdf and final zoning ordinance #179 is at http://www.cityofpointarena.com/ under "Municipal Code."
- Redondo Beach (certified April 2003): Ch 5 of the Municipal Code is at http://www.qcode.us/codes/redondobeach/.

This guide also complements and expands upon the *Local Coastal Program (LCP) Post-Certification Guide for Coastal Cities and Counties* available at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf . The *Post-Certification Guide* was last updated in 2002 and explains basic procedures for issuing coastal permits and carrying out other aspects of certified LCPs. This guide notes a few rules which have changed since 2002. It also suggests ways to write implementing ordinances for some of the procedures generally outlined in the *Post-Certification Guide*.

IMPORTANT NOTE: The information presented here is guidance only, and should be considered in conjunction with the legal requirements of the California Coastal Act, the California Code of Regulations, and the applicable certified Land Use Plan. Any actual proposed changes to an Implementation Plan should be reviewed directly with the relevant District Office contacts of the Commission. Such changes constitute LCP amendments that must be approved by the Commission.

Having noted this, some of this guidance is simply a restatement or elaboration of existing legal requirements that should be addressed in an IP. Other guidance is derived from past Commission decisions concerning IP amendments or procedural disputes. While such decisions should not be relied upon as rules or regulations, they are examples of how certain issues have been addressed by the Commission and local governments in other

cases. If you have any specific questions about the content of an individual IP update and the applicability of any of these suggestions in this Guide, they may be directed to the appropriate Commission District office staff. Together, we can discuss how the ideas presented in this Guide can be adapted to specific language for your IP. For contact information, please go to: http://www.coastal.ca.gov/address.html.

Contents of this Guide

This guide's topics are grouped into three categories:

- Section I. Local Coastal Permit Requirements
- Section II. Local Coastal Permitting Procedures
- Section III. Local Responsibilities in the Appeal Process

These categories correspond to the steps local government would generally perform to implement the coastal permit regulatory process. Table 1 below lists more detailed steps in each category that are discussed in this guidance. Column 1 of the table identifies the procedural step. Column 2 lists the minimum required content that your IP should address. Column 3 lists additional refinements and enhancements that you may want to consider to improve implementation of your IP. Whether or not they are needed will depend on the specific circumstances of your LCP and the certified LUP.

In reviewing your IP for possible updates, ask whether each listed step in column 1 of the Table is covered, and if the recommended minimum content is included (column 2). You can then review the additional suggestions for IP improvements (column 3), and ask which of the further refinements and enhancements might be applicable and desirable for your jurisdiction.

Many of the possible additional IP refinements and enhancements discussed in this guide use examples, such as other certified LCPs, that can be adapted to your local circumstances. The examples are compiled in Appendix B. These examples illustrate the concepts discussed in this guide, but their exact wording may not be appropriate to the circumstances of your jurisdiction. The Coastal Act and California Code of Regulations provide local governments some flexibility to both include additional coastal permit procedures beyond the minimum requirements and adapt the specific content to local circumstances. Since each IP is tailored to the corresponding local coastal LUP and written in the context of your Municipal or County code, there is no single text that fits all jurisdictions.

Finally, not all local permit procedures are contained in the zoning ordinances. Your city or county may have other written and/or informal procedures for planning staff to follow that complement and expand upon the basic steps established in your zoning ordinance. Because ordinances

vary in their level of procedural detail, this guide does not always specify if suggested enhancements and refinements should be in an ordinance or in an informal administrative document. This may depend in part on whether specific provisions in a certified LUP require implementation through ordinance.

Table 1: Components of LCP (Local Coastal Program) Update Guide: Implementation Plan (IP) Procedures		
Procedural Step	**When updating the IP ensure that it includes at a minimum:**	**Further refinements & enhancements to consider including when updating the IP:**
I. Identify Coastal Permit Requirements (Section I)		
A. Determine if a Proposed Project Is Within Local Permitting jurisdiction	Statement of responsibility to issue coastal permits	a. Process for determining if project is within coastal zone where permit authority has been delegated b. Option to have Coastal Commission act on a coastal permit when project straddles jurisdictional boundary c. Explanation of how to process a coastal permit when Coastal Commission also has jurisdiction d. Process for addressing subsequent projects on site where the Coastal Commission has previously issued a permit e. Address situations where local coastal permit authority is preempted
B. Determine if a proposal is "development"	Definition of development	a. Illustrations of established determinations of what activities are development b. Process for determining if a project is development c. Affirmation that definition of development applies to other governmental agencies
C. Determine if a development	List of exemptions	a. Definitions of statutory exemptions. b. Explanation of temporary

Table 1: Components of LCP (Local Coastal Program) Update Guide: Implementation Plan (IP) Procedures		
Procedural Step	**When updating the IP ensure that it includes at a minimum:**	**Further refinements & enhancements to consider including when updating the IP:**
proposal is exempt from permit requirements		events exemption c. Definition of disaster replacement exemption d. Description of emergency work exemption e. List of excluded categories of development f. Description of limited nuisance abatement
D. Determine if proposed project is appealable to Coastal Commission	Categories of developments that can be appealed. Identification of the principal permitted use in each zoning district within counties.	a. Process for determining if project is within locality's geographic appeal jurisdiction b. Definitions of major public works and energy facilities c. Discussion of when a permit amendment or extension is appealable. d. Procedure for revising appeal determinations
E. Resolve disputes over whether permits are required or appealable	Dispute resolution procedure	a. Procedure to ensure that any dispute resolution can commence as soon as practical b. Procedure to facilitate information exchange c. Procedure to accept a permit determination change as a result of dispute resolution
II. Specify Permitting Procedures (Section II)		
A. Specify application Contents	Requirement to fill out an application for a coastal permit	a. Categories of information in an application b. Different applications for different types of permit review c. Method to ensure applicant has legal authority to carry out approved project

Table 1: Components of LCP (Local Coastal Program) Update Guide: Implementation Plan (IP) Procedures		
Procedural Step	**When updating the IP ensure that it includes at a minimum:**	**Further refinements & enhancements to consider including when updating the IP:**
B. Specify noticing to Perform	Noticing requirement	a. Standard notice forms b. Procedure for additional noticing c. Procedure for advanced noticing
C. Decide on a coastal permit application	Indication of which bodies act on coastal permits and their procedures	a. Expanded use of the consent calendar b. Procedure for administrative officer to hear and act on coastal permits c. Process for some coastal permits not needing public hearings d. Process for consolidating permit e. Process for emergency permits f. Procedure for permit amendments g. Procedure for permit extensions
D. Address potential conflicting code provisions	Variance, non-conforming, and similar provisions that affect coastal permits	a. Coordination of any variances with coastal resource protection b. Coordination of any non-conforming provisions with coastal resource protection c. Coordination of other local reviews with coastal permits d. Explanation of using mapped information e. Assurance of internal consistency
E. Address some other state laws	No public hearing for second unit coastal permits	a. Assurance that coastal permit process is preserved when addressing other state laws

Table 1: Components of LCP (Local Coastal Program) Update Guide: Implementation Plan (IP) Procedures		
Procedural Step	**When updating the IP ensure that it includes at a minimum:**	**Further refinements & enhancements to consider including when updating the IP:**
F. Memorialize action taken on a coastal permit	Basic contents of a final local action notice and requirement to mail final local action notice	a. Guidance for preparing findings and conditions b. Guidance for addressing Coastal Act public access and recreation policies and legal documents c. Elaboration of required contents of Final Local Action Notice (FLAN) d. Procedure for transmitting FLANs e. Procedure for responding to notices of deficient FLANs
III. Coordinate with the Coastal Commission on Appeals (Section III)		
A. State any fees to appeal coastal permit decisions	Statement of whether a fee for appeals is charged	a. Fee schedules that accurately reflect any appeal fee b. Explanation of the effect of charging an appeal fee
B. Transmit complete files for appealed projects	Requirement to transmit file to Coastal Commission	a. Designation of staff to respond to Notifications of Appeal b. Procedure to assemble materials to transmit
C. Complete local process to coordinate with the Coastal Commission action	Acceptance of final Coastal Commission action on an appeal	a. Procedure to hold an additional hearing on permits appealed by Coastal Commissioners b. Procedure to address project changes after an appeal is filed c. Procedure to reconcile local responsibilities for the project with Coastal Commission action on appeal

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Section I. Local Coastal Permit Requirements

The Implementation Plan (IP) of a certified local coastal program must include procedures for issuing coastal development permits. The first steps in the coastal regulatory process typically occur when a party who wants to develop in the coastal zone contacts a city or county planning department with a proposal. Or, an interested citizen may have questions about the regulatory process relative to a proposal or activity that he or she encounters in the coastal zone.

The Coastal Act and corresponding Regulations establish basic rules for requiring coastal development permits, including what types of activities need a coastal permit and what entity is the lead permitting agency. These requirements and the general procedures are further outlined in Chapter II of the *Local Coastal Program Post-Certification Guide for Coastal Cities and Counties* at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf. The steps that the *Guide* covers are: Determining Jurisdiction Type, [Addressing] Projects Straddling Jurisdiction Boundaries, and Resolving Determination Disputes. Since the *Post-Certification Guide* was last revised in 2002, a new optional process for addressing projects straddling jurisdictional boundaries has been added to the Coastal Act.

In addition to the *Post-Certification Guide*, certain procedural interpretations have been made by the Commission over the years that can be incorporated into your practices to improve LCP implementation. In addition, the Commission's post-certification monitoring of LCP implementation has identified certain recurring procedural issues and problems in identifying permit requirements. For example, it is not always clear where precise jurisdictional boundaries are on the ground, or whether an applicant's proposal requires a coastal permit or whether your government has the authority to issue a coastal permit. You may find that your LCP does not include sufficient guidance on these matters. If such procedural directions are not clear to property owners, developers and the general public, problems may arise leading, for example, to enforcement actions being taken development approvals being delayed, or challenges being made to the legal status of lots. Updating your IP code sections can help prevent some of these problems and can result in saving time and money in processing coastal permits. In addition, because the coastal permit application sets the stage for considering and eventually implementing coastal permits, updating an LCP's procedures with respect

to the initial permit determination process can result in the following benefits:

- Coastal resources receive enhanced protection;
- Proposed projects are considered in a consistent manner;
- Processing delays are reduced;
- Interagency coordination is enhanced;
- Applicants and new staff better understand where to direct questions and applications.

This section provides suggestions for updating the IP and considering other practices that will help guide the beginning stages of processing a coastal permit – namely, deciding whether you need to issue a coastal permit for a proposed project. The first step (Section I.A) is to resolve jurisdictional questions -- whether you would authorize the proposed project or whether the Coastal Commission or another entity, such as a port with a certified port master plan, would have this responsibility. The next step (B) is to determine whether the proposed project constitutes "development." If it does not, no coastal permit is required. The third step (C) is to determine if the proposed project is somehow exempt from the coastal permit process. The fourth step (D) is to determine if the proposed project is subject to Coastal Commission appeal after you have rendered a coastal permit decision for it. A process is also available for resolving disputes about whether permits are required or appealable (E).

A. Determine if a Proposed Project Is Within Local Permitting Jurisdiction

The full text of citations to the Coastal Act can be found at: http://www.coastal.ca.gov/coastact.pdf.

The full text of citations to the California Code of Regulations can be found at: http://government.westlaw.com/linkedslice/default.asp?SP=CCR-1000. All references are the Title 14 Natural Resources Division 5.5.

Coastal Act § 30519 delegates coastal permit authority to local government in most of the coastal zone where an LCP has been certified. All IPs, therefore, must include some indication that the local government has the authority to process coastal permits and will exercise that authority.

Limitations to the local authority to issue coastal permits within its boundaries are clarified in various laws and regulations. Coastal Act § 30519(b) describes areas where the Coastal Commission retains coastal permit jurisdiction (e.g., tidelands, submerged lands, and public trust lands). Applicants for development in these locations go to the Coastal Commission, not local government, for coastal permits. Code of Regulations § 13577 directs how to map these Commission jurisdiction areas and local permit areas.

Coastal Act § 30601.3, added to the Coastal Act in 2006, allows the Coastal Commission to process the entire permit where a project straddles the jurisdiction of the Coastal Commission and a local government, provided that the applicant, the appropriate local government and the Commission, through its Executive Director, consent to consolidate the permit action, and provided that public participation is not substantially impaired by such consolidation. The Coastal Commission also retains jurisdiction over permits that it has previously issued.

The Coastal Act also specifies certain special coastal approval processes where the local government does not issue the coastal permit. For example, Coastal Act § 30605 provides for sponsors of public works projects subject to a public works plan and private college projects subject to a long-range development plan to authorize such projects instead of local governments. Coastal Act §§ 30519(b) and 30605 establish a special review process for projects on state college and universities. Coastal Act § 30715 allows for certain port governing bodies to authorize development if they have a certified port master plan. And Coastal Act § 30600(a), referencing Public Resources Code § 25500, preempts local review of thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them.

Finally, the Commission retains jurisdiction under the Coastal Zone Management Act (CZMA) to review federal projects and non-federal projects on federal land for consistency with the Coastal Act. In most situations, local government would not issue coastal development permits for these types of projects.

Since these limitations on the responsibility to issue local coastal permits are specified in various laws, elaboration of them in an IP in one place would assist Commission and local staff, as well as the public, in understanding local permit authority as questions arise. Following are suggestions for LCP updates to address: (a) determining if a proposed project is within the city or county's coastal permit jurisdiction; (b) authorizing the Coastal Commission to act on coastal permits that straddle jurisdictional boundaries; (c) processing coastal permits locally when the Coastal Commission also has some jurisdiction over the same projects; (d) determining who acts on requests for subsequent projects on sites that had previously been subject to Coastal Commission permits; and (e) addressing projects where local coastal permit authority is preempted.

1. Recommendation: Clarify Permit Jurisdiction

Update the IP to include a basic statement of responsibility to issue coastal permits, if not already included.

EXAMPLE: Certified IP text states purpose and intent, applicability, and requirement to obtain a coastal permit to undertake development (see Appendix B).

2. Additional Updates, Procedures and Practices to Consider

Some certified LCPs may already supplement a basic permit requirement provision, like the above example, with additional explanations as to which agency issues coastal development permits. If not, consider additional updated procedures that may clarify and inform applicants and the public when you have coastal permit jurisdiction and when you do not, pursuant to the cited laws and regulations. For example:

a. Clarify the process for determining whether a proposed project is within the coastal zone where coastal permit authority has been delegated to a local government.

First, if your LCP does not already reference or quote Coastal Act § 30519 and corresponding Code of Regulations § 13577, defining where the Coastal Commission retains coastal permit authority, you may wish to incorporate these into an IP update. These authorities establish the basis for making determinations as to whether you have permit authority over a proposed project.

Second, your IP can include a reference to and a procedure for consulting the post-certification maps when making a jurisdictional determination. These maps, adopted by the Coastal Commission, show the legislatively established coastal zone boundary and the coastal zone portions of your city or county where the Coastal Commission retains permit jurisdiction. They are required pursuant to Code of Regulations § 13576, which provides that a map portraying the areas of continuing Commission permit and appeal jurisdiction be adopted in conjunction with the final LCP certification. An update procedure is also described and provides the basis for revision and re-adoption of the map by the Commission. Please note, however, that while the adopted map should portray the various jurisdiction boundaries as accurately as possible, it remains only a depiction -- a cartographic representation and not a definition of the jurisdiction -- and it cannot be used on its own without field determination procedures to establish a precise boundary location. Conditions on the ground control permit and appeal jurisdiction boundary locations, based on Coastal Act definitions, regardless of how accurate the mapped boundary may be. It is important to emphasize that all adopted maps come with the following disclaimer:

> *…If questions arise concerning the precise location of the boundary of any area defined in the above sections [of the Coastal Act], the matter should be referred to the local government and/or the Executive Director of the [Coastal] Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where post-LCP certification permit and jurisdiction is retained by the Commission.*

Thus, your IP can include a procedure to ensure an accurate determination is made in cases where it is unclear where the precise boundaries fall on the ground, either because this determination cannot be made from consulting the maps alone or because the adopted post-certification map may not be totally up to date or complete for the situation in question. For example, your procedures may sometimes require more precise mapping of the proposed project, involve performing a field inspection, or incorporate consulting the Coastal Commission staff.

Ultimately, the Coastal Commission is charged with resolving any coastal geographic jurisdictional dispute. Clearly specifying a dispute resolution process in the IP consistent with Code of Regulations § 13569 could reduce conflict and delays (please also section I.E "Resolving Disputes Over Whether Permits Are Required or Appealable" below).

Please note that the adoption of post-certification maps is independent of the LCP certification and amendment process. These maps are prepared by the Coastal Commission's mapping unit before being adopted by the Commission. Thus, you cannot submit LCP amendments to change your official post-certification map. However you can revise other maps found in your LCP through an LCP amendment to ensure that they correspond to the coastal zone boundary that the Coastal Commission has already adopted. Our mapping staff continues to coordinate with local staffs as it updates and digitizes the post-certification maps. You are welcome to work with our staff and suggest updates to these maps, but please do not update your official versions without first consulting with the Commission. This can result in later disputes. Even if you wish to simply transfer boundary lines from USGS quad-scale maps to parcel-scale maps or from hard copy to digital, please have our mapping staff review them before officially using them to advise applicants.

b. Add an option to have the Coastal Commission act on coastal permits when the proposed project straddles the boundary between your jurisdiction and the Commission's.

Previously, when a development project straddled the boundary of a delegated permit jurisdiction, both the local government and the Coastal Commission had to process a separate coastal permit for the relevant portions of the project. Now under Coastal Act § 30601.3 one consolidated coastal permit may be processed by the Commission. Thus, you may wish to add provisions to your IP to allow for such Commission action.

If you amend your IP to include this option, you can explain how the procedure will work pursuant to § 30601.3. For example, you would need to inform a potential applicant of this option to see if they wanted to take advantage of it. Your IP could also designate who from your local government (e.g., the Planning Director) will make the decision to ask the Commission to act and under what criteria. Since the Coastal Act allows for this option only if "public participation is not substantially impaired" the designated decision-maker may need to first gauge how much public interest there is in the project and the nature of that interest. You could specify that proposals that generate a certain level or kind of public interest would still need permits from both the local government and the Commission. You may also want to facilitate transmitting local concerns to the Commission for those projects where you do ask the Commission to issue the consolidated coastal permit. Since you will likely remain responsible for issuing a building permit for the project, your IP may also include provisions for accepting the Commission's decision (i.e., permit conditions) for any follow-up regulatory work that you perform. This would be similar to how you address coastal permits that the Commission ends up deciding on appeals (please see Section III.C.2.c "Reconcile any remaining local responsibilities with Coastal Commission action on the appeal").

c. Explain how to process a coastal permit when the Coastal Commission also has jurisdiction over the same proposed development project.

If a proposed development project could be consolidated, but the consolidation process immediately described above in Section I.A.2.b is not used, the Coastal Commission would review that portion of the project within its jurisdiction and you would review the portion in yours. Although any approval is thus split between two agencies, projects and their impacts may not be easily separated by the jurisdictional boundary. Both the Commission and local government staff will need an understanding of the entire project in their respective consideration of

individual permits in order to properly review and analyze the permit application.

You may thus wish to incorporate measures in your IP and/or adopt associated procedures to facilitate coordination with our coastal permit process. For example:

- Revise permit application forms and filing requirements to require the applicant to describe and provide information on the entire project and then clearly indicate the specific component of the project that will occur just within your jurisdiction. For example, you may request both the total amount of grading and the amount within your jurisdiction alone (please see Section II.A "Specify Application Contents");
- Work with Commission staff during the application process in order to avoid giving applicants conflicting requirements and to ensure that all parties have the same factual understanding of the issues involved;
- Coordinate with Commission staff and the applicant to reach agreement on the sequencing of processing the applications. For example, if the part of the project in your jurisdiction is appealable to the Coastal Commission, it could save work if you process your permit first and then we process our permit, along with any appeal received on your permit;
- Consult with us if necessary to determine how issues may be separated between your permit and ours (e.g., you might address upland erosion and we might address shoreline erosion) and how those issues that do not easily separate on the jurisdictional boundary will be considered;
- Address Coastal Act issues that span the jurisdictional boundaries. If, for example, the majority of the project and issues raised are in your jurisdiction and/or if you have other permit authority, such as a use permit, for the portion in the Coastal Commission's jurisdiction, your actions might be able to incorporate Commission concerns and resolve issues that the Commission would also have. In such cases, the Commission's coastal permit process might be streamlined by incorporating the same conditions that you have imposed or by issuing a permit waiver if the applicant agrees to carry out all the local conditions over the entire project area. For example, if sensitive habitat spans the jurisdictional boundary and you require a sufficient mitigation/restoration plan, then the Commission may not have to devise a separate mitigation/restoration plan for the area under its jurisdiction – it might be able to reference and require the one that

you require. Early consultation with Commission staff is essential in these situations.

d. Clarify the process for addressing subsequent projects on sites where the Coastal Commission has previously issued a coastal permit.

Where the Commission previously issued a coastal development permit (pre-LCP certification or on appeal), it retains authority over projects that remain subject to the prior coastal permit decision. Your IP could include a process for clarifying when an applicant should seek an amendment to a previously issued Coastal Commission permit or can instead seek a new, separate coastal permit. If a proposed project must be processed as an amendment to the Commission-issued permit, then the application should be submitted to the Commission. Examples of when an amendment to the Commission-issued permit would be required include cases where the authorized development is not yet completed or where new proposals would conflict with permit requirements or conditions of the prior Commission action (e.g., limiting future development on the site). To confirm if the Commission acted on prior permits on a site and retains jurisdiction, your procedures could include measures to:

- require the application form to identify all prior permits;
- check local records for any building or other permits that you would have issued for the site in question between February 1, 1973 (the date the Coastal Commission started issuing coastal permits) and the date that you began issuing your own coastal permits;
- check for any recorded documents that govern the site;
- confirm if any development on the site remains underway or is incomplete;
- confirm whether the proposed project is distinct from existing development on the site.

Finally, if questions remain about prior permits, you can contact Commission staff to ask us to check our records for previously-issued coastal permits and determine whether you or the Commission processes the new application. The more information that you have about the site (e.g., the date of previous development and the owner at the time), the easier it may be for us to retrieve the actual coastal permit, if we issued it.

e. Address situations where local coastal permit authority is preempted.

Please see the U.S. Supreme Court's "Granite Rock decision" (CCC v. Granite Rock Co. (1986) 480 U.S. 572) for a discussion of the Coastal Commission's authority to issue permits for non-federal projects on federal land.

To help inform the public and applicants, your IP can include a list of the categories of projects that are within your boundaries but where coastal development authority is retained by the Coastal Commission or another entity. For example, the Commission retains jurisdiction under the Coastal Zone Management Act (CZMA) to review federal projects, whether or not they occur on federal land, and local government would not issue coastal development permits for non-federal projects on federal land. These would need a coastal permit from the Commission. In addition, local governments do not issue a coastal development permit for public works projects subject to an approved public works plan; projects within a port with a certified port master plan; state college and university projects for educational facilities under a Long Range Development Plan; and thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them.

You may wish to prepare information for prospective applicants and interested citizens directing them to the agencies that will be responsible for deciding these matters. Your LCP may include a procedure to consult with us or other agencies in case jurisdictional questions arise over these types of projects. Your LCP may also include procedures to track these matters that involve your jurisdiction and to facilitate local involvement in the corresponding decision making processes.

B. Determine if a Proposed Project Is "Development"

Coastal Act § 30600 requires that anyone wishing to undertake "development" in the coastal zone obtain a coastal development permit. Coastal Act § 30106 defines development for purposes of this permit requirement. All LCPs, therefore, must include a clear definition of development that is consistent with the Coastal Act § 30106 definition.

Questions often arise as to whether a specific activity meets the basic definition of development. Applicants and others would thus benefit if your IP also includes: (a) illustrations of established determinations of what activities are development; (b) guidance and procedures for determining whether a particular activity is development; and (c) a statement that the definition is applied to private and public projects.

1. Recommendation: Clarify What Is Development

Update the IP to incorporate the Coastal Act § 30106 definition of development, if not already included.

2. Additional Updates, Procedures and Practices to Consider

In updating your IP, consider additional procedures to clarify and inform applicants and the public how the definition of development in Coastal Act § 30106 may be applied. For example:

a. Illustrate the definition of development with established determinations of what activities are development.

It might not be immediately apparent whether a specific non-construction activity that someone is proposing is encompassed under the definition of "development." Over time, the Commission, courts, and perhaps your decision-makers have made determinations that certain activities in all or specified circumstances fall under the definition of development. Many of these determinations conclude that certain activities result in a change in the intensity of use of land or water and/or a change in access to water (e.g., the ocean). Illustrating your IP's definition of development with these determinations may facilitate effective implementation of your LCP. Examples of such decisions by the Coastal Commission and courts are shown in Table I.1.

Please see, "Imposing or Increasing Fees or Modifying the Hours of Operation of Public Beaches or Public Beach Parking Lots, Piers or Boat Launching Ramps," October 1993, page 2 for the rationale for coastal permit requirements for these activities.

Table I.1. Examples of Determinations of Whether An Activity is "Development"

Type of Activity	Discussion
Adding Parking Meters or Substantially Raising Parking Fees	If the meters serve beach visitors, then imposing or substantially increasing fees is considered a change in access to water (e.g., the ocean), which is defined as development.
Prohibiting Existing Parking or Changing It to Preferential Parking	If the parking serves beach visitors, then eliminating it or restricting it to only certain users (e.g., residents) is considered a change in access to the water, which is defined as development.
Adjusting Lot Lines	Although the Subdivision Map Act distinguishes lot line adjustments from subdivisions, they are considered development under the Coastal Act as affirmed in *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal. App. 4th 231.

Table I.1. Examples of Determinations of Whether An Activity is "Development"	
Type of Activity	**Discussion**
Issuing Conditional Certificates of Compliance	Issuing a conditional certificate of compliance is a discretionary action requiring analysis and possible conditions to allow a division of land that was not previously accomplished consistent with relevant legal standards. This falls under the definition of development, which encompasses subdivisions and any other division of land. Please note that while issuing an unconditional certificate is a ministerial action that does not recognize any new or illegal division of land and hence is not development, if a public agency erroneously issues an unconditional certificate, instead of a conditional certificate, such issuance is still "development," requiring a coastal permit. Issuance of a certificate of compliance, whether conditional or unconditional, must conform to the requirements of the Subdivision Map Act.
Imposing Beach Curfews	Imposing beach curfews usually reduces public access to the water (e.g., to the ocean) which is defined as development.

Please see, Please see "Actions Limiting Public Access to Beaches and State Waters (Beach Curfews)," June 1994, p. 7 for further information on this topic.

b. Specify a process for determining whether a proposed project is "development."

In addition to the examples in Table I.1, we recognize that you may frequently face questions about whether a specific activity is development. Your IP could include a procedure for making these determinations, including specifying who makes the decision and the criteria for making the decision. The rule to follow is that the proposed activity must fall within at least one of the definitional elements listed within Coastal Act § 30106. You may include in your determination procedure a point for consultation with Coastal Commission staff to help answer questions that may arise. If a dispute remains over whether a proposed activity is development, then it is resolved through the required resolution process (please see Section I.E "Resolve Disputes Over Whether Permits Are Required or Appealable").

The Coastal Commission makes determinations about whether an activity is development on a case-by-case basis, taking into account the specific facts of the situation and whether the activity meets one of the elements of the definition of development in Coastal Act § 30106. Table I.2 lists some additional examples where the Commission has determined that an activity constitutes development, and the basis for that determination.

Table I.2. Examples of Determinations that an Activity is "Development"

Type of Activity	Discussion
Abandoning Public Roads	Does the road provide access to the shoreline, either directly or indirectly? Is the roadway used by the public a fair amount? If so, then privatizing it reduces the use it receives and public access to the ocean, which is a water body. A change in the intensity of use of the land and access to water are both defined as development.
Clearing Brush or Controlled Burning	Is the vegetation environmentally sensitive habitat? If so it is considered major vegetation, the removal of which is defined as development.
Closing Accessways	Closing an accessway may be accomplished by erecting a barrier, signs or other placement or erection of a structure on land. It may also reduce public access to the ocean, or result in a reduction in the intensity of public use of the area. Grading or removal of material may also be involved. Each of these situations has been determined to be development in the past.
Merging Lots	Merger of lots that each have some development potential will likely reduce overall development potential, which is a change in the density or intensity of use of land and therefore development.

Please see the Commission's temporary events guidelines at http://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf for considering whether activities have a significant effect on public access.

Table I.2. Examples of Determinations that an Activity is "Development"	
Type of Activity	**Discussion**
Using Beaches & the Ocean to Teach Surfing, Kayaking etc.	If such activities take up substantial beach area then public access to the ocean may be affected, which may trigger the definition of development. If the schools need any equipment sheds, lifeguard towers, portable classrooms or placement of other structures, the activity involves development.

Please note that even though an activity may be defined as development, you may then be able to find it exempt from coastal permit requirements, at least in certain situations (please see Section I.C "Determine if a Development Proposal is Exempt from Permit Requirements"). Also, there may be procedures that could be used to expedite the processing of a required coastal permit (please see Section II.C.2 "Specify Procedures for Deciding on Coastal Permits").

c. Affirm that the definition of development applies to activities of other governmental agencies.

The Coastal Act differs from those state laws that exempt local, regional, and state agencies (e.g., school districts, water agencies, and State Parks) from the local regulatory process. The Coastal Act does require such other agencies to obtain coastal permits for new development pursuant to certified LCPs, unless specifically exempted. Your local staff may have confronted questions regarding development proposals from other agencies; or these agencies may lack detailed knowledge of Coastal Act requirements for local permits. Thus, you might include in your IP an affirmative statement that other local, regional and state governmental agency projects falling under the definition of development must abide by applicable coastal permit procedures.

You may wish to supplement such a provision by preparing permit training materials to assist other local, regional and state agencies and proactively performing outreach to the agencies that own land or typically operate in your community.

C. Determine if a Development Proposal is Exempt from Permit Requirements

Not all activities determined to be development require coastal permits. Coastal Act § 30610 lists development categories that are exempt from the requirement to be authorized by coastal development permits. California Code of Regulations §§ 13250-53 amplifies on some of these categories of exempt development. Coastal Act § 30600(e) exempts certain work responding to a Governor's state of emergency proclamation or to highway damage within its right-of-way due to natural events. Also, Coastal Act § 30005(b) provides that the requirement to obtain a coastal permit cannot be a limitation on your jurisdiction's power to abate a nuisance, although the approved abatement must be the minimum necessary to resolve the nuisance. All IPs, therefore, should include a clear list of development categories that are not subject to the coastal development permit process.

Questions often arise as to whether a specific activity falls within one of these exemption categories. Applicants and others would thus benefit if your IP also includes guidance to clarify what and under what conditions development is exempt by indicating, for example: (a) areas where exemptions apply; (b) which temporary events are exempt; (c) how the disaster replacement exemption is applied; (d) how the exemption for emergency work exemption is applied; (e) the scope and application of any exclusions; and (f) what nuisance abatement activities are exempt.

1. Recommendation: Clarify Exemptions from Coastal Permits

Update the IP to incorporate Coastal Act §§ 30600(e) and 30610 lists of exemptions and the requirements of corresponding California Code of Regulations §§ 13250-53 that are applicable to your jurisdiction, if not already included.

These various provisions can be melded into one exemptions section (please see Appendix B) with the related Act and Regulation sections combined (e.g., Code of Regulations§ 13250 expands upon Coastal Act § 30610(a) regarding improvements to existing single-family residences; Code of Regulations§ 13253 explains Coastal Act § 30610(b) regarding improvements to any structure other than a single-family residence; Code of Regulations § 13252 relates to Coastal Act § 30610(d) regarding repair or maintenance activities).

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider adding procedures that may clarify and inform applicants and the public about when a proposed activity will or will not require authorization through the coastal permit process. For example:

a. Include, define or reference specific statutory exemptions from coastal permit requirements for structural additions and repair and maintenance activities.

Exemption provisions are complex. Some categories of development are exempt from permit requirements except in certain situations. Some of these situations are geographically-specific. Thus, you may include in your IP exemption section definitions of or references to specific qualifications that are included in Code of Regulations §§ 13250 through 13253 (see bolded text in Table I.3). If such designations have not been made, you may wish to do so and include them in your IP.

Table I.3 Possible Designations to Reference in List of Exemptions

Code of Regulation	Summary of Provision	Local Application in IP
§ 13250(a)(2)	Exempts many improvements to structures "**normally associated with a single-family residence**" and lists some examples such as garages, pools, fences, and sheds.	Your IP could enumerate categories of structures normally associated with a residence for your jurisdiction.
§§ 13250(b)(1) and 13253(b)(1)	Does not exempt improvements in an area designated as "**highly scenic**" in a certified land use plan.	If you have such highly scenic areas designated in your LUP, you can reference them in your IP. If your LUP identifies areas of scenic importance, but does not use the term "highly scenic" you can amend your LUP to use that term.

Table I.3 Possible Designations to Reference in List of Exemptions		
Code of Regulation	**Summary of Provision**	**Local Application in IP**
§§ 13250(b)(5) and 13253(b)(5)	Does not exempt "**major water using development**" in areas with a "**critically short water supply**" designated by the Coastal Commission by resolution.	You could designate such water short areas in your LCP. Then, the Commission's resolution certifying your LCP satisfies this designation requirement. Your IP can also specify the threshold for defining major water using development.
§ 13252(a)(1)(D)	Does not exempt certain repair and maintenance activities along the shoreline where "**mechanized construction equipment or construction materials"** are present in certain areas.	Your IP could more precisely define mechanized equipment or construction materials and specify a threshold for what constitutes their presence.
§ 13252(a)(2)(C)	Does not exempt dredge spoil removal in areas within a "**critically short sand supply**" designated by the Coastal Commission by resolution.	Your LCP could designate such critically short sand supply short areas. Then, the Commission's resolution certifying your LCP satisfies this designation requirement.

Table I.3 Possible Designations to Reference in List of Exemptions		
Code of Regulation	**Summary of Provision**	**Local Application in IP**
§ 13252(a)(3)	Exempts certain repair and maintenance activities specifically described in "**Repair, Maintenance, and Utility Hookups**" at http://www.coastal.ca.gov/legal/exclusions-1978.pdf	You can incorporate relevant portions of this document in your IP so it will be conveniently accessible. You can specify local road maintenance programs that fall under part II.A of this document.

b. Explain which temporary events are exempt from coastal permit requirements.

You can include in your IP exemption section the text of or reference to the Coastal Commission's temporary events guidelines found at http://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf or excerpted in Appendix B**.** You could further indicate how a "significant adverse impact upon coastal resources" would be determined for your city or county pursuant to these guidelines and Coastal Act § 30610(i). You may also include a procedure for consulting with the Coastal Commission staff as to whether a specific proposed temporary event is exempt from coastal permit requirements.

c. Define "replacement" for purposes of implementing the exemption due to disasters pursuant to Coastal Act § 30610(g).

You may be aware of structures located in sensitive areas of your city or county that were destroyed by disaster but have not been rebuilt many years after the disaster. If so, you might want to specify in your IP a defined time period for replacement to take place, after which construction of a new structure would no longer be exempt from permitting requirements.

d. Describe which emergency work is exempt from coastal permits

pursuant to Coastal Act § 30006(e).

You may want to include the Code of Regulations § 13329 definition of the term "emergency" as a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. You may also be aware of instances of proposed work purported to be an emergency response to a declared disaster that appeared to go beyond addressing the immediate emergency. If so, you might want to define in your IP exemption section the terms "immediate" and "necessary" to ensure that the Coastal Act § 30600(e) exemption is used solely under appropriate circumstances.

e. Include or reference categorical exclusions from coastal permit requirements.

Please see Code of Regulations §§ 13240 – 13247 for further information about categorical exclusions.

Categorical exclusions list types of development that do not require coastal permits. They are adopted by the Coastal Commission under separate procedures from the LCP certification and amendment process. However, you may include in your IP permit exemption section the text of or a reference to any categorical exclusions adopted and still in effect for your jurisdiction pursuant to Coastal Act § 30610(e) [Please note: any categorical exclusions that the Commission adopted prior to certification of your LCP ceased to apply upon LCP certification, unless they were subsequently readopted after LCP certification.] Adopted categorical exclusions incorporate some procedural terms (such as transmitting determinations to exempt proposed projects under the categorical exclusion to the Coastal Commission) that must be completed before you can inform applicants that no coastal permit is needed for their projects.

Also, please note that you cannot propose an amendment to a categorical exclusion through the LCP amendment process alone. Such changes must be requested pursuant to the categorical exclusion process, although you can concurrently submit an LCP amendment that includes the categorical exclusion text. If you wish to exempt a category of development from coastal permit requirements that is not already exempted by the Coastal Act and Regulations, then you must apply for an urban or categorical exclusion pursuant to Coastal Act § 30610(e) and companion Code of Regulation §§ 13215 -13225 and 13240 – 13249. The threshold for granting an exclusion is high – "no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast." It will be necessary for you to provide the Commission with substantial documentation of no potential adverse effect in order to have the exclusion processed. Because the exclusion criteria are stringent and the process is substantial, exclusion

requests only make sense when they could significantly reduce your workload, based on your experience processing coastal permits. It may be more efficient to initiate some other streamlining measures as an alternative. (Please see Section II.C "Specify Procedures for Deciding on Coastal Permits.")

f. Include a limited exemption for abating nuisances.

The Coastal Act does not limit the power of your jurisdiction to declare, prohibit, and abate nuisances. In addition, when your jurisdiction has formally declared a nuisance and required abatement, the abatement activities may in some circumstances not require a coastal permit. You may wish to include in your IP an explanation of when activities that constitute development could be exempt from coastal permit requirements. These could include, for example:

- when alternative abatement measures that are not development would not succeed,
- when the development is the minimum necessary to abate the nuisance, and
- when full mitigation for any adverse resource or access impacts is incorporated into the abatement work.

D. Determine if a Proposed Project is Appealable to the Coastal Commission

Coastal Act § 30603(a) provides that local coastal permit decisions can be appealed to the Coastal Commission if they fall within certain categories or geographical areas. Code of Regulations § 13577 directs how the Commission maps these areas. All LCPs, therefore, must include a list of categories of appealable projects. County LCPs must clearly indicate the principal permitted use in each zoning district because every project other than the one principal permitted use in each zoning district is appealable to the Coastal Commission.

Questions may arise as to whether a development falls within an appeal area. Thus, applicants and others may benefit if the IP includes guidance and procedures for determining whether a particular activity: (a) falls within a geographical appeal area; (b) is an appealable public works or energy project; and (c) is between the nearest public road and the sea.

1. Recommendation: Clarify if a Project Is Appealable

Update the IP to incorporate the Coastal Act § 30603(a) list of the categories for appealing a local decision to the Coastal Commission, if not already included.

For counties, update the IP to show only one principal permitted use in each zoning district.

For counties, you should review your zoning district regulations to see if they clearly specify one principal permitted use in each zoning district for purposes of appeal. Any additional uses that you may still want to call "other principal permitted uses" for other reasons would be subject to appeal to the Coastal Commission.

EXAMPLE: A proposed County IP's agricultural zoning district with modifications suggested by the Coastal Commission indicates what is the principal permitted use that is not appealable and what are other permitted uses that are appealable (please see Appendix B).

Please note that applying the Coastal Act with regard to principal permitted uses differs from traditional zoning application where principal uses are generally allowed "by right," without further review and without any limitations other than the bulk and intensity requirements of the zoning district. Under the Coastal Act, as noted, there can only be one principal permitted use for county zoning districts for purposes of determining appealability. Also, a proposed development that is the principal permitted use will still need to be authorized by a coastal permit (unless the proposal is exempt or excluded) through the coastal permit process that evaluates the proposed development for consistency with LCP policies and development standards. For example, if the proposed principal permitted use cannot be found or made to comply with other IP provisions, such as habitat or view protection, it could be denied or conditioned to ensure LCP compliance.

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider additional procedures that may clarify and inform applicants and the public if a project will be appealable to the Coastal Commission. For example:

a. Clarify the process for determining if a proposed project is within your locality's geographic appeal jurisdiction.

Please see Section I.A.2.a "Clarify the process for determining whether a proposed project is within the coastal zone where coastal permit authority has been delegated to a local government" because the same considerations apply to determining appeal areas boundaries.

b. Include a reference to or quote the definition of and procedure for determining what is a major public works or major energy facility.

Coastal Act § 30114 defines "public works;" Coastal Act § 30107 defines "energy facility" and Code of Regulations § 13012 defines when these are "major;" the latter referencing the Engineering News Record Construction Cost Index (please see Appendix B). Current and historic data from the Construction Cost Index is on line at www.ENR.com with access by subscription. If someone in your city or county is not already a subscriber, you can consult with our staff if there is a question as to current value. The Coastal Commission periodically collects the updated figures and can provide the information to you. An amended Code of Regulations § 13012(a) became effective in January 1983. Costs have more than doubled since then. Construction costs of $100,000 in 1983 were equal to $208,771.04 as of December 2008.

c. Clarify whether a coastal permit amendment or extension request is appealable.

In updating your IP, you may wish to ensure that the rules for determining whether a project is appealable to the Coastal Commission are clear as to how they apply to subsequent coastal permit amendment and extension requests. If you have procedures to amend (please see Section II.C.2.f "Include permit amendment procedures"), or extend the terms of issued coastal permits (please see Section II.C.2.g "Include permit extension procedures"), then those procedures need to also include a determination of appealability for actions that have to be noticed to the Coastal Commission. Below are a few examples of how to determine whether an amendment or extension application is appealable to the Coastal Commission:

- If the original approval was for development subject to appeal pursuant to Coastal Act § 30603, then a proposed permit amendment or extension is usually appealable;
- If the amendment application only involves a distinct development proposal that clearly falls entirely outside of the appeal area, then the amendment may not be appealable, even if the original permit was

appealable (e.g., if original permit included a house within 100 feet of a wetland making it appealable only for that reason, but the amendment requests solely adding a shed entirely beyond 100 feet of the wetland);

- If the amendment application involves new development that falls even partially in the appeal area, then the amendment would be appealable, even if the original permit was not appealable (e.g., the original permit was for a house more than 100 feet from a wetland, but the amendment is for a garage within 100 of the wetland);
- In counties, if the amendment involves changing a use that is not the principal permitted use, then it would be appealable.

For coastal development permit extensions, there may also be some rare cases in counties where changed circumstances would result in a change in appeal status. A previously non-appealable permit may become appealable. A new designation of ESHA on a site is one example of such changed circumstance that can affect appeal status. For example, if the IP defines a house on a parcel with environmentally sensitive habitat (ESHA) as a conditional and thus appealable use, a permit extension for a house on a parcel that originally did not include ESHA, and was thus a non-appealable principally-permitted use, would be appealable if the changed circumstance is that a species located on the parcel is newly designated as endangered, so that the habitat on-site is re-designated as ESHA. Such cases do not happen often, but local government should be aware of the issue, especially for cases of multiple coastal permit extensions granted over time.

d. Include a procedure for revising appeal determinations.

Code of Regulation § 13569 requires that a determination as to whether a permit will be appealable is made at the time the application is submitted. This provision could be interpreted to read that a project's appeal determination cannot change. However, experience has shown that projects sometimes evolve through the local hearing process in a manner that could change their status. For example:

- a project design could be revised or a new element could be added that would place it within 100 feet of a stream, rendering it appealable to the Coastal Commission (or vice versa);
- a final local action could condition the project to include an element that renders the project appealable;

- a final local action to deny a project that would have been appealable renders it non-appealable (denials are not appealable to the Coastal Commission except for major energy or major public works projects);
- the Coastal Commission could determine that a project is appealable (please see, for example, Section I.E "Resolve Disputes Over Whether Permits Are Required or Appealable.")

It would be helpful for your procedures to account for such possibilities, by, for example:

- providing clear information on any public notice that the initial determination that a project is appealable, or not, may change if the project is altered through a later action;
- ensuring original determinations of appealability remain accurate before mailing notices if circumstances have changed or a long period has elapsed between application and public hearing;
- revising a determination of appealability where necessary and making apparent on subsequent notices that the determination of appealability has changed.

You could make use of a standard statement that outlines whether a project is appealable to the Coastal Commission or not, the rationale, the process for appeals, and the date of determination or revision. This statement could be included on various documents pertaining to the permit including notices, staff reports, and agendas. It would be updated as necessary throughout the permit process, with a clear indication if and when it has been changed.

E. Resolve Disputes over Whether Permits Are Required or Appealable

Code of Regulations § 13569 outlines a procedure to resolve disputes involving whether a development is excluded or appealable. All LCPs, therefore, must include such a procedure to resolve disputes consistent with these regulations.

This procedure can only be fully operable if the public is informed of local permit determinations. Also, experience over time has shown that following this procedure exactly may be difficult, given the short time lines and the local notification responsibility. The public may benefit if additional guidance and procedures are included in the IP to clarify how to resolve permit determination disputes by: (a) adequately noticing the

public; (b) facilitating information exchange; and (c) accepting Commission decisions.

1. Recommendation: Clarify How to Resolve Disputes over Whether Permits Are Required or Appealable

Update the IP to include a procedure for resolving disputes consistent with Code of Regulation § 13569, if not already included.

When including the steps outlined in **§** 13569 you can specify who or what body of your local government makes the determinations and requests called for.

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider additional procedures that may clarify and inform applicants and the public about how disputes can be resolved. For example:

a. Include procedures to ensure that any dispute resolutions can commence as soon as practical.

An assumption underlying for Code of Regulation § 13569 is that interested parties are made aware of local determinations of permit requirements and appealability. However, this section does not dictate how such noticing should occur. If a determination is made that no coastal permit is needed, notification might not occur to anyone other than the applicant, and so interested parties may not be aware of this determination until they witness construction occurring. If a determination is made that a coastal permit is appealable, interested parties may not be made aware of this until seven days prior to action on the coastal permit when they receive the public hearing notice pursuant to Code of Regulation § 13565. To minimize the potential for disputes it may be important to make any notice clear and explicit as to appeal status and appeal process. You can update your IP to provide for earlier noticing of permit and appeal determinations in order for any ensuing disputes to be resolved expeditiously. Please see Section I.D.2.d "Include a procedure for revising appeal determinations" and Section II.B.2.c "Provide for some advanced noticing."

b. Expand procedures to facilitate information exchange.

Experience with trying to follow the exact steps outlined in § 13569 has revealed some challenges. For example, sometimes interested parties may first call the Commission to question one of your decisions and sometimes

Commission staff may have its own questions about your determinations that you may then want to review before the dispute process escalates. Also, the two day turn-around time for response is often problematic, especially if some information is lacking. There are some procedures that you can establish to facilitate information exchange, such as measures to:

- accept and address disputes from members of the public or our staff;
- discuss with us informally the particulars of the dispute, before triggering the formal two day response period;
- supplement the required phone notification with written explanations and background materials, including a map where helpful.

c. Include procedures to accept a permit determination change as a result of dispute resolution.

At some point in the dispute resolution process your determination of whether a proposal needs a permit or is appealable may change. Based on input from our staff, you may voluntarily change your determination or based on a decision by the Coastal Commission you may be compelled to change your determination. Although not required by § 13569(d), you may incorporate an option to be able to accept a Coastal Commission Executive Director determination to avoid a Commission hearing. It would also be helpful if your IP included provisions for the acceptance of a changed determination of permit requirements or appealability and for any necessary follow-up (e.g., you might have to change your notice).

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

Section II. Local Coastal Permitting Procedures

The full text of citations to the Coastal Act can be found at: http://www.coastal.ca.gov/coastact.pdf.

The full text of citations to the California Code of Regulations can be found at: http://government.westlaw.com/linkedslice/default.asp?SP=CCR-1000. All references are the Title 14 Natural Resources Division 5.5.

Certified IPs should provide clear directions for processing any required local government coastal development permit. The Coastal Act authorizes local governments to issue coastal permits that are consistent with the provisions of their certified local coastal program. While local governments are free to devise the details of their application process, the California Code of Regulations §§ 13560 – 13574 provide minimum standards to be followed in processing coastal development permits. For example, certified LCPs must contain certain procedures to notice and conduct public hearings on coastal permits and transmit the results to the Coastal Commission. Chapter III of the *Local Coastal Program Post-Certification Guide for Coastal Cities and Counties* at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf gives some general explanation of Notice of Hearing or Pending Action and Notice of Final Local Action. Since the *Post-Certification Guide* was last revised in 2002 legislation has been enacted prohibiting public hearings for permit applications for second residential units on residentially zoned land.

The Commission and local governments have also learned from LCP implementation over the years about certain recurring procedural issues and problems with coastal permit applications, noticing, decision-making and transmittal of final local action notices. For example, occasional problems occur when the purported applicants do not have complete authority to comply with the terms of the permit. Other application issues arise when information needed to adequately consider the coastal permit had not been requested or submitted. Delays may occur if notices of pending actions on coastal permits are not prepared or distributed correctly and have to be redone. Some complaints of delays in arriving at permit decisions may be attributable to the time it takes to follow standard processing steps -- which for some cases could have been streamlined. Attempting to follow not only coastal permit requirements but others that are in your local code and are in other State laws can cause confusion, if coordination measures are lacking. The same can be true if coordination is lacking between you and the Coastal Commission when it takes jurisdiction on appeal over a coastal permit that you have approved. And appeal decisions can be delayed if required noticing of final local actions or information transmittal to the Coastal Commission is incomplete or improper.

Updating your IP can thus help prevent some of these problems and can result in saving time and money in processing coastal permits. Since the coastal permit is the primary means of carrying out your coastal land use plan policies, it is important to have clear and legally correct processing procedures. Some benefits from considering the suggestions offered in this section could include:

- Coastal resources receive full protection;
- Proposed projects are considered in a consistent manner and applicants recognize this;
- Processing times and delays are reduced;
- Interagency coordination is enhanced;
- Applicants have a clearer understanding of what is required;
- Confusion over seemingly contradictory requirements is avoided;
- Emergency situations are expeditiously addressed;
- Any appeals can be and are made in a timely manner;
- There are not subsequent problems when an applicant constructs a project.

This section provides suggestions for updating the IP and considering other practices that will help guide the processing of a coastal permit. The first step (Section II.A) is ensuring that you have all necessary information through the application. The second step (B) is to follow noticing requirements. The third (C) is to establish procedures to act on the permit. The final step (F) is to memorialize and transmit the action taken on the coastal permit. Additionally, this section covers coordinating various provisions within your IP and between your IP and other state laws (D & E).

A. Specify Application Contents

All LCPs should require that a party proposing development that requires a coastal permit submit an application. Requesting sufficient, verifiable and relevant information is important in order to be able to act appropriately on the application. Likewise, it is crucial that the applicant have the legal authority to carry out any terms of the issued coastal permit. Thus, applicants and the public could benefit if your IP: (a) indicates what information should be contained in the application; (b) includes application requirements tailored to the type of hearing process that may

be required; and (c) requires clarity as to who the applicant is and their legal ability to carry out the proposed development.

1. Recommendation: Require a Coastal Permit Application

Update the IP to incorporate a requirement for a coastal permit application if it is not already included.

EXAMPLE: Certified IP text states where to submit application, content, timing and fee (please see Appendix B).

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider adding specifications for what should be contained in coastal permit applications. For example:

a. Include categories of information that the application should address.

Updating the IP provides an opportunity to review and specify the information that applicants must provide to support their permit application. Code of Regulations § 13053.5 (which lists the items that the Coastal Commission requires for the permits it processes) can be used as guidance as to the nature and extent of general site and project information to request.

The presence of certain coastal resource issues will necessitate in depth technical review to ensure that the proposed project is consistent with LCP policies. You may wish to prepare supplemental application sheets for each issue requiring special documentation. For example, if environmentally sensitive habitats are a concern, the application should require a biological assessment and state how it should be prepared. Other possible supplements to a basic permit application include a geological assessment, archaeological reconnaissance, scenic resource evaluation, and agricultural suitability or feasibility analysis.

EXAMPLE: suggested filing requirements for subdivisions where landform alteration (grading) is involved:

> http://www.coastal.ca.gov/landform/sec4.html *(please see #s 6 and 7 also reproduced in Appendix B)*

EXAMPLE: Certified IP contains filing requirements for biological survey:

http://www.co.monterey.ca.us/planning/docs/plans/nc_cip.pdf (please see pp. NC-21 & 22 also reproduced in Appendix B)

EXAMPLE: Certified IP contains filing requirements for hydrological reports:

http://www.co.monterey.ca.us/planning/docs/plans/nc_cip.pdf (please see pp. NC-48 –50, also reproduced in Appendix B)

EXAMPLE: Certified IP contains filing requirements for geological reports:

http://www.co.monterey.ca.us/planning/docs/plans/nc_cip.pdf (please see pp. NC-65—68, also reproduced in Appendix B)

EXAMPLE: suggested filing requirements for geological reports:

http://www.geology.ca.gov/forms-pubs/guide-reports.shtml (also in Appendix B)

b. Tailor applications or application questions to correspond to different types of permit review.

Coastal permit processes can be tailored to specific circumstances such as the applications for variances, emergency situations, or requests for permit amendments or extensions (Please see Section II.C "Specify Procedures for Deciding on Coastal Permits"). For example:

Variance requests: Since a variance may only be granted if a property has special circumstances, your permit application should include questions about nearby property characteristics (e.g., sizes, shapes, topography) to be able to determine if the subject site is different than nearby sites and potentially qualifies for a variance. (please see Section II.D.2.a "Coordinate any variance allowances with coastal resource protection.")

Emergency permits: Where appropriate, consider the following to facilitate the streamlining of requests to perform emergency work (please see Section II.C.2.e "Have a distinct process for emergency permits"):

- The written application or parts of it may be deferred upon receipt of a telephone, emailed, or faxed request to perform emergency work,

provided that a follow-up written application is required to be submitted as soon as possible;

- Certain plan requirements (e.g., to scale, engineered drawings) may be waived provided a clear description of the limits of the emergency work, including the location, spatial extent and timing of the work, is specified;
- Submittal of required supporting information may be waived, postponed, or adjusted (e.g., a full geotechnical or biological report may be waived, but a geologist or biologist may be required to be present on site when the emergency work is underway).

Coastal permit amendments and extensions: Some options to consider (assuming that you issued the original permit for the site and retain access to the original permit file materials) include:

- Not requiring duplicate property information already obtained for the original application;
- Focusing supporting information requirements on what is proposed for change or may be changed circumstances.

See, also: Sections II.C.2.f & g "Include permit amendment procedures" and "Include permit extension procedures."

c. Establish methods to ensure that the stated applicant has legal authority to carry out the approved project.

Coastal permits need to be issued to a party with the legal authority to undertake development on the site and carry out any terms or future obligations of the coastal permit." In updating your IP you may wish to incorporate text quoting or similar to Coastal Act § 30601.5 ("the applicant shall demonstrate the authority to comply with all conditions of approval [of a coastal permit]") and companion Code of Regulations § 13053.5 (that requires applications to contain a description and documentation of the applicant's legal interest in the property and signatures attesting to the truth of the application).

Standard practice should be that all parties shown on a current property deed subject to proposed development sign the application. However, you may be faced with some party wishing to submit an application whose absolute or complete authority is not readily apparent. Thus, you may establish rules specifying the acceptable proof of authority for such cases. The following examples offer some options to consider in making sure

that permit applicants are clearly identified and have the authority to comply with conditions.

If some, but not all, of the co-owners of a property apply, consider:

- requiring all owners to sign the application;
- requiring non-applicant owners to grant written permission for the owners who do sign the application to represent them as well;
- allowing the application to be processed if the percentage of owners who sign is sufficient for them to have the authority to undertake the project; or
- allowing the application to be processed, but permit issuance to occur only if it can be demonstrated that the owners who signed the application have authority to undertake the project and comply with all terms of the permit.

If a party applies on behalf of a government, corporation, partnership or nonprofit, consider:

- determining if the representative signing the application has the necessary authority to represent the organization and carry out the permit conditions.

If a lessee of a property applies, but not the owner, consider:

- requiring the current owner to be a co-applicant;
- giving all other parties with an interest in the property the opportunity to be co-applicants (Coastal Act § 30106.5 places this requirement on permits issued by the Coastal Commission);
- requiring proof that the lease allows the applicant to undertake the development in question; or
- allowing the application to be processed, but permit issuance to occur only if it can be demonstrated that the lessee has the authority to undertake the project and comply with all terms of the permit; and.
- specifying in the permit what happens to the approved project when the lease term expires.

If a prospective future owner of the property applies, but not the current owner, consider:

- requiring the current owner to be the applicant;
- requiring the current owner to allow the prospective buyer to act in the current owner's behalf; or

- allowing the application by a future owner to be processed, but permit issuance to occur only after the transaction transferring ownership to the applicant is complete.

If a representative of an entity that wishes to perform work on property that the entity does not own applies (e.g., a director of a utility installing a new sewer or water line across private properties), consider:

- requiring submittal of an easement or similar permission to install their facilities on other people's property;
- allowing the application to be processed, but permit issuance to occur only after permission to use the property from the owners is obtained; or
- allowing the application to be processed on the basis that if all else fails the applicant can take or use the property through eminent domain.

If a property owner's agent applies on the owner's behalf, consider:

- requiring the owner(s) to grant written permission for the agent(s) to act on their behalf; and.
- having contingencies to address situations where the agent changes or no longer represents the owner.

If a party applies for development that is, or might be on, state lands, consider:

- requiring documentation from State Lands that the project will not be on State Lands, will be on State Lands but the applicant has permission from State Lands, or may be on State Lands pending further review but State Lands has no objection to the application being processed.

B. Specify Noticing to Perform

California Code of Regulations §§ 13565 and 13568(a) and (b) mandate certain basic noticing requirements to inform parties that a coastal permit application will be considered. California Code of Regulations § 13567 identifies mandatory situations where follow-up noticing is required. All LCPs, therefore, must include these minimum noticing requirements.

Noticing should be provided in a timely and understandable manner to those who have an interest in the matter being considered. Thus, the public may benefit from IP updates that amplify the basic noticing requirements

to cover: (a) standard notice forms; (b) cases of new people getting interested in the process or project changes over time; and (c) early noticing.

1. Recommendation: Specify Noticing Requirements

Update the IP to incorporate California Code of Regulations §§ 13565, 13567 and 13568(a) and (b) if they are not already included.

2. Additional Updates, Procedures and Practices to Consider

In updating your IP, consider additional procedures that may help ensure timely notification to all potentially interested parties. For example:

a. Standardize notice forms.

To ensure that all the required information is always included in the notice, you may develop standard forms for each consideration process for coastal permits established in your IP; e.g., one for public hearings for appealable permits, one for public hearings for non-appealable permits, one for continued public hearings (please see Section II.B.2.b "Adopt procedures for additional noticing" below), one for administrative permits (please see Sections II.C.2.b "Have an administrative officer hear and act on some coastal permits" and II.C.2.c "Use an alternative process for some coastal permits not needing public hearings" below), etc.

EXAMPLE: sample notices of a public hearing on a coastal permit and of action to occur on a coastal permit without a hearing:

> *Local Coastal Program Post-Certification Guide for Coastal Cities and Counties, Appendices C-2 and C-3 at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf.*

b. Adopt procedures for additional noticing.

In addition to minimum noticing requirements, you may wish to formalize procedures for additional noticing to facilitate public participation. Examples of situations that you may wish to address include:

New Interested Parties: Often people who are not on an original list to be noticed become interested in a project. You may wish to formalize a process to update your mailing lists and publicize how someone can be added. Parties who communicate to you on the matter in any way could automatically be added to the mailing lists for all future notices concerning the project. If you have a public hearing sign-in sheet, it could

include an explanation that by leaving contact information the signer will receive further noticing and be in the record for noticing by the Coastal Commission if the matter is appealed.

Change in Appeal Determination: As noted in Section I.D.2.c "Determining if a Proposed Project is Appealable to the Coastal Commission", a determination as to whether a permit is appealable could change during the course of considering the project. If subsequent noticing has to occur, then it should be clear on the new notice that the determination has changed. Because anyone can challenge a determination of appealability and because anyone who has participated in the process can appeal an appealable local coastal permit, widely broadcasting a change in appeal determination is important. This is especially true if the appeal status of a project changes from not appealable to appealable to the Coastal Commission.

Related Hearings: Sometimes multiple hearings occur on a matter that is subject to a coastal permit (e.g., a public works commission determining if a water connection is allowed, an architectural review commission determining if the proposed design is appropriate, a permit extension request, a subsequent permit for additional or different development on the same site). If you can predict that a matter under consideration by one of your local bodies will be subject to a subsequent coastal permit, you should have a procedure that conveys that information to interested parties so that they can be placed on the coastal permit notice list. Similarly, to the extent that you have the ability to track all related matters concerning a subject site, then the mailing list can be linked to the site, not just to the individual permit hearing matter. That way interested parties can be informed of any subsequent decisions involving the site.

c. Provide for some advanced noticing.

The Code of Regulations does not mandate notification of pending coastal permit deliberations until seven days before a hearing. However, you may wish to update your IP and/or your common practices to provide some level of earlier noticing. We have found that many disputes and delays in the permitting process can be avoided if we coordinate early on permit cases that may raise questions and issues. There may be other interested persons that you identify that also would benefit from earlier noticing, perhaps for a subset of coastal permits. If you have a sophisticated automated permit tracking and noticing system, then providing broad early noticing may be simple to do. If not, then you may wish to develop a more targeted procedure that does not overly burden your resources. For example, the procedures can:

- add the Coastal Commission to any distribution list of applications or other applicant information that you already maintain for routing to departments or other entities (e.g., click here to see a form that Monterey County uses to transmit its project referrals to the Coastal Commission staff);
- transmit key reports (or notifications of their availability) from biologists, foresters and geologists as they are received;
- add Coastal Commission staff to your electronic or regular mailing lists for receiving staff reports on proposed developments within your jurisdiction's coastal zone as soon as available;
- share any electronic tracking of coastal permit applications with the Coastal Commission;
- keep the Coastal Commission apprised of any responses to such early review that we provide and of any other significant changes in the proposed project.

In offering this advice, we acknowledge the Commission's limited staff resources to review a large number of permit applications that may be pending at the local level. But we try to review and discuss individual significant cases. And with this information the Commission staff may also be able to respond to any questions raised by the public.

C. Decide on Coastal Permit Application

Code of Regulations § 13566 requires that you hold at least one public hearing on each coastal permit that is appealable to the Coastal Commission, although this requirement does not apply to certain second residential units (please see Section II.E.1 "Accommodate Second Unit Law") and, under Coastal Act §30624.9, to certain "minor development" when the public was provided with adequate notice of the proposed project and no public hearing is requested. Code of Regulations § 13568(b) allows you to issue non-appealable coastal permits without public hearings. Code of Regulations § 13573(a) provides that appellants need not exhaust local appeals if local governments require an appeal to a local appellate body that has not been certified as an appellate body in an IP. Beyond these basic rules, you have discretion as to who makes the decision to approve or deny a coastal permit and related processing matters. LCPs should indicate all of the decision-making bodies that can act on coastal permit matters and their basic procedures for doing so.

Applicants may benefit if your LCP includes streamlined procedures for considering certain categories of coastal permits, such as: (a) using a consent calendar; (b) using a hearing officer; (c) deciding on certain permits administratively; ; and (d) consolidating hearings. In addition you can have separate processes for: (e) emergency permits; (f) permit amendments; and (g) permit extensions.

1. Recommendation: Specify Who Decides on a Coastal Permit Application

Update the IP to describe which of your local bodies acts on coastal permits and the consideration procedure that each follows, if this is not already included.

The procedure must include holding a public hearing for at least those coastal permits that are appealable to the Coastal Commission (except for certain second residential units).

EXAMPLE: Certified IP text establishes three bodies that can act on coastal permits (please see Appendix B*).*

2. Additional Updates, Procedures and Practices to Consider

In updating your IP, you can consider incorporating other additional measures that may streamline the permitting processes without reducing public participation. For example:

a. Expand use of the consent calendar.

Your decision-making bodies probably already make use of a consent calendar. You can establish rules for which coastal permits are placed on a consent calendar. You may also establish a process for moving items to the consent calendar (e.g., the Coastal Commission moves some items to the consent calendar after they are agendized as regular calendar items when applicants and staff are in agreement on the recommendation and there is no known public concern)**.** However, if you place appealable coastal permits on a consent calendar, then interested parties who wish to testify must be given an opportunity to do so.

b. Have an administrative officer hear and act on some coastal permits.

You may use a hearing officer, such as a zoning administrator, instead of an elected or appointed body, to act on coastal permit matters. As long as

the minimum noticing and hearing requirements are met, a hearing officer can conduct a public hearing on a coastal permit. You can update your IP to specify those categories of projects for which a coastal permit hearing can be held, and a decision rendered, by the Planning Director, Zoning Administrator, or other official.

c. Use an alternative process for some coastal permits not needing public hearings.

Your IP may specify categories of development for which public hearings are not required in order to act on coastal permits pursuant to Code of Regulations § 13568(b); e.g., non-appealable development or projects that meet the criteria in Coastal Act §30624.9(b). In order to comply with § 13568(b)'s noticing requirements quoted above, you must establish a procedure for accepting and considering public comments. Examples of such procedures include:

- If public comments are received, then hold a public hearing;
- Forward any public comments to a decision-making body to determine whether a public hearing should be held; or
- Prepare and disseminate written responses to any public comments.

In order to comply with Coastal Act § 30624.9, you must hold a public hearing if so requested.

d. Consolidate some permit processes.

You may already have the ability to consolidate functionally-related or same-applicant coastal permits into one process or to consolidate multiple permits that have to be issued for the same project, as the Commission does (Code of Regulations §§ 10353.4 and 10358). Updating the IP provides an opportunity to consider these or other consolidation methods to save time and cost while retaining the integrity of the coastal permit process. You will need to examine each requirement (e.g., policy basis, application form, noticing, hearing, appeal process) for each permit (e.g., coastal, septic, water well, design, special use) that you issue to determine what aspects, if any, can be consolidated.

In considering whether to combine certain noticing, hearing or permit issuance procedures, please note that consolidation cannot substitute for, nor lessen, basic coastal permit requirements. For example, if a proposed project requires both a coastal permit and a design permit and you want to combine noticing and hearing for both permits, then, at a minimum, the

coastal permit procedures should be followed. If you combine approvals, the combined permit would have to be treated as the coastal permit for purposes of any appeals or other challenges under the Coastal Act.

A second factor to consider is that because the authority for the coastal permit is to carry out the LCP, it may not comprehensively address all development aspects that you regulate. If you issue a combined development permit, you may distinguish those conditions and findings that are not part of the coastal development component of the combined permit. If the permit is then appealed and the Coastal Commission approves it on appeal (i.e., substituting its action for the local coastal permit), the Commission becomes responsible for future condition compliance and enforcement for the aspects of the approval that were related to LCP compliance. Thus, a Commission coastal permit issued on appeal may include a provision stating, "This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act." In anticipation of such situations, your regulations need to be clear as to what authorities and, hence, what categories of permit conditions, you remain responsible for. (Please see Section III.C.2.c "Reconcile any remaining local responsibilities with Coastal Commission action on the appeal.")

Similar advice applies in the reverse. To the extent that you will be issuing other permits that affect coastal development separately from the coastal permit, you need to ensure that they are consistent with and do not override provisions of the coastal permit.

e. Have a distinct process for emergency permits.

Your IP likely already contains special procedures for authorizing responses to emergencies in your coastal permit jurisdiction. Code of Regulations § 13009 defines an emergency as, "a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public service." In updating your IP you can revise and update emergency permit procedures, if necessary, to avoid delays caused by noticing and appeal requirements. This can be challenging because the Regulations do not contain any exceptions from noticing, public hearings, and appeal time lines and other requirements for local government, so the intent of these sections must be preserved in issuing local emergency permits. The Commission has approved IPs with emergency coastal permit procedures structured in a manner to allow timely emergency responses to occur, while preserving the integrity of the permit and appeal process. These emergency procedures should include some key provisions, such as:

- a clear definition as to what constitutes an emergency consistent with Code of Regulations § 13009;
- a process to consult with Coastal Commission staff, if necessary, to agree that the authorization is clearly for an emergency;
- an abbreviated application (please see Section II.A.2.b "Tailor applications or application questions to correspond to different types of permit review");
- some ability for the public to be notified and to be able to comment, where time allows;
- a finding that the emergency work is the minimum necessary to address the situation in the time period before a regular coastal permit could be processed;
- a requirement that the emergency work must commence as soon as possible;
- a requirement to submit applications for regular coastal permits for retaining any of the development authorized by the emergency permit within a limited time period;
- notification that follow-up coastal permits are appealable if the emergency work is appealable under the Coastal Act;
- a requirement for expiration of emergency authorizations and removal of the authorized development if a follow-up permit is not granted within a specified time period.

EXAMPLE: Certified IP's emergency permit ordinance:

Chapter 13.14 at http://www.qcode.us/codes/malibu-coastal/ *(also reproduced in* Appendix B*)*

EXAMPLE: Another certified IP's emergency permit ordinance:

Section 17.52.18 at http://www.codepublishing.com/CA/carmel.html. *(also reproduced in* Appendix B*)*

f. Include permit amendment procedures.

You have no doubt fielded questions about proposed additions and other design changes before, during, or after initial construction or have been requested to modify terms of a coastal permit. Your IP may accordingly already contain a process to amend permits that you issue. In updating your IP with regard to coastal permit amendments, clarify that any changes to permitted development need authorization through a coastal

permit or amendment (unless exempt). The Code of Regulations does not identify separate minimum requirements for coastal permit amendments. Thus, in general, an amendment request will be processed in the same manner as a coastal permit request. But, variations can be incorporated in your IP to address different types of proposed project changes involving coastal permits; for example:

- Coastal permit amendment application requirements could differ from original permit applications (Please see Section II.A.2.b "Tailor applications or application questions to correspond to different types of permit review" above);
- Application and processing provisions could vary for different categories of permit changes for projects or approval conditions (e.g., Santa Cruz County categorizes four types of amendments: minor variations, corrections, modifications, and major amendments);
- Staff sign-off could be allowed and discretionary approvals could be narrowed for a very limited category of immaterial changes that do not alter the original coastal permit (e.g., format or grammatical changes to conditions or interior design detail alterations);
- Some small changes may be exempt from coastal permit requirements, such as minor additions to any approved structures (please see Section I.C "Determining if a Development Proposal is Exempt from Permit Requirements");
- Procedures could better distinguish those changes to previously exempted development that may not be exempt, such as a further structural addition that is closer to the shoreline or higher than previously approved;
- The amendment may not always have the same appeal determination as the original permit (please see Section I. D "Determine if a Proposed Project is Appealable to the Coastal Commission").

g. Include permit extension procedures.

Code of Regulations § 13156 provides that coastal permits approved by the Coastal Commission expire if authorized development has not commenced within two years. Section 13159 indicates how this permit life can be extended. You can include a process to extend the coastal permits that you issue if you do not already have one. The original permit decision (i.e., in the local final action notice) should include a statement explaining if and when the permit expires (please see Section II.F.2.c

"Elaborate on the contents of Final Local Action Notices"). Any subsequent discretionary action to extend a coastal permit beyond what is provided for in the local final action notice must be reported to the Coastal Commission. (This is akin to amending the permit because one of the terms of the original approval -- its stated expiration date – is being changed.) In cases where the permit subject to extension was originally appealable to the Coastal Commission, the extension would likewise be subject to the appeal process (please see Section I.D.2.c "Clarify whether a coastal permit amendment or extension is appealable"). As long as you follow these principles, there are various options for processing permit extensions, such as:

- Different categories of development could be subject to different processes (e.g., by type of project, location, size, whether it is appealable or not to the Coastal Commission);
- The time period that the extension is valid for could vary by category of development;
- The number of allowed extensions could be limited, so that an unexercised permit does not have an infinite life;
- Different circumstances could determine the process (e.g., pursuant to Code of Regulations § 13169, the Coastal Commission extension procedures vary depending on whether the Executive Director determines that there are changed circumstances that may affect the consistency of the development with the Coastal Act).

EXAMPLE: Certified IP text establishes application requirement for, criteria for granting and limits on the number of time extensions for coastal permits (please see Appendix B).

For those cases where an extension would not be possible, applicants could always apply for a new coastal permit for their projects. In all cases, any extension requests would need to be received before the permit expires; otherwise, the proper procedure would be for the applicant to reapply.

D. Address Potential Conflicting Code Provisions

Applying all of your IP provisions to a project may result in some apparent conflicts, and applying them in conjunction with some of your other Municipal or County Code regulations may also result in inconsistencies. Government Code § 65906 allows for granting variances to zoning requirements, but these are discretionary and do not supersede

Coastal Act requirements. At a minimum, IPs should contain any provisions (e.g., variances, non-conforming, height limit exceptions) that operate to affect the coastal permit.

Applicants and the public would further benefit from a more efficient and transparent process for resolving potential conflicting provisions of their IPs. This could be accomplished by updating IPs to more specifically describe how various provisions are applied in a coordinated manner, so that there either will not be a conflict, or if there is potential conflict, the IP can describe how it will be resolved. Specific situations to consider addressing include: (a) variances; (b) non-conforming uses; (c) other local permits; (d) map depictions; and (e) potentially conflicting LCP provisions.

1. Recommendation: Include Provisions that Affect Coastal Permits

Update the IP to incorporate any variance, non-conforming or similar procedures in your County or Municipal Code that can affect coastal permits, if they are not already part of the certified IP.

Any provision in your Municipal or County Code or other binding document that can be used to alter any LCP standard needs to be in the LCP as well. If you have been applying any variance, non-conforming, height exception, or similar provisions that are not part of the LCP to coastal permits and wish to continue to do so, then you must submit them to the Coastal Commission as LCP amendments. The Commission needs to review them to ensure that implementation will remain consistent with the LCP land use plan. If you have such provisions to submit, you may first wish to review and possibly revise them to address the following considerations.

2. Additional Updates, Procedures and Practices to Consider

In updating your IP, consider how coastal permit requirements interact with other provisions of your code that provide for some exceptions. For example:

a. Coordinate any variance allowances with coastal resource protection.

Government Code § 65906 allows for variances to zoning requirements only when there are special circumstances for the property in question that result in it being deprived of the same benefits that similar properties enjoy. In addition, variances are discretionary, and it is important that they

not become a mechanism for undermining Coastal Act or LCP objectives. If your Code only has basic, general variance language, updating the IP offers the opportunity to clarify the relationship between variance procedures and the application of coastal protection policies. Variance procedures in an IP can:

- ensure that what is allowed pursuant to the variance is incorporated into the development authorized by the coastal permit (e.g., by processing the variance application concurrently with the coastal permit, please see Section II.C.2.d "Consolidate some permit processes");
- ensure that variances are granted only when the resulting development will still be consistent with all LUP policies (e.g., even if a lot is smaller than others on a street, so that it might qualify for a variance from a stream setback requirement, such variance should not be granted if doing so would allow development that is inconsistent with other policies in your LCP). If the standard is in the LUP, not just the IP, then the variance provision can only operate if a variance is allowed by the LUP as well – a variance can not be used to override an LUP policy.

EXAMPLE: Proposed County IP's text with modifications suggested by the Coastal Commission indicates that projects including variances must be consistent with LCP policies, can not deviate from habitat or geological setback requirements and can not be considered principal permitted uses (please see Appendix B).

b. Coordinate any non-conforming use and structure allowances with coastal resource protection.

Local zoning typically describes the extent to which changes can be made to existing land uses and structures that once conformed, but no longer conform, to setback, height, coverage, allowed use, and other current requirements (e.g., allowing similar replacements as long as no more than 50% of the structure is replaced or allowing additions that do not increase the non-conformance). If your provisions for non-conforming uses or structures do not account for coastal resource protection concerns, then your IP should be revised to clarify when existing non-conforming uses and structures can be allowed to continue. The following are some examples of how non-conforming use provisions could be coordinated and clarified with regard to other LCP provisions:

- For cases when an existing non-conforming use is allowed to continue, limitations can be placed on how long the continuance can last before it is subject to a new coastal permit (e.g., if the use in question previously had an operational time limit, such as authorized to occur for a certain amount of years, then a continuance beyond that time could be defined as "new" development subject to a new coastal permit; similarly, restarting a use after a defined time gap in continued operation could be defined as "new " development).
- For any cases where a non-conforming use similar to, or in the same category of use as the current use, is allowed to continue, limitations could be placed on what is considered the similar or same category of use, in order to account for different impacts on coastal resources or access (e.g., a sit-down restaurant and a take-out fast-food drive-in may both be in the eating establishment category but their respective impacts on water use and traffic may vary significantly and thus you may subject them to different non-conforming rules).
- For any cases of allowing additional intrusions into setbacks that extend no farther than a current non-conforming intrusion, limitations could be placed on the setback exception to ensure that it does not diminish the function of habitat or wetland buffers or shoreline setbacks.
- For any cases of allowing replacement of existing structures that exceed current maximum coverage standards, limitations could be placed on the size of the replacement.
- For cases where the non-conforming aspect of a use or structure is no longer allowed and must be terminated, limitations or mitigations could be placed on other remaining aspects of the development, such as shoreline protective devices (e.g., if a structure intruding into a rear setback on a bluff top is being replaced and now has to conform to the setback, then maintenance of a shoreline device to protect the intruding structure may no longer be allowed, since the improved structure meets the setback rule).
- For any cases where non-conforming structures were destroyed by disaster, whether or not to allow their rebuilding and how would depend on how you apply your use or building permit requirements, in cases where the replacement structures are exempt from coastal permitting requirements under Coastal Act § 30610(g) (please also see Section I.C. "Determine if a Development Proposal is Exempt from Permit Requirements").

c. Coordinate other local reviews with coastal permit procedures.

Typically local permit actions will be sequenced -- with planning permits preceding building and related permits. After a basic entitlement to perform the project is approved, then subsequent permits are considered. These usually involve technical requirements and are issued by staff – e.g., septic, well, building, and grading permits. The staff that signs off on these permits may be different than the planning staff that was assigned to the coastal permit. Thus, coordination is necessary to ensure that these subsequent permits do not contradict the terms of the coastal permit.

In updating your IP, you can review your coastal permit process to ensure that it is structured to be the controlling permit over all development, including, for example, grading, septic tank installation and water well drilling. You can also review your ordinances governing other permits that you issue to ensure that their application cannot override what is contained in the final coastal permit. If the subsequent application of another permit requirement cannot be accommodated within the parameters of the coastal permit, then the proper course of action is to direct an amendment to the coastal permit.

d. Explain how to use map depictions.

Sometimes maps are relied on in a manner inconsistent with the Coastal Act or the intent of the LCP. For example, take the case of a development proposed in environmentally sensitive habitat, an LCP policy prohibiting intrusion into such a habitat, and an LCP habitat map that fails to show that this habitat is present on the site in question. If a coastal permit is approved for such development based on the map (not showing habitat on the site), then a coastal resource is not protected. Updating the IP provides an opportunity to address such situations if your LCP includes map depictions of protected or restricted areas. These maps may have lost some of their utility as more precise resource knowledge of both mapped and unmapped areas has been gained. It is important that LCPs clearly note that resources are protected as they exist on the site, not simply as depicted on a map. Your IP update could, for example:

- Indicate the sources and dates and any qualifications of any mapped information;
- Indicate how the mapped information is to be used (e.g., as a guide to portraying where issues might be present, taking into account current on-the-ground conditions);
- Include guidance identifying resources that are to be protected;

- Include provisions that explain how to reconcile any differences between previously mapped information and new information garnered during coastal permit review and how to apply the results;
- Incorporate updated maps;
- Include procedures for further updating maps in the future.

e. Ensure internal consistency in the LCP

To learn more about conformance with land use plans please see: Lesher Communications, Inc. v. City of Walnut Creek, (1990) 52 Cal. 3d 531, 541.

An LCP's land use plan (LUP) and implementing ordinances (IP) should each be internally consistent, and there should be consistency between them. Coastal Act § 30513 requires that zoning ordinances and maps conform with and be adequate to carry out the certified LUP. Thus, your LCP can indicate that, in general, zoning provisions must be interpreted and applied in a manner consistent with the LUP. Updating the IP offers an opportunity to review the language and structure of your LCP to ensure internal consistency. If your IP has in some way become inconsistent with your LUP, then it should be amended to be brought into conformity with the LUP. IP ordinances can be updated to clearly implement the specific LUP policies. Sometimes clarification can be achieved by adding language that specifies the relationship among possibly overlapping or competing LCP policy or ordinance sections. Your IP can identify some general rules of construction for your LCP. For example:

EXAMPLE: from proposed IP text approved by the Coastal Commission:

> *Where conflicts exist between the provisions of this [Design Review] Section and the policies of the LUP, the policies of the LUP shall control.*

<u>EXAMPLE</u>: from certified IP ordinance:

> *D. In the event of a conflict or inconsistency between this Title and any County land use regulation the terms of the regulations listed highest on the following ladder shall prevail:*
>
> *1. Coastal Act*
>
> *2. Applicable Area Land Use Plan*
>
> *3. Regulations For Development (Parts 2 through 6 of the Coastal Implementation Plan)*
>
> *4. Title 20 (Part 1 of the Coastal Implementation Plan)*
>
> *5. Any other regulation in the County*

Finally, it is important to know that LCPs cannot incorporate the conflict resolution provision of Coastal Act § 30007.5. This section allows the Commission to resolve direct conflicts between two policies in the Coastal Act "in the manner that is most protective of significant coastal resources." As noted, by design LCPs are required to be certified as consistent with Chapter 3 of the Coastal Act, and thus certain provisions cannot be ignored in favor of others. If a conflict arises between LCP policies, then the remedy is to apply to the Commission for an LCP amendment to resolve it.

E. Address Other State Laws

Coastal Act Chapter 5 discusses the relationship of the Coastal Commission's regulatory process with those of certain other state agencies. Since the Act was written, other state laws have been adopted whose application may pose challenges when also applying coastal permitting authority. For example, when these laws direct the processing or outcome of local permits, it may appear that they apply to a local government's issuance of a coastal permit when they may not. Many of these laws strive to expedite permit processing or to limit grounds for denial of certain types of projects deemed worthy (e.g., affordable housing, farm labor housing, family childcare homes and mobile homes). In a few cases, the legislation itself explicitly resolves any potential inconsistency with the Coastal Act. For example, Government Code § 65852.2 was changed in 2002 to end the requirement for public hearings for proposals to develop second residential units. But the law explicitly preserves the coastal permit and appeal process. If you have not already amended your IP to conform to 65852.2, you should do so.

Other state laws mandate or allow local governments to address certain types of development in the coastal zone, such as subdivisions, affordable housing, mobile homes, etc.. If you experienced questions or challenges in applying some of these laws, consider updates to your IP to address the coastal permitting relationship with them.

1. Recommendation: Accommodate Second Unit Law

Update the IP to eliminate any requirement for public hearings for qualified second units, if they are still in your LCP.

EXAMPLE: from certified IP ordinance:

> *Notwithstanding any other provisions of the LCP, attached or detached second dwelling units shall be processed as administrative*

> *permits, except that the approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone.*

If you already have a process for noticing coastal permits where no local hearing is required, it can be applied to all coastal permits for second units. Or, you can develop a specific notice applicable for second unit permit applications. Either case must provide for some way for the public to provide comments to you and to be informed that the permit for second units can be appealed to the Coastal Commission (if it is appealable).

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, consider adding clarifications on applying other state laws to new development in coordination with your coastal permit process.

a. Ensure coastal permit process is preserved when addressing other state law provisions.

Some state laws mandate expediency requirements for processing local permits for certain types of development, such as affordable housing. Unless the state law specifically mandates a change in coastal permit procedures, you should ensure that incorporating these other state requirements into your ordinances does not contravene Coastal Act and California Code of Regulations requirements. Coastal development will still need to be authorized by a coastal permit (unless it falls under a specific exemption, please see Section I.C. "Determine if a Development Proposal is Exempt from Permit Requirements") even if certain state laws exempt certain types of development from other local permits or standards. For example, Government Code § 65589.4, which restricts requiring use permits for some affordable housing, does not apply to coastal permits – they are still required. Minimum noticing and hearing requirements for coastal permits must always be followed and appealable development remains appealable.

You can revise your coastal permit procedures to address the intent of streamlining provisions in other state laws, provided the Coastal Act and Code of Regulations requirements are met. (Please see Section II.C "Decide on Permit Application" for ways to expedite permit processing). For example, if your IP has an expiration period for coastal permits that is less than three years, you can modify it for subdivision approvals to conform to Government Code §§ 66452.6(a) and 66463.5(a) (allowing tentative map approval to initially be valid for three years --or longer in

some cases), because the Code of Regulations does not set a specific time period for local coastal permits to expire, as long as other Coastal Act and LCP resource protection requirements are taken into account (e.g. some reasonable expiration period or process needs to be in place to assure that changed circumstances do not render the original permit approval obsolete or inconsistent). Similarly, if your IP has a time limit for processing coastal permits that is longer than the minimum specified by Code of Regulations§§ 13565 or 13568, you can shorten it to the minimum to expedite consideration of affordable housing projects pursuant to Government Code § 65950 (please see Section II.B "Specify Noticing to Perform").

If you add sections to your County or Municipal Code addressing other state laws, you may wish to cross-reference them to your IP's coastal permitting provisions so that planners and the public are aware that both sets of requirements apply. You should ensure that any terminology used in both a coastal permit processing section of your IP and another section of your Code addressing another State law does not have conflicting meanings.

With regard to affordable housing, for example, please see Part I of this Guide: "Planning and Locating New Development" at http://www.coastal.ca.gov/la/lcpguide/lcpguide_development_6.pdf .)

Some state laws either limit or prescribe certain standards that can be applied to certain types of developments. Before these requirements can be applied to development projects in the coastal zone, you must amend your LCP, if the standards differ from what is currently in the certified documents.

F. Memorialize Action Taken on a Coastal Permit

Code of Regulations §§ 13570 -13572 cover minimum requirements for preparing and transmitting final local action notices (FLANs or NOFAs—Notice of Final Action) on coastal permits. Regulations § 13571 stipulates that your final action notices include written findings and any written conditions that you have imposed. Coastal Act § 30604(c) requires every coastal permit for a project located seaward of the nearest public road and the sea to "include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 [of the Coastal Act]." At a minimum, all IPs should contain provisions that follow these requirements.

Documenting and transmitting a justifiable action on a coastal permit is crucial to implementing your local coastal program in a manner to protect coastal resources. The resulting permit is legally binding on the authorized development – any future questions are answered by referring to the final local action notice. Inaccurate or unclear final action notices can lead to

unnecessary appeals because potential appellants may not fully understand the nature or scope of the project. Failure to transmit notices properly can result in time delays. Applicants and citizens would benefit from elaborations on the basic requirements regarding: (a) permit findings and conditions; (b) specific access and recreational findings and conditions for legal documents; (c) contents of the FLAN; (d) FLAN transmittal responsibilities; and (e) responses to deficient FLANs.

1. Recommendation: Memorialize the Action Taken on a Coastal Permit

Update the IP with provisions regarding how coastal permits are prepared and transmitted pursuant to Code of Regulations §§ 13570 - 13572, if not already included.

EXAMPLE: Certified IP text indicates when a coastal permit decision is final and how notice of final action is given (please see Appendix B).

2. Additional Updates, Procedures and Practices to Consider

Some certified IPs may already supplement basic final action notice requirements with more detailed guidance. If not, in updating an IP, consider the following additional procedures that will elaborate on the process of writing and transmitting FLANs.

a. Add guidance for preparing permit findings and conditions.

You may wish to supplement a statement of general responsibility to adopt findings and conditions with more guidance as to what findings and conditions should generally contain. In addition to amplifying your IP, some of the tools that the Commission is aware of to accomplish this include compiling illustrative examples of findings and conditions on various issues, conducting planning staff training sessions with staff attorneys and preparing templates or checklists of common conditions. Following are some examples of guidance that you could offer:

For Findings: Write findings to:

- explain how the project (as finally approved and conditioned) is or is not consistent with all relevant LCP policies (or policy groupings), including how policies are interpreted;
- explain and support all conditions of approval;
- resolve any apparent discrepancies with relevant policies;

- resolve any conflicts in applying various policies to the project;
- explain why some apparently relevant policies may not apply;
- explain any deviations from past precedents.

For Conditions: Draft conditions to:

- cover all topics at issue that need addressing in order to find complete consistency with your LCP policies;
- be specific as to the intended outcome and, where necessary, as to ensuring the outcome will occur (e.g., wording a condition so that a reader can easily discern who is responsible for carrying out the condition, how and by when it should be achieved, documentation required to demonstrate compliance, who reviews and enforces the requirement, and the potential recourse for not implementing what is specified).

For a discussion of the importance of being specific as to outcome please see Sundstrom v. County of Mendocino court decision at: http://ceres.ca.gov/ceqa/cases/1988/sunstrom_062288.ht

EXAMPLE: chart format that a certified County uses has columns for permit condition number, permit condition text and responsible County department, compliance or monitoring actions to be performed, responsible party for compliance, timing, and verification of compliance:

http://www.co.monterey.ca.us/planning/docs/resolutions/za_2008/res_PLN080316.pdf beginning at page 5.

- make explicit any requirements that direct the applicant to follow referenced material (e.g., recommendations of consulting biologists) and ensure such material is publicly available;
- avoid deferring discretionary decisions to the future (e.g., for staff discretion to approve future "minor" modifications, final building siting, or terms of an access or conservation easement).

b. Add guidance for addressing Coastal Act public access and recreation policies and required legal documents.

In updating your IP you may include an elaboration of how to address coastal access and recreation and required legal documents in coastal permit findings and conditions.

Access Findings:

Coastal Act § 30604(c) requires that your findings address Coastal Act recreation and public access policies for any project between the nearest public road and the sea. Thus, your LCP could cite or quote the Coastal

Act sections that need consideration, such as §§ 30210, 30211, 30212, 30212.5, 30213, 30214, 30220, 30221, 30222, 30223, 30224 and 30252.

In order to comply with this mandate, the final local decision may have to address not only what specific access requirements are in the LCP, but what would be required by applying the Coastal Act policies as well. Your LCP update could acknowledge and prescribe that this must be part of the final decision if compliance with these Coastal Act sections is not already mandated in your LCP. Especially if the LCP was written some time ago, circumstances could have changed or the particular project location might not have received detailed attention. For example, your LCP might have a provision requiring adequate access from the nearest road paralleling the ocean to the beach and illustrating where this should occur. In considering a permit for a project located on a parcel seaward of the nearest road, where access is not specifically illustrated, your LCP should also require that staff reports include a finding explaining whether access should be required pursuant to Coastal Act access and recreation policies. Your LCP could go on to list factors to evaluate, such as:

- any evidence of public use across the parcel;
- availability of a publicly usable beach or viewpoint on the seaward side of the parcel to which access is lacking;
- impacts caused by any increase in demand for access in the area, that may be overburdening other access points;
- availability of nearby accessways;
- presence of any safety hazard that may affect access;
- presence of agricultural use that may affect access;
- status of nearby accessways planned or anticipated but not yet constructed.

EXAMPLE: Certified IP ordinance details how access findings are made:

> *http://www.qcode.us/codes/malibu-coastal/ Please click on "Local Implementation Plan" > "CHAPTER 12—PUBLIC ACCESS ORDINANCE" > "12.7. REQUIRED FINDINGS AND SUPPORTING ANALYSIS FOR PUBLIC ACCESS DEDICATIONS" or see Appendix B.*

EXAMPLE: Another certified IP ordinance details how access findings are made:

> *http://www.cityofpointarena.com/ Please click on "Municipal Code" > "Zoning Ordinance" > "Chapter 18.25 GENERAL PROVISIONS*

AND EXCEPTIONS)"> "18.25.100 Public access to the shoreline" > subpart (7) or see Appendix B.

Conditions for Recorded Legal Documents: If findings support requiring public access in the coastal permit, it is often secured through recordation of a legal document, such as a public access easement. Recorded documents may also be required to secure property interests in open space, scenic views, archaeological sites, and other sensitive resources. Any permit condition requiring recorded documents should include the following:

To implement such conditions, the Coastal Commission sends compliance instructions including a requirement for a Preliminary Report from a licensed title insurance company to identify the prior encumbrances or liens on the property, and to confirm the current ownership and correct legal description.

- Precisely describe what development or activities can take place in the restricted portion of the parcel. Condition language should be supplemented or illustrated with a map exhibit. The condition can direct any precise follow-up delineation that still must occur, such as field verification to identify the exact location of a trail easement. For example, if the final easement location is dependent on an additional biological survey to delineate a habitat boundary and buffer, then the condition can direct who should perform the delineation, when, and how.
- Describe the method for drafting and recording the legal document.
- Address any property encumbrances by specifying that the easement, or other legal document, be recorded free of prior liens and encumbrances that may affect the interest being conveyed. This can be accomplished by the holders of these prior encumbrances signing subordination agreements subordinating their interest in the property to your recorded document. To help ensure that subordination agreements will be acceptable, you can attempt to determine what current encumbrances may be on a property and how the condition requirement affects these. For example, if an objective is to designate an area to set aside in a conservation easement for habitat restoration purposes, land subject to an existing utility easement that allows for future excavations and maintenance activities should probably not be chosen.
- Describe long-term expectations, both proactive and restrictive. Proactive measures could include, for example, installing a trail, eradicating invasive plants, inviting scientific study, revegetating with native species, or enhancing habitat. Restrictive measures could limit, for example, temporal access, vegetation removal, hunting, or pets. Several of these types of measures are defined as development. (Please see Section I.B "Determine if a Proposed Project is 'Development'"). Thus, the coastal permit should be clear as to which activities are authorized, which should never be allowed, and which could be allowed but only pursuant to future permits or permit

amendments, all of which must be consistent with your LCP. It is also important to note who is to carry out future management of the property in question.

c. Elaborate on the contents of Final Local Action Notices.

An IP update can elaborate on what constitutes a complete and informative "final local action notice" (FLAN) -- sometimes called a Notice of Final Action (NOFA). Required contents of a complete final local action notice can be expanded upon, for example, to specify:

Form and content: A FLAN may be more readily identifiable if you attach a cover letter clearly indicating that a FLAN is being transmitted and describing what is being transmitted. In assembling material to send as, or with, the FLAN you might find that it contains outdated references (e.g., if you include a staff report if may refer to earlier project descriptions or suggested conditions that were eliminated in the final approval). Through revision, annotation, or the like, it should be clear to the reader that these references are outdated.

EXAMPLE: of a cover page to a FLAN indicating its content:

> *Appendix C-4 of the Local Coastal Program Post-Certification Guide for Coastal Cities and Counties at* http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf

Applicant contact information: This information is needed because we must notice the applicant if we receive an appeal.

Project descriptions: Your application form likely requires a project description initially provided by applicants, but this description and may undergo modification through the permit approval process, so you should ensure that the FLAN has an accurate, up-to-date project description. For example, to more accurately portray all that is being proposed, reflect any changes that the applicants propose, or reflect any revisions that the decision-makers mandate. Thus, the FLAN should clearly and fully describe the complete approved project, and it is helpful to include a plot plan and elevations.

Adopted findings and conditions: Similarly, final adopted findings and conditions may differ from those drafted in a staff report. The clearest way to address any changes is for the FLAN to include one adopted set of complete, correct findings and conditions. If this is too burdensome, then any annotations or revisions made on an earlier set of findings and conditions (e.g., margin notes or strike-outs and underlines) should be as clear as possible (with most documents now electronic, these changes and

notations should be easier to incorporate). Findings and conditions should be plainly distinguished from any other material in the submittal. And it would be helpful for each finding and condition to be clearly labeled and/or numbered so it can be easily discerned and referenced.

Expiration dates: The notice should state the time period for which the permit approval is valid. Extensions may be possible (please see Section II.C.2.g "Include permit extension procedures"), but first there needs to be a baseline date from which to extend the permit. Some options include, for example:

- state what the time period is before a permit will expire;
- specify from what date the time is calculated (e.g., date the final approval body acts, date final findings are adopted, or date a permit acceptance form is signed);
- define any terms that your ordinance uses in this regard, such as "exercised," "expired" or "abandoned" (e.g., is it sufficient that some conditions have been complied with, some paperwork completed or construction equipment moved to the site or does physical construction have to have occurred? Does a certain amount of work have to occur in a certain time period or does the work have to be completed in a certain time period?);
- conform corresponding provisions governing the term of any other related permits that you issue, such as building permits or tentative map approvals, to the coastal permit expiration provisions.

Attachments or exhibits: In general, the FLAN should include any documents referenced in findings and conditions. For example, if a condition of approval requires following certain recommendations of a geological report, then that report (or at minimum, its recommendations) needs to be part of the FLAN. You may have additional staff reports or other materials that are critical to evaluating the final coastal permit decision (e.g., biological and geological consultant reports) that you may wish to transmit with the FLAN as well.

d. Establish procedures for transmitting Final Local Action Notices.

You may wish to supplement a requirement to transmit FLANs with procedures for ensuring that this is always accomplished. Code of Regulations §§ 13570 and 13571 mandate that a final local action notice be mailed first-class to the Coastal Commission within seven days of the local government's action on the coastal permit being completed (i.e., all findings have been adopted and all local avenues of appeal have been

exhausted). One ramification of this regulation is that the final action may be made by different local decision-makers who have different support staff (e.g., Planning Department, City Council or Board of Supervisors). Support staff to the appellate bodies may have fewer occasions to mail notices and hence have less familiarity with the rules.

Our experience is that FLANs are not always mailed to the Coastal Commission within the required time period -- occasionally we receive them too early, occasionally too late, and occasionally not at all. If a notice is sent before local appeal periods have been exhausted, Commission staff cannot consider it a "final" action notice, and we have to return it with a notice of deficiency. For appealable projects, receipt of the notice triggers the Commission's ten working day appeal period -- until this transpires the local permit cannot be exercised. To fully monitor LCP implementation, the Commission needs to have all final action notices (including for denied and non-appealable projects as well as for administrative and emergency coastal permits). These notices help to 1) understand any questions or disputes that arise in conjunction with the permit; 2) meet federal reporting requirements, 3) use in the evaluation of subsequent LCP amendments; and 4) to use in periodic reviews. And some denials of public works and energy projects can be appealed to the Coastal Commission.

Methods for ensuring timely transmittal of a final local action notice could include:

- assigning a staff person or persons from or responsible to each body from which a FLAN may be produced to prepare and mail the FLAN;
- coordinating your permit tracking process with the FLAN mailing process so the person responsible for mailing the FLAN knows when the right time to mail it is (e.g., knows whether or not it has been appealed locally and knows when that appeal process is completed);
- clarifying that if an appeal through your process is subsequently withdrawn, the date that withdrawal occurs would constitute the final local decision date for purposes of complying with § 13571.

e. Establish procedures to respond to notices of deficient Final Local Action Notices.

The Coastal Commission can reject as deficient a final local action notice (FLAN) on a coastal permit that you send if it does not meet either content or procedural requirements. When we receive a FLAN that fails to meet the applicable requirements, we mail you a Notification of Deficient Notice. The effective date of your approval of an appealable development

is suspended if we find that the FLAN is deficient pursuant to Code of Regulations § 13572. No appeal period can commence until the deficiency is corrected and the corrected FLAN is mailed to us.

A process to respond to notices of deficiencies can be included when updating your IP and related internal procedures, such as to:

- track your final local action notice transmittals to us;
- make assigned staff aware that the Coastal Commission may send a Notification of Deficient Notice and, if it does so, the local action notice needs to be corrected and retransmitted;
- establish a time frame for correcting and resending FLANs;
- discuss with the Commission planner assigned to your jurisdiction any questions about a deficient notice or any reoccurring final action noticing problems.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Section III. Local Responsibilities in the Appeal Process

The full text of citations to the Coastal Act can be found at: http://www.coastal.ca.gov/coastact.pdf.

The full text of citations to the California Code of Regulations can be found at: http://government.westlaw.com/linkedslice/default.asp?SP=CCR-1000. All references are the Title 14 Natural Resources Division 5.5.

To learn more about the appeal process please see "The California Coastal Commission Permit Appeal Process: Frequently Asked Questions" at: http://www.coastal.ca.gov/cdp/appeals-faq.pdf

After the process of transmitting final local action notices to the Coastal Commission is completed, certain coastal permit decisions can be appealed. The appeal process is governed by Coastal Act § 30603 and California Code of Regulations §§ 13110 -- 13120. These requirements and the general process are further explained in Chapter IV of the *Local Coastal Program Post-Certification Guide for Coastal Cities and Counties* at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf; topics covered are: Appeal Limitations; Appeal Procedures and Appeals by Two Commissioners. The Coastal Commission processes any appeals pursuant to Coastal Act and Code of Regulations rules. However, local involvement in the appeals process continues even after the filing of an appeal. Appeal rules in the Act and Regulations have not changed since the *Post-Certification Guide* was last updated in 2002.

Experience with appeals has identified some recurring procedural issues involving the interaction between the Coastal Commission and local governments. For example, if there is inconsistency in ordinance provisions or fee schedules as to whether there is a fee to appeal a coastal permit, members of the public may be confused about appeal rights and requirements. If procedures are lacking for considering a matter anew after an appeal by Coastal Commissioners, then you may be deprived of the ability to expeditiously resolve a matter locally. If the Commission staff does not receive local files in a timely manner after a permit is appealed to us, delays or misunderstandings can occur. And, if the Commission finds that an appeal raises a substantial issue, we are responsible for the follow-up permit issuance and compliance. However, there may still be a role for local government to play, especially if other local permits were also issued for the project. The IP should clarify all the appeals provisions and the full range of local responsibilities in order to better inform applicants and the public.

Since the appeal process injects the Coastal Commission into the coastal permit process that started at the local level, it is important to have clear, practical and legally correct procedures in your IP addressing the relationship between agencies. Some benefits from considering the suggestions offered in this section could include:

- Citizens can clearly understand their rights to appeal;

- The appeal process is not delayed;
- Local citizen and decision-maker input into considering an appeal is available;
- Matters of local importance that are beyond the scope of the Coastal Commission's authority are not diminished;
- Applicants can clearly understand how to satisfy both local and Coastal Commission requirements.

This section provides suggestions for updating the IP and considering other practices that will help coordinate your role with the Coastal Commission's in a coastal permit appeal. The first step covered (Section III.A) is whether or not you charge a fee for a local appeal of a coastal permit decision. The next step (B) is the file transmittal that must occur when there is an appeal of a permit on which you have acted. The final step (C) is the follow-up that you undertake once the Commission's appeal process commences.

A. State Any Fees to Appeal Local Coastal Permit Decisions

Pursuant to California Code of Regulations § 13573, an appellant, other than a Coastal Commissioner who acts as an appellant, generally must exhaust all local avenues for appeals before he or she may appeal a local final action on a coastal permit to the Coastal Commission. However, § 13573 provides that if a local government charges a fee for a local appeal, then parties may appeal directly to the Coastal Commission, bypassing the local appeal process. For this reason, IPs should clearly state whether or not a fee is charged for appeals.

Your IP's coastal permit procedures likely do specify whether a fee is charged to appeal to a local appellate body. However, you may have another ordinance provision that authorizes a fee schedule and/or a schedule that lists fees for appeals. Thus, updating an IP is also an opportunity to concurrently review other ordinance provisions and your published fee schedule to ensure: (a) a consistent application of the fee policy; and (b) that the public understands the ramifications of any appeal fee.

1. Recommendation: State If There Is a Fee for an Appeal

Update the IP to specify whether a fee is charged to a party that appeals a coastal permit decision, if not already clearly stated.

You have the option of identifying categories of development for which appeals fees apply, such as by specifying the location, type or size of a project triggering a fee requirement. The Coastal Act leaves this decision to local government.

2. Additional Updates, Procedures, and Practices to Consider

Updating your IP provides an opportunity to review related procedures and fee schedules in order to ensure that the fee determination is consistently followed and understandable. For example:

a. Ensure that fee schedules accurately reflect any appeal fee.

Typically Municipal and County Codes do not include a list of fees. Rather they usually establish the authority to determine fees that are adopted in separate fee schedules. If your IP states that a fee is charged to appeal a coastal permit decision, then you have discretion as to the amount set in your schedule. In updating your IP in relation to other Code provisions, it would be helpful to cross-reference fee determination provisions. If your IP states that you do not charge a fee for appealing coastal permits, then this should be referenced in the other sections of your Code that address fees. This cross-reference could serve as an alert to a decision-making body undertaking an independent fee schedule update about changing the coastal permit appeal fee structure. If they do decide to institute an appeal fee for coastal permits, then a corresponding amendment to the IP must be made. If you charge appeal fees for other types of permits, then your fee schedule should clearly explain that there are no appeal fees for coastal permits.

b. Ensure the public understands the effect of charging an appeal fee.

If you charge an appeal fee, then you should include explanatory text of the effect on appeal procedures in any documents that mention the fee. The public should be able to fully understand their option to appeal a coastal permit directly to the Commission instead of to your appellate bodies if local fees are charged and if the permit is otherwise appealable to the Commission.

B. Transmit Complete Files for Appealed Projects

Regulation § 13572 requires the Coastal Commission to notify local governments within five days of receiving a valid appeal of a local coastal

permit decision. This Commission Notification of Appeal contains a request to receive the local file. Once you receive this appeal notice from the Commission, Code of Regulations § 13112 requires that you send us "all relevant documents and material" used in consideration of the permit within working five days.

Sometimes we do not receive complete appeal files within five days. While we understand that this requirement might at times be burdensome, it is essential to transmit a complete file in order to avoid delays in the appeal process. Along with updating your IP, you can consider procedures to: (a) designate staff to respond to Notifications of Appeal; and (b) assemble file materials for duplication and transmittal.

1. Recommendation: Ensure Files Are Transmitted for Appealed Coastal Permits

Include a provision in your IP to incorporate requirement of Code of Regulations § 13112 to promptly transmit permit files to the Coastal Commission after an appeal.

Alternatively, this obligation to transmit the permit file within five days of being noticed by us of an appeal could be included in your administrative procedures.

2. Additional Updates, Procedures, and Practices to Consider

You can also review your procedures to help ensure that your staff will be prepared to carry out this obligation, given the short turn-around time. For example:

a. Designate staff to respond to file requests.

Once we receive a valid appeal of a local coastal permit, we send the local government a Notification of Appeal that contains a request for the file. Please inform your counterparts at our Commission offices as to whom and how best to send these notices so that they will receive prompt attention.

b. Outline procedures to assemble materials to transmit.

Your procedures for assembling, duplicating and transmitting the material should be designed to ensure that we receive copies of everything in your files pertaining to the appeal, even bulky plans or exhibits and any digital material. This is because any materials that were available to you might turn out to be relevant to the Commission's review. We maintain a permanent, public file for each coastal permit appealed to us.

You do not need to resend file material previously sent to the Commission office, provided that you have verified with us that we still have the materials and that they are part of the file. If a specific file assembly is going to be cumbersome (e.g., due to a large amount of material or bulky items), then we recommend that you consult with Commission staff regarding how best to transmit the file. For example, there may be some items in the file that we can agree are unnecessary, can be condensed, can be sent later, can be represented by taking a photo of them, or that can be sent electronically.

C. Complete Local Process in Coordination with the Coastal Commission Action on Appeals

Code of Regulations § 13572 provides that local action is suspended when an appeal is filed with the Coastal Commission. If the Coastal Commission determines that a substantial issue exists with the local decision, it acts on the coastal permit de novo, pursuant to Code of Regulations § 13115. The final Commission action supersedes and replaces the local government action on the coastal permit. Thus, at a minimum, your IP should provide that the Commission has the authority to replace a coastal permit decision that you have made.

There are some ways that you can affect the local permit once an appeal is filed with the Coastal Commission. You can provide a process in which the applicant can make changes to the project through your approval process to address the issues raised on appeal. Please note, however, that in this situation the Commission must still act on the appeal within 49 days, unless the applicants waive this deadline. Changes made through this process may convince the appellants that their appeal is no longer necessary, so they may withdraw it. In addition, if the local appeals process has not been exhausted and the project has been appealed by two Commissioners, Code of Regulation § 13573(b) allows the local appellate body to suspend the Commission appeal while it considers the merits of the project.

There may be other instances where local decision-makers have been interested in attempting to resolve the problem identified in the appeal prior to the Commission taking action on the appeal. Thus, you can update your IP to allow for: (a) requesting further local consideration by the appellate body after two Commissioners have appealed the project under Code of Regulation § 13573(b); and (b) further local consideration, at an applicant's request, of a coastal permit already appealed to the Coastal Commission. You can also (c) update your IP to clarify how the final

Commission decision on appeal is coordinated with any responsibilities that you retain over the approved development.

1. Recommendation: Accept Coastal Commission Appeal Decisions

Update the IP to have an acceptance of Commission action on the coastal permit on appeal, if not already included.

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/. Click on CHAPTER 13—COASTAL DEVELOPMENT PERMITS, then 13.20 -- APPEALS.

EXAMPLE: certified IP text:

> *The coastal development permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.*

For the context of this example, please see Santa Barbara Coastal Zoning Ordinance, in particular Sec. 35-169. Coastal Development Permits, found at: http://www.sbcountyplanning.org/PDF/A/Article%20II.pdf.

EXAMPLE: certified IP text:

> *Where an appeal has been filed with the Coastal Commission in compliance with Section 35-182 (Appeals) and the Coastal Commission has reversed or modified the action of the County on the Coastal Development Permit, the action of the Coastal Commission on the Coastal Development Permit is final. If the County has approved the Coastal Development Permit, any previously approved County project permits shall be automatically amended to conform to the Coastal Commission's approved Coastal Development Permit for the project or automatically terminated to conform to the Coastal Commission's disapproval of the Coastal Development Permit.*

2. Additional Updates, Procedures, and Practices to Consider

In updating your IP, also consider adding procedures to allow for additional ways to resolve appeals and incorporating final Commission decisions in your responsibilities. For example:

a. Establish a procedure for holding an additional hearing on a local permit that has been appealed to the Coastal Commission by Coastal Commissioners under Code of Regulations § 13573.

To further consider a permit already under appeal to the Coastal Commission, you can revise your IP pursuant to § 13573 to include:

- how and when the request for the Commission to suspend its appeal consideration is made (Please note that since the Coastal Commission

must hold a hearing within 49 days, unless this deadline is waived by the applicant, the Commission staff is responsible for processing the appeal until the local government appellate body officially requests to rehear it);

- that the local permit's operation and effect remain stayed by the appeal (Code of Regulations § 13112), even if the appeal process before the Commission has been suspended to allow for a local government's reconsideration of the project;
- how and when the permit will be heard by the identified appellate body, including noticing requirements;
- the outcome of any changes to the project or from new hearings (Please see Table III.1).

Table III.1 Local Hearing Follow-ups on Applications Already Appealed to the Coastal Commission

Results of Local Rehearing	Follow-Up
Rehearing cancelled	➢ the local decision remains stayed; ➢ the Coastal Commission needs to be notified to lift its suspension for processing the appeal.
No change to the project	➢ the local decision remains stayed; ➢ the Coastal Commission needs to be notified to lift its suspension for processing the appeal.
Modification of the original approval	➢ the previous local decision is superseded by this modified decision; ➢ a new notice of final action must be mailed to the Coastal Commission in a timely manner pursuant to §§ 13570 – 13572; ➢ the local action and notice should indicate that the previous permit notice is null and void (hence, rendering the previous appeal moot); ➢ a new Commission appeal may result pursuant to § 13573(b), if a member of the public or two Commissioners identify that the project is still inconsistent with the certified LCP.

Table III.1 Local Hearing Follow-ups on Applications Already Appealed to the Coastal Commission

Results of Local Rehearing	Follow-Up
Reversal of the previous decision - i.e., the application is denied	➢ the previous local decision is superseded by this modified decision (i.e., the previous approval is null and void); ➢ a new notice of final action must be mailed to the Commission in a timely manner pursuant to §§ 13570 – 13572; ➢ the new denial would no longer be appealable, unless the project is a major public works or major energy facility.

For the context of this example, please see Section 17.54.050 of Carmel-by-the-Sea's Municipal Code, found at: http://www.codepublishing.com/CA/carmel.html

EXAMPLE: Certified IP text:

> *B. Where a project is appealed by any two members of the Coastal Commission, there shall be no requirement of exhaustion of local appeals; provided, however, that the Coastal Commission shall transmit a "Notice of Commissioners' Appeal" to the City Council. Upon receipt of such notice, the Coastal Commissioners' appeal may be suspended by the City Council pending a decision on the merits of the appeal by the Council. The City Administrator or any two Council members may request a review of the appeal by notifying the City Clerk and the City Administrator shall then notify the Coastal Commission that a suspension is in effect. The council shall review the matter within 45 days of said notice to the Coastal Commission. If the decision of the City Council is to modify or reverse the previous decision the Coastal Commissioners shall be required to file, if necessary, a new appeal of that decision.*

b. Establish a procedure to address project changes after an appeal is filed.

There have been instances where, following the Coastal Commission's filing of an appeal of a locally-issued coastal permit, applicants propose further changes in their projects in order to address issues raised. Applicants may change project descriptions after the Coastal Commission has found substantial issue, in which case the Commission handles this directly, but applicants may also waive the 49 day limit for the Coastal

Commission action to allow for time to resolve appeal issues. In particular, applicants may want to request that you amend your local approval in order to accept changes that they decide to make in their projects to address appeal concerns. You can update your IP to allow your coastal permit amendment procedures to cover this situation, for example, by adding the following considerations:

- identify a process through which you can take further action on the permit, while acknowledging that the local permit's operation and effect remain stayed by the appeal (Code of Regulation § 13112);
- establish filing and hearing requirements that are appropriate for a process in which an applicant is only attempting to adjust the proposed project to meet appellants' concerns;
- specify how the result of any such amendment approval would affect the original coastal permit on appeal in order for the Commission to understand how to proceed with the original appeal (e.g., a decision to amend the coastal permit on appeal would most likely supersede the original coastal permit decision with a new coastal permit that has a new appeal period -- hence voiding the prior approval and rendering the prior appeal to the Coastal Commission moot).

c. Reconcile any remaining local responsibilities with Coastal Commission action on the appeal.

If the Coastal Commission determines that an appeal of a locally issued coastal permit raises a substantial issue, it assumes jurisdiction over the coastal permit from the local government. Often the Commission will approve the coastal permit with additional conditions or changes to some conditions adopted by the local government. Commission staff, if time allows, will try to coordinate with local staff during development of the staff recommended conditions. This will help avoid potential inconsistencies with other local permit requirements, such as where a septic disposal system that would be subject to a local septic permit can be sited. To address the coastal permit and any corresponding local permits following a Coastal Commission appeal decision, your IP and procedures could be updated to include, for example:

- clarifying to the public and applicant the procedures for conditions that are based solely on an authority other than the Coastal Act (Commission approval of a coastal permit on appeal often acknowledges that the approval has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.);

- clarifying to the public and applicant procedures for condition compliance in matters of local interest that are based on both a Coastal Act and other authority and conditions that the Commission retains verbatim from the local permit; (e.g., if you conditioned an appealed coastal permit to have final grading plans signed off by your grading inspector, the Coastal Commission could impose a revised condition stating that the applicant submit a final grading plan to the Commission, along with evidence that it has been approved by the county/city grading inspector);
- incorporating the Coastal Commission condition revisions into your process for issuing any subsequent local permits, such as the building permit; and updating your files and permit tracking system to incorporate the final Coastal Commission action on appeal;
- coordinating with us to ensure that we both sign-off on the same set of final plans.

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

Appendix A: Drafting a New Implementation Plan

Please see Code of Regulations §13511(c)(2) at http://government.westlaw.com/linkedslice/default.asp?SP=CCR-1000. for Coastal Implementation Plan Requirements:

The zoning ordinances and zoning district map shall conform with and be adequate to carry out the policies, objectives, principles, standards and plan proposals set forth in the land use plan. The scope of measures contained in the zoning ordinance and/or district maps shall extend to the authority granted by the planning laws of California, including Government Code Sections 65850-65862 and 65910-65912. Where applicable and necessary to carry out the policies and provisions of an approved land use plan, these measures may include: exclusive use zones, overlay zones, conditionally permitted uses based on certain findings, sign and/or design controls, landscaping and grading regulations, hazard or geologic review requirements, open space and lot coverage standards, minimum lot sizes (including minimum acreages for agricultural and timberland conversion), density and timing of development standards based on public service capacities and recreational use needs, and any other similar ordinances within the scope of zoning measures.

If your city does not have a certified LCP or only a certified Land Use Plan, you may need to develop a new Implementation Plan (IP). This Appendix outlines some considerations that would go into drafting a complete Implementation Plan; it is not intended as a detailed guide for preparing and IP. Coastal Act § 30513 requires that a coastal implementation plan be fully consistent with and adequate to carry out your certified coastal land use plan. Adequacy to carry out the land use plan means in part following the minimum requirements of Code of Regulations §§ 13560 through 13574, "Local Coastal Program Implementation Regulations."

A coastal implementation plan consists of zoning ordinances and district maps. Essential elements of an implementation plan include:

- land uses and their densities and related standards, consistent with your coastal land use plan provisions, typically in the form of zoning district regulations;
- land use and density locations, typically in the form of zoning maps;
- substantive and procedural standards to implement all coastal land use policies, such as those implementing your required public access component and those governing environmentally sensitive habitats, biology and marine resources, geology and hazards management, view protection, and archaeology among others--sometimes integrated into zoning district regulations or sometimes comprising separate sections of the local zoning code and applying wherever the issue is present;
- other regulations, such as for landscaping, parking, signs, grading, subdivisions, etc., that affect the kind, location, or intensity of new development in the coastal zone;
- procedures for processing coastal permits;
- procedures for processing LCP amendments.

Certified coastal implementation plan formats and contents differ widely. Implementation plan format and content must respond to your specific coastal land use plan; no one size fits all. The Coastal Act and

implementing Code of Regulations provide for variation Nevertheless, if you are creating a coastal implementation plan from scratch, here are some tips to consider:

The coastal implementation plan consists of zoning ordinances (please see sidebar) and district maps. Many jurisdictions' zoning ordinances consist of a chapter of the municipal or county code, but the coastal content will likely spread to other code chapters as well. If you have a zoning ordinance chapter you may divide it into coastal and inland parts. If your entire city is in the coastal zone, then the entire zoning ordinance chapter might comprise part of the coastal implementation plan. Exactly where in your regulatory framework your coastal implementing ordinances and maps reside is discretionary. What is important is that they be readily identified as comprising the implementation portion of your Local Coastal Program.

Zoning ordinance" means an ordinance authorized by Section 65850 of the Government Code or, in the case of a charter city, a similar ordinance enacted pursuant to the authority of its charter (Coastal Act 30122).

Some jurisdictions append various relevant guidelines or manuals to their coastal implementing ordinances. For example, your land use plan might mandate that park landscaping be kept healthy and free from invasive plants. Implementation may be through a parks department landscape maintenance manual that you may wish to include in your coastal implementation plan.

To ensure that your coastal implementation plan is complete in terms of subject matter, it may help to prepare a table listing all coastal land use plan policies in one column and their corresponding implementation provisions in the other column. There should be at least one implementation entry for every policy. You could maintain this table as a helpful guide to track any future amendments to the LCP.

Coastal implementation plan provisions that appear to conform to the land use plan may not be sufficient for certification; the provisions must also be adequate to carry out the plan. For example, if your land use plan designates a site for agricultural use and your open space zoning district allows agriculture, along with parks and golf courses, they may appear to conform. But that zoning provision alone would not satisfy the certification criteria of "adequate to carry out the land use plan" because it allows for the possibility of a non-agricultural use, inconsistent with the land use plan. Either using another narrower agricultural zoning district or other qualifying coastal implementation plan provisions would be necessary.

The Coastal Act establishes coastal permit regulation as the paramount way to implement your coastal land use plan. Hence, the coastal permit process is the centerpiece of a coastal implementation plan. Minimum standards for coastal permits are found in Code of Regulations Title 14,

Division 5.5, Chapter 8, Article 17. You can then fill out the remaining elements of the process from initial application requirements through effective dates, amendments, revocations, and reconsiderations. These are covered in Sections I through III of this Guide. You can also pattern your coastal permit ordinance after the procedures that the Coastal Commission follows for the coastal permits it considers. These procedures are found in the Code of Regulation Title 14, Division 5.5, Chapters 5 and 6.

All regulatory elements to implement the coastal land use plan must be carried out through your coastal permit process. You can have other permits help carry out coastal land use plan policies, for example, a design permit to address scenic protection, but it must be linked and subservient to the coastal permit process.

Most zoning ordinance sections or chapters are prefaced with "Purpose" or "Intent" provisions. These offer the opportunity to relate the operative zoning provisions to your land use plan and possibly even the Coastal Act. They can help properly guide subsequent interpretations of the zoning ordinances. However, they cannot substitute for having operative, binding ordinance provisions.

Where local governments develop form-based or other innovative zoning codes, they must still comply with Coastal Act § 30513 and other requirements of the Act and Code of Regulations.

Some recently certified coastal implementation plans that you can review to obtain ideas about format and content are listed in the Introduction.

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

Appendix B: Examples and Citations for Some Recommendations and Suggestions

Section I. Local Coastal Permit Requirements

A. Determine if a Proposed Project Is Within Local Permitting Jurisdiction

1. Recommendation: Clarify Permit Jurisdiction

Update the IP to include a basic statement of responsibility to issue coastal permits, if not already included.

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on Chapter 13.

EXAMPLE: Certified IP text:

13.1. PURPOSE AND INTENT

The purpose and intent of this Chapter is to establish the process for the review of all development within the coastal zone of the City of Malibu to ensure that it will be consistent with the provisions of the City of Malibu Local Coastal Program, the California Coastal Act and the California Code of Regulations Title 14 Division 5.5.

13.2. APPLICABILITY

All properties within the City of Malibu are located within the coastal zone as defined in the California Coastal Act and are subject to the provisions of this Chapter. Where the standards or procedures described in this Chapter for issuing Coastal Development Permits conflict with any other permit procedures in the City's General Plan or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and other plans, resolutions or ordinances, the standards or procedures described herein shall take precedence.

13.3. PERMIT REQUIRED.

A. Except as otherwise provided in this Chapter, any person wishing to perform or undertake any development in the coastal zone… shall

obtain a coastal development permit in accordance with the provisions of this Chapter. Development undertaken pursuant to a coastal development permit shall conform to the plans, specification, terms and conditions of the permit. The requirements for obtaining a coastal development permit shall be in addition to requirements to obtain any other permits or approvals required by other city ordinances or codes or from any state, regional or local agency. Subsequent to the certification of the LCP, the City shall immediately assume coastal development permitting authority….

2. Additional Updates, Procedures and Practices to Consider

a. Clarify the process for determining whether a proposed project is within the area of the coastal zone where coastal permit authority has been delegated to a local government.

Reference or quote Coastal Act § 30519 and corresponding Code of Regulations § 13577.

CITATION: Coastal Act § 30519:

(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the [Coastal] commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

<u>CITATION</u>: Code of Regulations § 13577, excluding last subsection (i)(c) which applies to the Coastal Commission, not local government:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

(c) Estuaries. Measure 300 feet landward from the mean high tide line of the estuary. For purposes of this section, an estuary shall be defined as a coastal water body, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with the open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. The salinity level may be periodically increased to above that of the open ocean due to evaporation. The mean high tide line shall be defined as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station.

(d) Tidelands. Tidelands shall be defined as lands which are located between the lines of mean high tide and mean low tide.

(e) Submerged Lands. Submerged lands shall be defined as lands which lie below the line of mean low tide.

(f) Public Trust Lands. Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable

lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

(g) Beaches. Measure 300 feet landward from the inland extent of the beach. The back beach, or dry beach, if it exists, shall be included. The inland extent of the beach shall be determined as follows:

(1) from a distinct linear feature (e.g., a seawall, road, or bluff, etc.);

(2) from the inland edge of the further inland beach berm as determined from historical surveys, aerial photographs, and other records or geological evidence; or

(3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence.

(h) Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean:

(1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and

(2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line

along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

(2) Whenever no public road can be designated which conforms to all provisions of (i)(1) above, and a public road does exist, which conforms to all provisions of (i)(1) except (i)(1)(v), the effect of designating the first public road paralleling the sea shall be limited to the following:

(A) all parcels between the Pacific Ocean and such other public road; and

(B) those parcels immediately adjacent of the sea inland of such other public road.

Include a reference to and a procedure for consulting the post-certification maps.

Include a procedure to ensure an accurate determination is made in cases where it is unclear where the precise boundaries fall on the ground.

b. Add an option to have the Coastal Commission act on coastal permits when the proposed project straddles the boundary between your jurisdiction and the Commission's.

c. Explain how to process a coastal permit when the Coastal Commission also has some jurisdiction over the same proposed development project.

d. Clarify the process for addressing subsequent projects on sites where the Coastal Commission has previously issued a coastal permit.

e. Address situations where local coastal permit authority is preempted.

B. Determine if a Proposed Project Is "Development"

1. Recommendation: Clarify What Is Development

Update the IP to incorporate the Coastal Act § 30106 definition of development, if not already included:

CITATION: Coastal Act § 30106:

> *"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes,*

kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

2. Additional Updates, Procedures and Practices to Consider

a. Illustrate the definition of development with established determinations of what activities are development.

b. Specify a process for determining whether a proposed project is "development."

c. Affirm that the definition of development applies to activities of other governmental agencies.

C. Determine if a Development Proposal is Exempt from Permit Requirements

1. Recommendation: Clarify Exemptions from Coastal Permits

Update the IP to incorporate Coastal Act §§30600(e) and 30610 lists of exemptions and requirements of corresponding California Code of Regulations §§ 13250-53 that are applicable to your jurisdiction, if not already included.

EXAMPLE: Citations of Code of Regulations§§ 13250- 53 and Coastal Act §§ 30610 melded together, excluding §§13250(c) 13252(a)(3)(B) second part, 13252(c) and 13253(c) that apply to the Coastal Commission, not local government, with sources shown in brackets.

[Coastal Act § 30610] Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) ***Improvements to existing single-family residences****; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental*

effect and shall require that a coastal development permit be obtained pursuant to this chapter.

[referenced Code of Regulations§ 13250]. Improvements to Existing Single-Family Residences.

(a) For purposes of Public Resources Code section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to a residence;

(2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and

(3) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

(1) Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff.

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken

pursuant to Public Resources Code section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

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

(6) Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

[Coastal Act § 30610] (b) ***Improvements to any structure other than a single-family residence*** *or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.*

[referenced Code of Regulations§ 13253]. Improvements That Require Permits.

(a) For purposes of to Public Resources Code section 30610(b) where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to the structure.

(2) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect,

adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or within 50 feet of the edge of a coastal bluff;

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, in a highly scenic area, or in an environmentally sensitive habitat area;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

(5) In areas which the commission or regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

(6) Any improvement to a structure where the coastal development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit;

(7) Any improvement to a structure which changes the intensity of use of the structure;

(8) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

[Coastal Act § 30610] (c) ***Maintenance dredging of existing navigation channels*** *or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.*

[Coastal Act § 30610] (d) ***Repair or maintenance activities*** *that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.*

[referenced Code of Regulations § 13252]. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials…

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

[Coastal Act Section 30610](g) (1) The ***replacement of any structure****, other than a public works facility,* ***destroyed by a disaster****. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed*

structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

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

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

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

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i) (1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and exercising its coastal development permit jurisdiction over any temporary event at any time if the commission determines that the exercise of its jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 (commencing with Section 30200).

[Coastal Act §30006(e)—no coastal permit is required for] .., except that notification by the agency or public utility performing any of the following projects shall be made to the [Coastal] commission within 14 days from the date of the commencement of the project:

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

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

2. Additional Updates, Procedures, and Practices to Consider

a. Include, define or reference specific statutory exemptions from coastal permit requirements for structural additions and repair and maintenance activities.

b. Explain which temporary events are exempt from coastal permit requirements.

Include the text of or reference to the Coastal Commission's temporary events guidelines.

CITATION: Relevant excerpts from Coastal Commission's Temporary Events Guidelines:

For the context of this example, please see Coastal Commission memorandum "Regulation of Temporary Events in the Coastal Zone" at: http://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf

I.D.7 ***Temporary event*** *which does not have any significant adverse impact upon coastal resources are excluded from permit requirements*

II: Criteria for Exclusion from Permit Requirements

Except as provided in Section III below, the Executive Director shall exclude from coastal development permit requirements all temporary events except those which meet all of the following criteria:

a) Are held between Memorial Day weekend and Labor Day; and

b) Occupy all or a portion of a sandy beach area; and

c) Involve a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

Only temporary events meeting all of the above criteria shall require coastal development permit review, however, the Executive Director may also exclude from permit requirements temporary events meeting all of the above criteria when:

d) The fee is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; or

e) The event is held on sandy beach area in a remote location with minimal demand for public use, and there is no potential for adverse effect on sensitive coastal resources; or

f) The event is less than one day in duration; or

g) The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.

III Executive. Director or Commission Discretion to Require a Permit

The Executive Director, or the Commission through direction to the Executive Director, may determine that a temporary event shall be

subject to coastal development permit review, even if the criteria in Section II are not met if the Executive Director or the Commission determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time.

b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Section V of these guidelines;

c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or parking areas or otherwise significantly impact public use or access to coastal waters;

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

V. Definitions

For purposes of these guidelines, the following definitions shall apply:

a) "Temporary event(s)" means an activity or use that constitutes development as defined in Section 30106 of the Coastal Act; and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use;

b) "limited duration" means a period time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis;

c) "Non-permanent structures" include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailer, portable toilets, sound/video equipment, stages, platforms, movie/film sets, etc., which do not involve grading or landform alteration for installation

d) "exclusive use" means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other tan for or through event itself.

e) "Coastal resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

f) "Sandy beach area" includes publicly owned and privately owned sandy areas front on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest.

Indicate how a "significant adverse impact upon coastal resources" would be determined.

Include a procedure for consulting with the Coastal Commission staff.

c. Define "replacement" for purposes of implementing the exemption due to disasters pursuant to Coastal Act § 30610(g).

d. Describe which emergency work is exempt from coastal permits pursuant to Coastal Act § 30006(e).

Include Code of Regulations § 13329 definition of the term "emergency."

CITATION: Code of Regulations § 13329:

"Emergency," as used in Public Resources Code Section 30624, and in this article, means: a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

Define the terms "immediate" and "necessary."

e. Include or reference categorical exclusions from coastal permit requirements.

f. Include a limited exemption for abating nuisances.

D. Determine if a Proposed Project is Appealable to the Coastal Commission

1. Recommendation: Clarify if a Project Is Appealable

Update the IP to incorporate the Coastal Act § 30603(a) list of the

categories for appealing a local decision to the Coastal Commission, if not already included:

CITATION: Coastal Act § 30603 (a):

> *After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*
>
> *(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.*
>
> *(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.*
>
> *(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
>
> *(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map….*
>
> *(5) Any development which constitutes a major public works project or a major energy facility.*

For counties, update the IP to show only one principal permitted use in each zoning district.

For the context of this example, please see the Commission staff reports at: http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009.pdf and http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009-a2.pdf

EXAMPLE: Commission suggested modifications to excerpt from county's agricultural zoning district [see especially text in bold]:

> *For the purposes of Section 21.52.020(A)(3) and Public Resources Code 30603(a)(4),* ***the agriculture exclusive district uses listed under the principal permitted use section herein shall be considered as the principal permitted use in the California Coastal Zone. Variances and adjustments to the district's requirements and standards shall not be considered a principal permitted use for purposes of Section 21.52.020(A)(3) and Public Resources Code 30603(a)(4).***

The following regulations shall apply in all AE districts, subject to the provisions of Chapters 21.02 through 21.60. (Ord. 83-03 (part))

21.08.020 The principal permitted use.

The principal permitted agriculture exclusive use entails all agricultural uses including horticulture, crop and tree farming, livestock farming and animal husbandry, including dairies, public and private stables, but excepting feed lots and accessory buildings and uses including barns, stables, greenhouses constructed without a slab or perimeter foundation, and other agricultural buildings. These respective uses are not appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4), but may be so appealed pursuant to other provisions of Section of PRC Section 30603.

21.08.025 Other principally permitted uses.

Other principally permitted uses not requiring securement of a conditional use permit but which are appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4) entail:

A. A farm dwelling with appurtenant uses including home occupations, and appurtenant accessory structures. A manufactured farm dwelling may be placed in lieu of a conventional farm dwelling; and

B. Farm quarters for up to five farm laborers employed full-time on the premises. Manufactured farm quarters may be placed in lieu of conventional farm dwelling units. (Ord. 2009-___ § _ (part))

21.08.030 Uses permitted with a use permit.

Uses permitted with a use permit and appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4) shall be as follows:

A. Feed lots for the intensive raising of animals for commercial purposes;

B. Hog farming;

C. Produce sales stands, providing that the majority of the produce sold or offered for sale is grown on the premises;

D. Farm quarters for six or more farm laborers employed full-time on the premises;

E. Animal husbandry services including veterinary clinics;

F. Greenhouses which are constructed with a slab or other foundation which will preclude the use of the underlying soil(s);

G. Home enterprises which are agricultural in nature.

2. Additional Updates, Procedures, and Practices to Consider

a. Clarify the process for determining if a proposed project is within your locality's geographic appeal jurisdiction.

b. Include a reference to or quote the definition of and procedure for determining what is a major public works or major energy facility.

CITATION: Coastal Act §30114 defines "public works" as:

(a) All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

(b) All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities…

(c) All publicly financed recreational facilities, all projects of the State Coastal Conservancy, and any development by a special district.

(d) All community college facilities.

CITATION: Coastal Act § 30107:

"Energy facility" means any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.

CITATION: Code of Regulations § 13012:

(a)"Major public works" and "Major energy facilities" mean facilities that cost more than one hundred thousand dollars ($100,000) with an automatic annual increase in accordance with the Engineering News

Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624. [Please note that these sections address emergency situations.]

(b)Notwithstanding the criteria in (a), "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

c. Clarify whether a coastal permit amendment or extension request is appealable.

d. Include a procedure for revising appeal determinations.

E. Resolve Disputes over Whether Permits Are Required or Appealable

1. Recommendation: Clarify How to Resolve Disputes over Whether Permits Are Required or Appealable

Update the IP to include a procedure for resolving disputes consistent with Code of Regulation §13569, if not already included.

CITATION: Code of Regulations § 13569:

Determination of Applicable Notice and Hearing Procedures.

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular

development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;

(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:

(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

2. Additional Updates, Procedures, and Practices to Consider

a. Include procedures to ensure that any dispute resolutions can commence as soon as practical.

b. Expand procedures to facilitate information exchange.

c. Include procedures to accept a permit determination change as a result of dispute resolution.

Section II: Local Coastal Permitting Procedures

A. Specify Application Contents

1. Recommendation: Require a Coastal Permit Application

Update the IP to incorporate a requirement for a coastal permit application if it is not already included.

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on Chapter 13.

EXAMPLE: certified IP text:

> *13.6.1 Filing Procedures. A. Application for a coastal development permit and amendments to coastal development permits shall be made to the Planning or Building Department on an application form provided by the Department, together with all required plans, maps, elevations, reports and any such supporting information deemed necessary by the Planning Department or any other ordinance contained in the certified LCP to adequately assess and evaluate the proposed project for consistency with the LCP. Application for a coastal development permit may be submitted concurrently with other city permits required by the City Municipal Code. The application may include a fee set by the City Council.*

2. Additional Updates, Procedures, and Practices to Consider

a. Include categories of information that the application should address.

For the context of this example, please see source: California Coastal Commission, Land Form Alteration Policy Guidance at: http://www.coastal.ca.gov/landform/sec4.html

EXAMPLE: suggested filing requirements for subdivisions where landform alteration (grading) is involved:

> *6. Necessary Submittal Contents*
>
> *6.A. All technical reports must be clear and precise Many technical studies are written by experts and are addressed to a professional audience. These reports must remain useful to the experts who will use the technical information to make design recommendations, site restoration or possible mitigation plans and must be presented in the technical vernacular that is expected from the profession. Nevertheless, technical experts must also recognize that their reports will be used by planners to identify locations or resources on the parcel which must be avoided, protected, or treated in some special manner. Land use planners are not required to be experts in any of the technical areas which they review to make informed land use decisions, and it would be impossible for any one person to achieve broad expertise in all the technical areas which may have some bearing on land use decisions. Technical reports must provide overviews or summaries that any reasonable intelligent lay person can understand. If the reports contain information on areas where sensitive or important resources have been located or where some geologic hazard may exist, the reports must state these conclusions*

plainly, show clearly where the locations are and indicate, if possible, what activities can and cannot be undertaken on or proximity to these resources or hazards. For example, it is not enough to provide a map of surface geology and assume that a planner can and will find all the indicators of landslides of surface instability; these must be highlighted in some manner so that the average person can understand that there are, or are not, stability problems on the parcel.

6.B. A subdivision plan, complete with all relevant requirements, must be provided All elements of the subdivision must be provided and mapped in a fashion that shows how they will or will not affect the identified resources and hazard areas. The subdivision elements would not just be lot lines, but access roads that will meet fire access requirements, lot areas that meet minimum zoning requirements, driveways and building areas that meet minimum lot line set back requirements, the areas that would have to be cleared of vegetation for fire safety, utility corridors, septic areas, well sites, and open space areas. Whenever there is a law, regulation, code or standard which dictates any element of this subdivision plan, the supporting report must provide a complete reference for this code, current for the time the subdivision is being considered. If the planner does not have copies of these codes, standards, requirements, etc., the developer can be asked to provide a copy with the application. If the design is affected by undocumented professional "standards of practice", the applicant should provide the names or at least three professionals working in the area who can and will substantiate the use of these "standards of practice" for the parcel which is being reviewed.

6.C. Subdivision plans should specify appropriate foundation styles for building pads Once building areas are established, the style of building foundation can affect how the individual lot development may alter the existing land forms. In attempting to fit the development to the general characteristics of the site, every portion of the development must be adapted to the site. For a building this starts with the foundation. In a flood prone area, elevation of the building may be necessary, either through elevating the site or siting the building on pilings. A flat slab foundation may reduce the visual profile of the building, but may require extensive cut and fill if the building area is steep. Different foundation designs will affect the property differently and for many areas it is appropriate to consider

various foundation designs, rather than fix the site to accommodate a chosen foundation design.

7.A. Types Of Information For Subdivision Planning Decisions

TYPE OF INFORMATION	*USES FOR INFORMATION*
Aerial Photographs	*Put site in regional setting* *Show large land forms which may be difficult to identify on the ground, such as large landslides and drainage patterns*
Topographic Maps, with contour intervals suitable for site layout. If grading or drainage plans are prepared, some topo maps should be provided at a scale similar to these plans.	*Show areas of steep slope, 10, 20 and 30% slope (or other slopes required by local government)* *Show drainage characteristics* *Show prominent land features* *Use as a base map to identify site constraints, habitat areas, setbacks, etc.* *Use to quantify grading and disturbed areas*
Geologic Studies *Soils Surveys*	*Identify geologic constraints such as landslides, or slide prone areas; faults; expansive, erosive or unstable soils* *Identify locations with stable, septic-compatible soils*
Hydrologic studies	*Identify perennial and intermittent streams, natural drainage patterns and flows*

	for extreme events
	Identify areas of high runoff potential
	Locate groundwater and directions of flow
	Use for developing on-site flood and drainage controls
Hazards Assessment (for high hazard areas)	*Use with geologic and hydrologic studies for risk due to geologic instability, flooding, erosion, fire, etc.*
Vegetation and Wildlife Surveys	*Identity sensitive habitat and wildlife corridors*
	Identify riparian and wetland areas
	Identify rare, threatened and endangered species
	Identify highly combustible vegetation
Cultural Features, Circulation Patterns	*Existing and past land uses; zoning, easements, covenants, off-site nuisances*
	Historic buildings, landmarks, archeological sites
	Traffic and circulation patterns, vehicular, pedestrian and equestrian
	Major vehicle access points, parking and access requirements
Utilities and Public Services	*Existing utilities, storm*

	drains, sediment basins
	Available fire fighting facilities and equipment
Visual surveys	*Identify critical view sheds, vistas, etc.*
	Determine site visibility from major viewing areas
Regulatory Setting	*Land Use Plans and Zoning Ordinances*
	Community Housing Plans, Transit Plans, Management and Growth Plans
	Special Assessment Districts

For the context of this example, please see Monterey County Coastal Implementation Plan Part II Regulations for North County at http://www.co.monterey.ca.us/planning/docs/ordinances/Title20/20.02%20General%20Provisions.htm.

EXAMPLE: certified IP's filing requirements for biological survey:

[20.144.040.A] 4. The biological survey shall contain the following elements:

a. identify the property surveyed, with accompanying location map and site plan showing topography and all existing and proposed structures and roads, and the proposed project site(s):

b. describe the method of survey:

c. identify the type(s) of plant and animal habitats found on the site (and/or on adjacent properties where development is adjacent to the habitat), with an accompanying map delineating habitat location(s);

d. identify the plant and animal species, including rare and endangered species, found on the site (or on adjacent properties, where development is adjacent to the habitat) with a map showing their habitat locations:

e. in areas of potential public access, determine the maximum amount and type(s) of public use which will allow for the long-term maintenance of the habitat;

f. describe and assess potential impacts of the development on the environmentally sensitive habitat(s) found on the site and/or on neighboring properties:

g. recommend mitigation measures, such as setbacks from the habitat, building envelopes, and modifications to proposed siting, location, size, design, vegetation removal, and grading, which will reduce impacts to on-site or neighboring habitats and allow for the habitat's long-term maintenance;

h. assess whether the mitigation measures will reduce the development's impact to an insignificant level, which is the level at which the long-term maintenance of the habitat is assured; and,

i. other information or assessment as necessary to determine or assure compliance with resource protection standards of the North County Land Use Plan and of this ordinance.

For the context of this example, please see Monterey County Coastal Implementation Plan Part II Regulations for North County at http://www.co.monterey.ca.us/planning/docs/ordinances/Title20/20.02%20General%20Provisions.htm.

EXAMPLE: certified IP's filing requirements for hydrological reports:

[2 0.144 .070.D] 5. The hydrologic report shall contain, at a minimum, the following elements:

a. location map;

b. to-scale site plan showing the entire parcel and proposed and existing structures, roads, land use, landscaping, wells, and water lines, and hydrologic and drainage features;:

c. description of how water is currently supplied and how it will be supplied to the proposed development;

d. assessment of existing and proposed water usage, including water usage for landscaped and other vegetated areas;

e. description of hydrologic setting and features on the parcel and in the area, and for areas presently cultivated or proposed for cultivation;

f. description of investigation methods, including review of well logs, (subject to owner's permission) on-site and off-site testing, and contacts with Health Department and Flood Control District staff;

g. description of other development activity in the area, both proposed and under construction:

h. assessment of the individual and cumulative impacts of the proposed development on the quantity and quality of the groundwater table and local aquifer, specifically addressing nitrates, TDS, and toxic chemicals;

i. assessment of the proposed development's individual and cumulative impact on the aquifer's safe long-term yield level, saltwater intrusion, and long-term maintenance of local coastal-priority agricultural water supplies:

j. description and assessment of project alternatives, including reduced density, if needed to mitigate the proposed development's adverse impacts as identified above: and, recommendations for water conservation measures, addressing siting, construction, and landscaping and including retention of water on site to maximize groundwater recharge and reclamation of water.

For the context of this example, please see Monterey County Coastal Implementation Plan Part II Regulations for North County at http://www.co.monterey.ca.us/planning/docs/ordinances/Title20/20.02%20General%20Provisions.htm.

EXAMPLE: certified IP's filing requirements for geological reports:

[20.144.100.B.1.] i. The report shall be consistent with "Guidelines for Geologic/Seismic Reports" of the California Division of Mines and Geology (CDMG Notes No. 37) and shall include, at a minimum, the following elements, as applicable to the site:

1) regional geologic setting;

2) geologic conditions, including soil, sediment, and rock types and characteristics in addition to structural features such as bedding, joints and faults;

3) evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity both on-site and offsite:

4) ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of sewage effluent and irrigation water to the groundwater system, and alterations in surface drainage);

5) potential effects of seismic forces resulting from a maximum credible earthquake;

6) effect of the proposed development including siting and design of structures, septic system, landscaping, drainage, and grading, and

impacts of construction activity on the stability of the site and the adjacent area;

7) any other factors that might affect slope stability:

8) potential erodability of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design); and,

9) any other recommended mitigation measures. (Ref. Policy 2.8.3.A.5)

10)and for development of shoreline structures, the following elements shall be included:

a) design wave height

b) maximum expected wave height

c) frequency of overtopping

d) normal and maximum tidal ranges

e) erosion rate with/without protection device

f) effect of structure on adjoining property

g) potential/effect of scouring at base

h) design life of structure/maintenance provisions

i) alternatives to the chosen design including "no project"

j) maintenance provisions including methods and materials.

For the context of this example, please see the Board's Guidelines at http://www.geology.ca.gov/forms-pubs/guide-reports.shtml

EXAMPLE: suggested filing requirements for geological reports from the California State Board for Geologists and Geophysicists:

II. REPORT CONTENTS FOR EARTHQUAKE AND/OR FAULT HAZARD REPORTS

A. Purpose and Scope of the Investigation

Includes a brief description of proposed or existing site use; may also include a description of limitations of the work and authorization to perform the work. The design lifespan of the proposed project should be implicitly stated.

B. Regional Geologic Setting

May include reference to geologic province and location with respect to major structural features.

C. Site Description and Conditions

Includes information on geologic units, landforms, graded and filled areas, vegetation, existing structures, etc., that may affect the choice of investigative methods and the interpretation of data.

D. Description of the Investigation

1. Review of the region's seismic or earthquake history, based primarily on existing maps and technical literature.

a. Significant earthquakes during historic time and epicenter locations and magnitudes in the vicinity of the site.

b. Location of fault traces that may affect the site, including maps of fault breaks and a discussion of the tectonics and other relationships of significance to the proposed construction.

c. Location and chronology of other earthquake-induced features such as landsliding, lurching, settlement and liquefaction, accompanied by:

(1) Map showing the location of these features relative to the proposed project.

(2) Description of the disturbed zone for each feature.

(3) Estimate of the amount of disturbance relative to bedrock and surficial materials.

2. Interpretation of aerial photographs and other remotely sensed images relative to fault-related topography, vegetation, and soil contrasts, and other lineaments of possible fault origin.

3. Surface investigation.

a. Mapping of geologic units and structures, topographic features, deformation of man made structures, etc., both on and beyond the site (sag ponds, spring alignments, offset bedding and man made features, disrupted drainage systems, offset ridges, faceted spurs, dissected alluvial fans, scarps, landslide alignments, vegetation patterns).

b. Review of local groundwater data (water-level fluctuations, groundwater impediments, water quality variations, or anomalies indicating possible faults).

c. Description of the distribution, depth, thickness, and nature of the various earth materials, including subsurface water, which may affect the seismic response and damage potential at the site.

4. Subsurface investigation

a. Trenching and any other excavation (with appropriate logging and documentation, including method of cleaning wall) to permit the detailed and direct observation of continuously exposed geologic units and features. This would include trenching done across any known active faults and suspicious zones to determine the location and recency of movement, the width of disturbance, the physical condition of fault zone materials, the type of displacement, the geometry of fault features, and recurrence interval, if known.

b. Borings drilled and test pits excavated to permit the collection of data needed to evaluate the depth and types of materials and groundwater and to verify fault-plane geometry. Data points sufficient in number and adequately spaced will permit valid correlations and interpretations.

c. Geophysical surveys conducted to facilitate the evaluation of the types of site materials and their physical properties, groundwater conditions, and fault displacements, including a description of the types of equipment and techniques used, such a seismic refraction, magnetic, electrical resistivity, seismic refraction, magnetic, electrical resistivity, seismic reflection, and gravity.

5. Other special methods (used when special conditions permit or critical structures demand a more intensive investigation).

a. Aerial reconnaissance overflights, including special photography.

b. Geodetic and strain measurements, microseismicity monitoring, or other monitoring techniques.

c. Radiometric analysis (e.g., C14, K-Ar), stratigraphic correlation (fossils, mineralogy), soil profile development, paleomagnetism, or other age-dating techniques to identify the age of faulted or unfaulted units or surfaces.

E. Conclusions

1. Regarding areas of high risk and potential hazards relative to the intended land use or development (made in conjunction with the

geotechnical engineering study) and a statement of the degree of confidence in, and limitations of, the data and conclusions.

a. Presence or absence (including location and age) of active or potentially active faults on or adjacent to the site or in the region of the site if they could affect it (through ground shaking).

b. Types and probability of, or relative potential for, future surface displacement within or immediately adjacent to the site, including the direction of relative displacement and the maximum possible displacement.

c. Secondary effects, such as: liquefaction of sediments and soils, shallow ground rupture, settlement of soils, earthquake-induced landslides, and lurching.

d. Estimates of maximum earthquake, upper bound earthquake, or other definitions of earthquakes if required by statute or regulation for the specific type of project.

F. Recommendations

1. Mitigative measures that provide appropriate protection of the health, safety and welfare of the public.

2. Effect of fault locations on proposed structures at the site. Federal, state and local law may dictate minimum standards.

3. Risk evaluations, if appropriate, relative to the proposed development.

4. Other recommendations as appropriate for the proposed project.

G. References

1. Literature and records cited and reviewed.

2. Aerial photographs or images interpreted, listing the type, scale, source, index numbers, etc.

3. Compiled data, maps, or plates included or referenced.

4. Other sources of information, including well records, personal communications, or other data sources.

H. Illustrations

1. Location map to identify the site locality, significant faults, fault strain and/or creep, geographic features, seismic epicenters, and other pertinent data.

2. Site development map, at an appropriate scale, to show the site boundaries, existing and proposed structures, graded areas, streets, exploratory trenches, borings, geophysical traverses, and other data.

3. Geologic map to show the distribution of geologic units (if more than one), faults and other structures, geomorphic features, aerial photo lineaments, and springs. The geologic map may be combined with the location and site development maps. A clear distinction should be made on the map and within the report between observed and inferred geologic features and relationships.

4. Geologic cross-sections illustrating displacement and/or rupture, if needed to provide a three-dimensional picture.

5. Logs of exploratory trenches and borings to show the details of observed features and conditions.

6. Geophysical data and the geologic interpretations of those data.

I. Supporting data not already provided

1. Water well data.

J. Signature and registration number of the responsible professional(s)

1. Registered Geologist, Certified Engineering Geologist.

II. REPORT CONTENT FOR ENGINEERING GEOLOGIC REPORTS

A. Purpose and Scope of the Investigation

Includes a brief description of proposed or existing site use; may also include a description of limitations of the work and authorization to perform the work. The design lifespan of the proposed project should be implicitly stated.

B. Regional Geologic Setting

May include reference to geologic province and location with respect to major structural features.

C. Site Description and Conditions

Includes information on geologic units, landforms, graded and filled areas, vegetation, existing structures, etc., that may affect the choice of investigative methods and the interpretation of data.

D. Description of the Investigation

1. Review of the regional and site geology, and land-use history, based primarily on existing maps and technical literature.

a. Geologic hazards that could affect the planned use of the site.

(1) Significant historic earthquakes in the region.

(2) Fault traces that may affect the site. Is the site within an earthquake fault zone?

(3) Secondary earthquake effects, such as ground breakage in the vicinity of the site, seismically-induced landslides, differential tilting and liquefaction.

(4) Regional effects, such as subsidence, uplift, etc.

(5) Landslides or other earth movements at the site and vicinity.

(6) Soil and rock properties such as high moisture content, low density, swelling, cementation, weathering, fracturing, etc.

b. Other geologic conditions that could affect the planned use of the site.

(1) Soil thickness, types, and relationship to bedrock.

(2) Excavatability of rock materials.

(3) Depth to and characteristics of subsurface water.

c. Conditions imposed on the site by past uses, such as buried objects, contaminated soils, groundwater, or adjacent structures, etc.

2. Interpretation of aerial photographs and other remotely sensed images relative to topography, vegetation, or any other features related to geologic hazards and past site use.

3. Surface investigation.

a. Mapping of the site geology and vicinity; identification and description of geologic units, soil and rock types, and features that could be related to geologic hazards and the proposed use and

constructability of the site. A clear distinction should be made on the map and within the report between observed and inferred geologic features and relationships.

b. Evaluation of surface-water conditions, including quality, flood potential in relation to site conditions, geomorphology and drainage within or affecting the subject area.

4. Subsurface investigation.

a. Trenching and any other excavation (with appropriate logging and documentation) to permit detailed and direct observation of continuously exposed geologic units and features.

b. Borings drilled, test pits excavated, and groundwater monitoring wells installed to permit the collection of data needed to evaluate the depth and types of materials and subsurface water. Data points sufficient in number and adequately spaced will permit valid correlations and interpretations.

c. Geophysical surveys conducted to facilitate the evaluation of the types of site materials and their physical properties, groundwater conditions and any other pertinent site conditions. The types of equipment and techniques used, such as seismic refraction, magnetic, electric resistivity, seismic reflection and gravity, and the name of the geophysicist responsible for the work.

5. Special methods (used when special conditions permit or critical structures demand a more intensive investigation).

a. Aerial reconnaissance overflights, including special photography.

b. Geodetic measurements, radiometric analysis, age dating, etc.

E. Results of Investigation

Describes the results of the investigation outlined in Section IV above. The actual data or processed data upon which interpretations are based should be included in the report to permit technical reviewers to make their own assessments regarding reliability and interpretation.

F. Conclusion

Relative to the intended land use or development (made in conjunction with the geotechnical engineering study). Includes a statement concerning the degree of confidence in and limitations of

the data and conclusions, as well as disclosure of known or suspected potentially hazardous geologic processes affecting the project area.

1. Presence or absence of active or potentially active faulting at the site or in the vicinity, and the potential for renewed fault activity.

2. Effects on the site from ground shaking.

3. Potential for secondary effects from earthquakes, such as ground cracking, landsliding, and liquefaction.

4. Potential for subsidence or other regional effects.

5. The presence of creep or landsliding; and possible future mass movements.

6. Soil and rock conditions, such as swelling soils that could affect site use.

7. The presence of and possible effects from any other soil and rock defects.

8. Excavation methods.

9. Presence of contamination or any other man-imposed condition.

10. Potential for earthquake-induced flooding, including tsunamis and seiches.

11. Potential for volcanic hazards.

12. Conformance with local, state and federal statutory and regulatory requirements.

G. Recommendations

1. Effect of fault locations on proposed structures at the site. Federal, state, or local law may dictate minimum standards.

2. Placement of structures to best take advantage of geologic conditions.

3. Methodology for excavating and moving materials.

4. Means of correcting site defects, such as buttressing landslides, installing special drainage devices, etc.

5. Correcting contamination or other man-induced site defects.

6. Other recommendations as appropriate for the proposed project.

H. References

1. Literature and records cited and reviewed.

2. Aerial photographs or images interpreted, listing the type, scale, source, and index numbers, etc.

3. Compiled data, maps, or plates included or referenced.

4. Other sources of information, including well records, personal communications, or other data sources.

I. Illustrations

1. Location map to identify the site locality, geographic features, or major regional geologic features.

2. Site development map, at an appropriate scale, to show the site boundaries, existing and proposed structures, graded areas, streets, and locations of exploratory trenches, borings, wells, geophysical traverses, and other data.

3. Geologic map to show the areal distribution of geologic units, faults and other structures, geomorphic features, aerial photo features noted, along with surface water bodies and springs. The geologic map may be combined with the location and site development maps.

4. Geologic cross sections illustrating significant or appropriate geologic features.

5. Logs of exploratory trenches and borings to show the details of observed features and conditions.

6. Geophysical data and the geologic interpretations of those data.

7. Other, as appropriate.

J. Supporting Data Not Already Provided

1. Non-confidential water well data (including bore-hole logs).

K. Signature and Registration Number of the Responsible Professional(s)

1. Registered Geologist, Certified Engineering Geologist.

b. Tailor applications or application questions to correspond to different types of permit review.

c. Establish methods to ensure that the stated applicant has legal authority to carry out the approved project.

B. Specify Noticing to Perform

1. Recommendation: Specify Noticing Requirements

Update the IP to incorporate California Code of Regulations §§ 13565, 13567 and 13568(a) and (b) if they are not already included.

CITATION: California Code of Regulations §§ 13565, 13567 and 13568(a) and (b):

§ 13565. Notice of Appealable Developments.

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information:

(1) a statement that the development is within the coastal zone;

(2) the date of filing of the application and the name of the applicant;

(3) the number assigned to the application;

(4) a description of the development and its proposed location;

(5) the date, time and place at which the application will be heard by the local governing body or hearing officer;

(6) a brief description of the general procedure of local government concerning the conduct of hearing and local actions;

(7) the system for local and Coastal Commission appeals, including any local fees required.

§ 13567. Notice of Local Government Action When Hearing Continued.

If a decision on a development permit is continued by the local government to a time which is neither (a) previously stated in the notice provided pursuant to Section 13565, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565.

§ 13568. Notice of Non-Appealable Developments.

(a) Notice of developments within the coastal zone that require a public hearing under local ordinance, but which are not appealable pursuant to Public Resources Code Section 30603 (and which are not categorically excluded) shall be provided in accordance with existing local government notice requirements which shall provide at a minimum:

Notice of developments shall be given at least ten (10) calendar days before a hearing in the following manner:

(1) if the matter is heard by the Planning Commission (city or county) notice shall be published in a newspaper of general circulation or (if there is none) posted in at least three public places in the local jurisdiction;

(2) notice by first class mail to any person who has filed a written request therefore,

(3) notice by first class mail to property owners within 300 feet.

(4) notice by first class mail to residents within 100 feet of the proposed project.

(5) notice by first class mail to the Commission.

(6) the notice shall contain a statement that the proposed development is within the coastal zone.

The local government may, instead, elect to provide notice in accordance with Section 13565.

(b) Notice of developments within the coastal zone which are not appealable pursuant to Public Resources Code Section 30603 and

which do not require a public hearing under local ordinance (and which are not categorically excluded) shall be provided as follows:

Within ten (10) calendar days of accepting an application for a non-appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the local decision on the application, the local government shall provide notice, by first class mail, of pending development approval. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed, and to the Commission. The notice shall contain the following information:

(1) a statement that the development is within the coastal zone;

(2) the date of filing of the application and the name of the applicant;

(3) the number assigned to the application;

(4) a description of development and its proposed location;

(5) the date the application will be acted upon by the local governing body or decision-maker;

(6) the general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision;

(7) a statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.

2. Additional Updates, Procedures and Practices to Consider

a. Standardize notice forms.

For the context of this example, please see Coastal Commission's Local Coastal Program Post-Certification Guide for Coastal Cities and Counties at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf, Sample form is Appendix C-2.

EXAMPLE: Items included in Coastal Commission sample notice of a public hearing on a coastal permit:

- *Date*
- *Filing date*

- *File number*
- *Jurisdiction*
- *Applicant*
- *APN*
- *Project location*
- *Proposed development*
- *Public hearing time, date, place*
- *Hearing body*
- *Date appeal must be filed*
- *Whether appealable to Coastal Commission*

For the context of this example, please see Coastal Commission's Local Coastal Program Post-Certification Guide for Coastal Cities and Counties at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf, Sample form is Appendix C-3.

EXAMPLE: Items included in Coastal Commission sample notice of action to occur on a coastal permit without a hearing:

- *Date*
- *Filing date*
- *File number*
- *Jurisdiction*
- *Applicant*
- *APN*
- *Project location*
- *Proposed development*
- *Date application will be acted upon*
- *Responsible local official*
- *Date comments due*

b. Adopt procedures for additional noticing.

c. Provide for some advanced noticing.

C. Decide on Coastal Permit Application

1. Recommendation: Specify Who Decides on a Coastal Permit Application

Update the IP to describe which of your local bodies acts on coastal permits and the consideration procedure that each follows, if this is not already included.

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on Chapter 13.

EXAMPLE: compendium of excerpted provisions from a certified IP that establish three bodies that can act on coastal permits:

> *Permits issued under Section 13.13 of the Malibu LIP (Administrative Permits), and any subsequent changes to the administrative permit that are consistent with Section 13.3 of the Malibu LIP, and permits issued under Section 13.14 of the Malibu LIP (Emergency Permits) may be decided upon by the* ***Planning Manager****.*
>
> *The Planning Manager may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).*
>
> *a. Improvements to any existing structure;*
>
> *b. Any single-family dwelling;*
>
> *c. Lot mergers;*
>
> *d. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars ($100,000) other than any division of land.*
>
> *All other coastal development permits shall be decided upon by the* ***Planning Commission*** *subject to appeal provisions in Section 13.20 of the Malibu LIP (Appeals).*
>
> *A decision or any portion of the decision made by the Planning Manager under the provisions of this Chapter may be appealed to the Planning Commission by an aggrieved person as defined in Chapter 2 of the Malibu LIP (Definitions). Any decision made by the Planning Commission may be appealed by an aggrieved person to the* ***City Council****.*

The Planning Commission and City Council, respectively, may, upon the affirmative vote of a majority of its members, appeal a decision made by the Manager or Planning Commission under the provisions of this Chapter.

2. Additional Updates, Procedures, and Practices to Consider

a. Expand use of the consent calendar.

b. Have an administrative officer hear and act on some coastal permits.

c. Use an alternative process for some coastal permits not needing public hearings.

d. Consolidate some permit processes.

e. Have a distinct process for emergency permits.

EXAMPLE: certified IP text:

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on Chapter 13.

13.14. EMERGENCY PERMITS

In the event of an emergency as defined in Chapter 2 of the Malibu LIP (Definitions), an application for an Emergency Coastal Development Permit ("emergency permit") shall be made to the Planning Manager. The Planning Manager may issue an emergency permit in accordance with Coastal Act Section 30624 and the following: (Resolution No. 07-04 (LCPA No. 05-001))

A. Applications in cases of emergencies shall be made to the Planning Manager by letter or facsimile during business hours if time allows, by telephone or in person if time does not allow. (Resolution No. 07-04 (LCPA No. 05-001))

B. The information to be included in the application shall include the following:

1. The nature of the emergency;

2. The cause of the emergency, insofar as this can be established;

3. The location of the emergency;

4. The remedial, protective or preventative work required to deal with the emergency; and

5. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

C. The Planning Manager shall verify the facts, including the existence and nature of the emergency, insofar as time allows. (Resolution No. 07-04 (LCPA No. 05-001))

D. Prior to issuance of an emergency coastal development permit, when feasible, the Planning Manager shall notify, and coordinate with, the South Central Coast District office of the California Coastal Commission as to the nature of the emergency and the scope of the work to be performed. This notification shall be in person or by telephone. (Resolution No. 07-04 (LCPA No. 05-001))

E. The Planning Manager shall provide public notice of the proposed emergency, with the extent and type of notice determined on the basis of the nature of the emergency itself. The Planning Manager may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the Planning Manager finds that: (Resolution No. 07-04 (LCPA No. 05-001))

1. An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of this chapter and Public Resources Code Section 30600.5 and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;

2. Public comment on the proposed emergency action has been reviewed if time allows; and

3. The work proposed would be temporary and consistent with the requirements of the City's certified LCP.

4. The work proposed is the minimum action necessary to address the emergency and, to the maximum extent feasible, is the least environmentally damaging temporary alternative for addressing the emergency.

5. The Planning Manager shall not issue an emergency permit for any work that falls within the provisions of Public Resources Code Section 30519(b) since a coastal development permit application must

be reviewed by the California Coastal Commission pursuant to provisions of Public Resources Code Section 30600.5. (Resolution No. 07-04 (LCPA No. 05-001))

F. The emergency permit shall be a written document that includes the following information:

1. The date of issuance;

2. An expiration date;

3. The scope of work to be performed;

4. Terms and conditions of the permit;

5. A provision stating that within 90 days of issuance of the emergency permit, a regular coastal development permit application shall be submitted and properly filed consistent with the requirements of this Chapter;

6. A provision stating that any development or structures constructed pursuant to an emergency permit shall be considered temporary until authorized by a follow-up regular coastal development permit and that issuance of an emergency coastal development permit shall not constitute an entitlement to the erection of permanent development or structures;

7. A provision that states that: The development authorized in the emergency permit must be removed unless a complete application for a regular coastal development permit is filed within 90 days of approval of the emergency permit and said regular permit is approved. If a regular coastal development permit authorizing permanent retention of the development is denied, then the development that was authorized in the emergency permit, or the denied portion of the development, must be removed.

G. The emergency permit may contain conditions for removal of development or structures if they are not authorized in a regular coastal development permit, or the emergency permit may require that a subsequent permit must be obtained to authorize the removal.

13.14.1 Reporting of Emergency Permit

A. The Planning Manager shall report in writing to the City Council and to the California Coastal Commission at each meeting the emergency permits applied for or issued since the last report, with

a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing. (Resolution No. 07-04 (LCPA No. 05-001))

B. All emergency permits issued after completion of the agenda for the meeting shall be briefly described by the Planning Manager at the meetings and the written report required by Section 13.14.1 (A) of the Malibu LIP shall be distributed prior to the next succeeding meeting. C. The report of the Planning Manager shall be informational only; the decision to issue the emergency permit is solely at the discretion of the Planning Manager.

EXAMPLE: certified IP text:

For the context of this example, please see City of Carmel-by-the-Sea Municipal Code, at http://www.codepublishing.com/CA/carmel.html click on Title 17, then on Chapter 17.52)

17.52.180 Emergency Coastal Permits.

A. Purpose. This section provides procedures for the issuance of emergency permits in compliance with the Coastal Act.

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

C. Application. An application for an emergency permit shall be filed with the Director in writing if time allows, or in person or by telephone if time does not allow.

D. Required Information. The applicant shall report to the Director the following information, either during or as soon after the emergency as possible:

1. The nature and location of the emergency;

2. The cause of the emergency, insofar as this can be established;

3. The remedial, protective, or preventative work required to deal with the emergency; and

4. The circumstances during the emergency that appeared to justify the courses of action taken, including the probable consequences of failing to take action.

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

F. Notice. The Director shall provide public notice of the proposed emergency work. The extent and type of notice shall be determined by the Director based of the nature of the emergency and the work proposed.

G. Emergency Permit Approval. The decision to issue an emergency permit is at the sole discretion of the Director; provided, that subsequent land use, building, and grading permits required for the project shall comply with all applicable provisions of these regulations. The Director may grant an emergency permit if an emergency exists as defined in Chapter 17.70 CMC, and if the Director first finds that:

1. An emergency exists that requires action more quickly than would occur following normal permit procedures, and the emergency work can and will be completed within 30 days unless otherwise specified by the emergency permit;

2. Public comment on the proposed emergency action has been reviewed, if time allows; and

3. The work proposed would be consistent with the requirements of the certified Local Coastal Program or would not impede attainment of these requirements following completion of the emergency work.

H. Emergency Permit Contents. If granted, the permit shall state the basis for the findings made by the Director and shall be subject to reasonable terms and conditions, including:

1. Language indicating that the work accomplished under an emergency permit is considered temporary unless a regular permit is subsequently issued for the work;

2. An expiration date for the emergency permit; and

3. A condition specifying the necessity for the submittal of a regular permit application within 30 days of the effective date of the emergency permit.

I. Expiration. An emergency permit shall expire and become void within seven days of issuance if it is not exercised, or if the emergency ceases to exist.

J. Report to Council. For information only, the Director shall provide the Council with a written report describing the nature of the emergency and the work involved at the Council's first regularly scheduled meeting after the emergency permit has been issued. Copies of the permit and the report shall be available at the meeting and shall be mailed to the Executive Director of the Coastal Commission and to all persons who have requested this notification in writing.

K. Normal Permits Required. Within 30 days of the date of issuance of the emergency permit, the applicant shall apply for all permits required by these regulations, and any other permits required by the municipal code. Failure to file the applications and obtain the required permits shall result in enforcement action in compliance with Chapter 17.66 CMC, Enforcement.

f. Include permit amendment procedures.

g. Include permit extension procedures.

EXAMPLE: certified IP text:

For the context of this example, please see County of San Luis Obispo Coastal Zone Land Use Ordinance: http://www.slocounty.ca.gov/Assets/PL/Land+Use+Ordinances/Title+23+-+Coastal+Zone+Land+Use+Ordinance/Title+23+Coastal+Zone+Land+Use+Ordinance.pdf

23.02.050 - Extensions of Time for Land Use Permits.

When substantial site work (Section 23.02.042) on a project authorized by an approved land use permit has not occurred within the time limits set by Section 23.02.040, a maximum of three, 12-month extensions (except as provided by Section 23.02.042 a of this Title) to the initial time limit may be granted as provided by this section. Extension requests shall be in writing and shall be filed with the Planning Department on or before the date of expiration of the land use permit or previous extension, together with the required filing fee. When an extension request has been filed, the permit shall be automatically extended until such time as the Review Authority has acted upon the extension request, provided that no construction shall take place and no construction permits shall be issued for a proposed project pursuant to Title 19 of this code until the extension has been approved. Notice of the application for extension shall be provided to the California Coastal Commission.

a. Initial extensions: The Planning Director may grant two 12-month extensions to the time limit for any land use permit. The Planning Director shall grant an extension only after finding that the land use permit does not contain conditions prohibiting extension, and that:

(1) There have been no changes to the provisions of the Land Use Element or Land Use Ordinance applicable to the project since the approval of the land use permit; or

(2) There have been no changes in the character of the site or its surroundings that affect how the standards of the Land Use Element or Land Use Ordinance apply to the project; or

(3) There have been no changes to the capacities of community resources, including but not limited to water supply, sewage treatment or disposal facilities, roads or schools such that there is no longer sufficient remaining capacity to serve the project.

If the Review Authority determines that changed circumstances exist that may affect the consistency of the development with the Local Coastal Program, then the extension request shall be denied. Action on a requested extension by the Planning Director may be appealed to the Planning Commission as set forth in Section 23.01.042 (Appeal) and to the California Coastal Commission as set forth in Section 23.01.043 (Appeals to the Coastal Commission).

Third and final extension: *The Planning Commission (or Board of Supervisors on appeal) may grant one additional 12-month extension to an approved land use permit after the two initial extensions in accordance with the notice, hearing, and appeal procedures required for a new development application, subject to the same findings and standards required by Section 23.02.050a. provided that the Planning Commission makes the following additional findings:*

(1) *That substantial site work could not be completed as set forth in Section 23.02.042 because of circumstances beyond the control of the applicant; and*

(2) *The findings specified in Sections 23.02.050a(1), (2) and (3) above; and*

(3) *The findings that were required by Section 23.02.034c(4) to enable initial approval of the permit.*

An approved land use permit shall become void after the expiration of the third extension (or after the expiration of any previous extension when a request for further extension has not been filed before expiration) where substantial site work has not first occurred pursuant to Section 23.02.042. No more than three extensions pursuant to this section shall be granted.

c. Land use permit required with a land division. *For land use permits that are required in conjunction with a land division application, the advisory agency (the Planning Commission or Subdivision Review Board) may grant five 12-month time extensions to the time limit in accordance with the standards and procedures established by this Section. The planning department shall make a written recommendation in its staff report to the advisory agency concerning the extension request.*

d. Time extensions on permits issued by the Coastal Commission. *A time extension on a coastal development permit issued by the Coastal Commission shall only be granted by the Coastal Commission.*

e. Notice of Final County Action. *After all county rights of appeal have been exhausted as set forth in Section 23.01.043b. (Exhaustion of Local Appeals required), the County shall provide notice of its action on the third and final extension…*

For those cases where an extension would not be possible, applicants could always apply for a new coastal permit for their projects. In all cases, any extension requests would need to be received before the permit expires; otherwise, the proper procedure would be for the applicant to reapply.

D. Address Potential Conflicting Code Provisions

1. Recommendation: Include Provisions that Affect Coastal Permits

Update the IP to incorporate any variance, non-conforming or similar procedures in your County or Municipal Code that can affect coastal permits, if they are not already part of the certified IP.

2. Additional Updates, Procedures, and Practices to Consider

a. Coordinate any variance allowances with coastal resource protection.

For the context of this example, please see the Commission staff reports at: http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009.pdf and http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009-a2.pdf

EXAMPLE: Commission suggested modifications to a certified IP variance section proposed for amendment (see especially text in bold):

21.50D.010 Definition.

A variance is an entitlement to deviate from those requirements of Chapters 21.08 through 21.48 which do not address land use because of special circumstances applicable to the property, including size, shape, topography, location or surroundings when the strict application of said chapters deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. (Ord. 83-03 (part))

21.50D.020 Application review.

A. Content. Application for a variance shall be made to the county planning office on a form provided by said office and shall be accompanied by:

1. Verification of the applicant's interest in the property such as a copy of the grant deed signed or certified escrow instructions, title report or owner's letter of authorization;

2. An assessor's office plant map;

3. A plot plan of sufficient detail to illustrate the request and to determine compliance with other county regulations (yards, setbacks, grading, General Plan compliance, etc.);

4. Any building plans, elevations or supplemental data as may be requested to adequately illustrate the proposal and/or its impacts;

5. A filing fee, as prescribed in the current fee schedule resolution of the board of supervisors.

B. Environmental Review Committee (See Title 16 of the Del Norte County Code).

The environmental review committee shall review an application at its next regular meeting after submission of the application packet to the department of planning and building. Review shall include:

1. A determination of completeness of the application and, where necessary, notification of any additional information required;

2. A recommendation for action on an environmental document pursuant to the California Environmental Quality Act.

C. Planning Staff Report. Project applications shall be reviewed by the environmental review committee, scheduled for planning commission/harbor commission hearings and shall be accompanied by a report from the staff of the department of planning and building. The report shall include a description of the project, its location, any applicable regulations and/or policies, any responses to comments submitted regarding the project and a recommendation for findings and/or conditions, if any. (Ord. 83-03 (part))

21.50D.030 Appeal status; Notification.

A. The county shall provide notice of pending application which contains the following information:

1. A statement that the development is within the coastal zone;

2. The date of filing of the application and the name of the application;

3. The number assigned to the application;

4. A description of the development and its pro-posed location;

5. The date(s), time and place(s) at which the application will be considered by the local governing body;

6. A brief description of the general procedure of local government concerning the conduct of any hearing and/ or issuance action;

7. The system for local and Coastal Commission appeals, including any local fees required.

B. Variances represent a deviation from the recognized and intended types, forms and scales of development within a given zoning district. Therefore, for purposes of appeal pursuant to sections 21.51.030, and/or 21.52.020 and Coastal Act section 30603(a)(4), a development for which a variance has been granted does not constitute a principal permitted use.

C. When a project which is appealable to the Coastal Commission required a local public hearing, notice shall be provided as set forth in section 21.51.xxx and 21.52.xxx.:

21.50D.040 Hearings.

A. Variances shall be heard by the planning commission at the date, time and place set forth in the required public notice.

B. Before any variance may be granted, all of the following must be shown:

1. That there are exceptional or extraordinary circumstances, or conditions applying to the land referred to in the application, which circumstances or conditions do not apply to other lands, in the same district;

2. That the granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;

3. That the granting of such variance will not, under the circumstances of the particular case, affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood;

4. That the issuance of such variance is consistent with policies and standards of the local coastal program which are applicable to the subject parcel and the intent of the zoning district in which it is located.

C. Variances shall be granted solely for deviations from the prescriptive standards of development site zoning district (i.e., building height, minimum lot area except for land divisions and lot line adjustments, front, side and rear yard areas, special yards and distances between buildings). ***Variances shall not be granted for deviation from the requirements for buffer around environmentally sensitive habitat area or for development setbacks from geologically unstable areas, or other procedural provisions or exactions relating to the protection of coastal resources.***

D. *Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which such property is situated.*

E. *Following the public hearing for a variance the commission shall make a written report to the board of supervisors summarizing any issues, addressing specific findings, and setting forth the commission's recommendation including any conditions.*

F. *The board of supervisors shall consider the report of the commission regarding any variance and, if the board of supervisors finds that the requirements of subsection B of this section do in fact apply to the land and that such variance is in harmony with the purposes of Chapters 21.02 through 21.60, the board shall by resolution grant such variance. The board of supervisors may designate conditions and guarantees in connection with the variance to secure the purposes of Chapters 21.02 through 21.60.*

21.50D.050 Revocation/expiration.

A. In any case where the conditions of granting of a variance have not, or are not complied with, the board of supervisors shall give notice to the permittee of intention to revoke such variance at least ten days prior to a hearing hereon by the planning commission/harbor commission. After conclusion of the hearing, the planning commission/harbor commission may revoke such variance. Such revocation shall be subject to confirmation by the board of supervisors.

B. In any case where a variance has not been used within one year after the date of granting thereof, then, without further action by the planning commission or board of supervisors, the variance granted shall be null and void. (Ord. 83-03 (part))

b. Coordinate any non-conforming use and structure allowances with coastal resource protection.

c. Coordinate other local reviews with coastal permit procedures.

d. Explain how to use map depictions.

e. Ensure internal consistency in the LCP

For the context of this example, please see the Commission staff reports at: http://documents.coastal.ca.gov/reports/2009/12/Th18b-12-2009.pdf

EXAMPLE: proposed IP text certified by the Coastal Commission:

Where conflicts exist between the provisions of this [Design Review] Section and the policies of the LUP, the policies of the LUP shall control.

For the context of this example, please see Monterey County Coastal Implementation Plan at http://www.co.monterey.ca.us/planning/docs/ordinances/Title20/20.02%20General%20Provisions.htm.

EXAMPLE: certified IP ordinance text:

20.02.060.D In the event of a conflict or inconsistency between this Title and any County land use regulation the terms of the regulations listed highest on the following ladder shall prevail:

1. Coastal Act

2. Applicable Area Land Use Plan

3. Regulations For Development (Parts 2 through 6 of the Coastal Implementation Plan)

4. Title 20 (Part 1 of the Coastal Implementation Plan)

5. Any other regulation in the County

E. Address Some Other State Laws

1. Recommendation: Accommodate Second Unit Law

Update the IP to eliminate any requirement for public hearings for qualified second units, if they are still in your LCP.

EXAMPLE: certified IP ordinance text:

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on

13.13.1.B Notwithstanding any other provisions of the LCP, attached or detached second dwelling units shall be processed as administrative permits, except that the approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone.

2. Additional Updates, Procedures, and Practices to Consider

a. Ensure coastal permit process is preserved when addressing other state law provisions.

F. Memorialize Action Taken on a Coastal Permit

1. Recommendation: Memorialize the Action Taken on a Coastal Permit

Update the IP with provisions regarding how coastal permits are prepared and transmitted pursuant to Code of Regulations §§ 13570 - 13572, if not already included.

EXAMPLE: certified IP text:

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/, click on Chapter 13.

13.15. FINALITY OF CITY ACTION.

A City decision on an application for a coastal development permit shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity

with the certified Local Coastal Program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted.

13.16. NOTICE OF FINAL LOCAL GOVERNMENT ACTION.

A. Notice after Final City Action. Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13.15 of the Malibu LIP, the City shall notify by first class mail the South Central Coast District Office of the Coastal Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

B. Pursuant to Public Resources Code Section 30166.5, notwithstanding the requirements of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, once the City assumes coastal development permitting authority pursuant to Public Resources Code Section 30166.5, no application for a coastal development permit shall be deemed approved if the city fails to take timely action to approve or deny the application.

13.17. EFFECTIVE DATE OF CITY ACTION.

The City's final decision on an application for a coastal development permit that is appealable to the Coastal Commission shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired unless either of the following occur:

A. An appeal is filed in accordance with Section 13.20 of the Malibu LIP (Appeals);

B. The notice of final local government action does not meet the requirements of Section 13.16 of the Malibu LIP.

When either of the circumstances in (a) or (b) occur, the Coastal Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the City and the applicant that the effective date of the City action has been suspended.

2. Additional Updates, Procedures, and Practices to Consider

a. Add guidance for preparing permit findings and conditions.

Elaborate On Required Findings

Elaborate On Required Conditions

For the context of this example, please see coastal permit issued by Monterey County at: http://www.co.monterey.ca.us/planning/docs/resolutions/za_2008/res_PLN080316.pdf, condition chart begins on page 5.

EXAMPLE: Items included in a County's final local action notice chart of permit conditions:

- *permit condition number*
- *permit condition text and responsible County department*
- *compliance or monitoring actions to be performed*
- *responsible party for compliance, timing, and verification of compliance*

b. Add guidance for addressing Coastal Act public access and recreation policies and required legal documents.

Cite or quote the Coastal Act sections that need consideration, such as §§ 30210, 30211, 30212, 30212.5, 30213, 30214, 30220, 30221, 30222, 30223, 30224 and 30252.

CITATION: Coastal Act §§ 30210 - 14:

> *Section 30210 Access; recreational opportunities; posting*
>
> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> *Section 30211 Development not to interfere with access*
>
> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> *Section 30212 New development projects*

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 Public facilities; distribution

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214 Implementation of public access policies; legislative intent

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

CITATION: Coastal Act §§ 30220 – 30224:

Section 30220 Protection of certain water-oriented activities

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 Oceanfront land; protection for recreational use and development

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 Private lands; priority of development purposes

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5 Oceanfront lands; aquaculture facilities; priority

Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture

facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30223 Upland areas

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 Recreational boating use; encouragement; facilities

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

CITATION: Coastal Act § 30252:

Section 30252 Maintenance and enhancement of public access

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Elaborate On Required Findings for Public Access:

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/ click on Chapter 12.

EXAMPLE: certified IP ordinance text:

12.7. REQUIRED FINDINGS AND SUPPORTING ANALYSIS FOR PUBLIC ACCESS DEDICATIONS

12.7.1 Required Overall Findings

A. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development). Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 12.7.2 of the Malibu LIP and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 12.7.2 of the Malibu LIP. The type of affected public access and recreation opportunities shall be clearly described.

2. An analysis based on applicable factors identified in Section 12.8.1 of the Malibu LIP of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.

3. A description of the legitimate governmental interest furthered by any access condition required.

4. An explanation of how imposition of an access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

12.7.2 Required Project-Specific Findings

In determining any requirement for public access, including the type of access and character of use, the City shall evaluate and document in written findings the factors identified in subsections A through E, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect"

means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning requirements or regulations.

A. Project effects on demand for access and recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

B. Shoreline processes. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of existing or proposed shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development, Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project — alone or in combination with

other anticipated changes -will have upon the ability of the public to use public tidelands and shoreline recreation areas.

C. Historic public use. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal).

Evidence of the type and character of use made by the public (vertical, Lateral, blufftop, etc. and for passive and/or active recreational use, etc. Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use).

D. Physical obstructions. Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

E. Other adverse impacts on access and recreation. Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

12.7.3 Required Findings for Public Access Exceptions

Any determination that one of the exceptions of Section 12.5 of the Malibu LIP applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the

fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

For the context of this example, please see City of Point Arena Municipal Code at http://www.cityofpointarena.com/ click on Title 18, Chapter 18.25.

EXAMPLE: certified IP ordinance text:

18.25.100 Public access to the shoreline.

(7)Required Findings and Supporting Analysis for Public Access Dedications.

(a)Required Overall Findings. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development). Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by subsection (7)(b) and shall reflect the specific level of detail specified, as applicable.

Findings supporting all such decisions shall include:

(i) A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to subsection (7)(b). The type of affected public access and recreation opportunities shall be clearly described;

(ii) An analysis based on applicable factors identified in subsection (7)(b) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act;

(iii) A description of the legitimate governmental interest furthered by any access condition required;

(iv) An explanation of how imposition of an access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

(b)Required Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the city shall evaluate and document in written findings the factors identified in subsections (b)(i) through (b)(v), to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the city and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning requirements or regulations.

(i) Project Effects on Demand for Access and Recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

(ii) Shoreline Processes. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand,

wave and sand movement, presence of existing or proposed shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development, description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project, alone or in combination with other anticipated changes, will have upon the ability of the public to use public tidelands and shoreline recreation areas.

(iii) Historic Public Use. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal). Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc., and for passive and/or active recreational use, etc.). Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including, but not limited to, creation of physical or psychological impediments to public use).

(iv) Physical Obstructions. Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

(v) Other Adverse Impacts on Access and Recreation. Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation.

Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

(c) Required Findings for Public Access Exceptions. Any determination that one of the exceptions of subsection (5) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

(i) The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

(ii) Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

(iii) Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

Elaborate on Permit Conditions for Recorded Legal Documents

c. Elaborate on the contents of Final Local Action Notices.

Elaborate on form and content

For the context of this example, please see Coastal Commission's Local Coastal Program Post-Certification Guide for Coastal Cities and Counties at http://www.coastal.ca.gov/la/docs/post-cert-lcp-guide.pdf, Sample form is Appendix C-4.

EXAMPLE: Items included in Coastal Commission suggested sample cover letter:

- *Indication it is a final action notice*
- *Date*
- *To whom sent*
- *Application number*
- *Project applicant*
- *Applicant's representative*
- *Project location*
- *Project description*

- *Which local body gave final local action*
- *Checklist of supporting materials enclosed or date previously sent*
- *Indication whether or not appealable to Coastal Commission*
- *Where to file an appeal*

Elaborate on applicant contact information, project description, expiration dates, attachments and exhibits

d. Establish procedures for transmitting Final Local Action Notices.

e. Establish procedures to respond to notices of deficient Final Local Action Notices.

Section III. Local Responsibilities in the Appeal Process

A. State Any Fees to Appeal Local Coastal Permit Decisions

1. Recommendation: State If There Is a Fee for an Appeal

Update the IP to specify whether a fee is charged to a party that appeals a coastal permit decision, if not already clearly stated.

2. Additional Updates, Procedures, and Practices to Consider

a. Ensure that fee schedules accurately reflect any appeal fee.

b. Ensure the public understands the effect of charging an appeal fee.

B. Transmit Complete Files for Appealed Projects

1. Recommendation: Ensure Files Are Transmitted for Appealed Coastal Permits

Include a provision in your IP to incorporate requirement of Code of Regulations § 13112 to promptly transmit permit files to the Coastal Commission after an appeal.

2. Additional Updates, Procedures, and Practices to Consider

a. Designate staff to respond to file requests.

b. Outline procedures to assemble materials to transmit.

C. Complete Local Process in Coordination with the Coastal Commission Action on Appeals

1. Recommendation: Accept Coastal Commission Appeal Decisions

Update the IP to have an acceptance of Commission action on the coastal permit on appeal, if not already included.

For the context of this example, please see City of Malibu Local Implementation Plan at: http://www.qcode.us/codes/malibu-coastal/. Click on CHAPTER 13—COASTAL DEVELOPMENT PERMITS, then 13.20 -- APPEALS.

EXAMPLE: certified IP text:

> *The coastal development permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.*

For the context of this example, please see Santa Barbara Coastal Zoning Ordinance, in particular Sec. 35-169. Coastal Development Permits, found at: http://www.sbcountyplanning.org/PDF/A/Article%20II.pdf.

EXAMPLE: certified IP text:

> *Where an appeal has been filed with the Coastal Commission in compliance with Section 35-182 (Appeals) and the Coastal Commission has reversed or modified the action of the County on the Coastal Development Permit, the action of the Coastal Commission on the Coastal Development Permit is final. If the County has approved the Coastal Development Permit, any previously approved County project permits shall be automatically amended to conform to the Coastal Commission's approved Coastal Development Permit for the project or automatically terminated to conform to the Coastal Commission's disapproval of the Coastal Development Permit.*

2. Additional Updates, Procedures, and Practices to Consider

a. Establish a procedure for holding an additional hearing on a local permit that has been appealed to the Coastal Commission by Coastal Commissioners under Code of Regulations § 13573.

For the context of this example, please see Section 17.54.050 of Carmel-by-the-Sea's Municipal Code, found at: http://www.codepublishing.com/CA/carmel.html

EXAMPLE: Certified IP text:

> *B. Where a project is appealed by any two members of the Coastal Commission, there shall be no requirement of exhaustion of local appeals; provided, however, that the Coastal Commission shall transmit a "Notice of Commissioners' Appeal" to the City Council.*

Upon receipt of such notice, the Coastal Commissioners' appeal may be suspended by the City Council pending a decision on the merits of the appeal by the Council. The City Administrator or any two Council members may request a review of the appeal by notifying the City Clerk and the City Administrator shall then notify the Coastal Commission that a suspension is in effect. The council shall review the matter within 45 days of said notice to the Coastal Commission. If the decision of the City Council is to modify or reverse the previous decision the Coastal Commissioners shall be required to file, if necessary, a new appeal of that decision.

b. Establish a procedure to address project changes after an appeal is filed.

c. Reconcile any remaining local responsibilities with Coastal Commission action on the appeal.