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To: Commissioners and Interested Persons

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**Subject: Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0067-2
(Safety Element Update)**

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County proposes to amend its Local Coastal Program (LCP) to update its Safety Element, a chapter in the LCP's Land Use Plan (LUP), and its corresponding Implementation Plan (IP) components. The Safety Element addresses a myriad of issues regarding the risks and hazards in planning and development, including with respect to seismic and slope stability, grading and erosion control, and flood¹ and fire hazards. The proposed changes are largely minor in nature: large introductory/background sections are proposed at the beginning of each LUP subchapter serving to lend up-to-date context to each hazard issue area/type; language changes throughout both the LUP and IP components serve to bolster permitting requirements through clearer processes and procedures regarding indemnification, deed recordation, and geotechnical reporting; and other organizational changes.

More specifically, one of the primary changes in the proposed amendment relates to the notice and disclosure of known and potential site hazards. These changes serve to strengthen the application of the certified LCP—and therefore its implementation of the Coastal Act—by adding certainty to its provisions, making it more accessible and comprehensible to the public, and making clear that owners bear the burden of the risks and consequences of development where known and potential hazards exist. For example, while the existing LUP requires the declaration of a notice on the property regarding potential geologic hazards, the proposed language goes into much greater detail by specifically having such notice describe the nature of the hazard by

¹ The Safety Element also includes extensive policies addressing coastal hazards; namely, policies addressing the unique hazards risks associated with ocean-related forces at the land/ocean interface. These issues include bluff and shoreline erosion and appropriate setbacks, redevelopment, shoreline armoring, and sea level rise. The County updated these policies at the same time as the updates to the rest of the Safety Element. However, the Commission and County agreed to separate the coastal hazards subchapter from the rest of this LCP amendment submittal and to bring it to the Commission as a separate agenda item (LCP amendment number LCP-3-SCO-20-0066-2). Staff expects to bring this coastal hazards LCP amendment to the Commission in the coming months.

professional geologists/engineers, require all current and future owners to accept those risks, release the County from liability of claims of defense against damages or injury from those risks, and for flood hazard abatement, states that: “any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner. That cost of abatement and/or future removal of structures shall be the responsibility of the property owner.” Such internalization of private property risk is an important public policy objective so current and future owners are aware of the risks they may face. Doing so also ensures the public isn’t forced to bear the burden of lawsuits or other financial obligations related to hazard abatement. Thus, at this broad level, the proposed changes in this regard related to the identification, mitigation, and disclosure of potential hazards risk is consistent with the Coastal Act and an important LCP improvement.

While the amendment, as proposed, generally strengthens the LCP by more affirmatively requiring review, avoidance, mitigation, and disclosure of known and potential hazards risks, the suggested modifications described in this report are meant to both ensure that standards applicable to CDP review are clear and enforceable, and to ensure that certain hazards issue areas include the best and most up-to-date policy prescriptions. For example, with respect to grading and erosion control, suggested modifications make clear which standards apply to and are enforceable components of CDP review (as opposed to other County grading authorizations). For fire hazards, suggested modifications are added that reflect best practices in terms of fire hazard avoidance, defensible space, and sensitive habitat protection. This includes mitigation for any potential habitat impacts for both new and existing development. For flood hazards, the suggested modifications make clear what standards apply to creek/riverine flooding and their associated floodplains versus coastal hazards associated with development along the ocean, which have their own unique and specific differences and thus policy requirements.

Commission and County staffs worked extensively and cooperatively on this important LCP amendment to understand the issues and craft the suggested modifications to address the identified issues and concerns. As a result of this collaboration, County staff is in agreement with the staff recommendation. The amendment, as modified, will thus strengthen an important component of the County’s LCP, one with far reaching and ever greater importance in the face of climate change.

As modified, the proposed amendment is consistent with and adequate to carry out the Coastal Act, the standard of review for the Land Use Plan (LUP); and the LUP, the standard of review for this IP amendment. As stated above, the County has indicated it is in agreement with the staff recommendation. Therefore, staff recommends that the Commission approve the amendment with the suggested modifications. The required motions and resolutions are found starting on page 4 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on June 15, 2021. The proposed amendment affects the LCP’s LUP and IP, and the 90-working-day action deadline was October 21, 2021. On October 15, 2021 the Commission extended the action deadline

by one year. Thus, the Commission has until October 21, 2022 to take a final action on this LCP Amendment.

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EXHIBITS

- Exhibit 1: Proposed LUP Amendment
- Exhibit 2: Suggested Modifications: LUP Amendment
- Exhibit 3: Proposed IP Amendment
- Exhibit 4: Suggested Modifications: IP Amendment

1. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make four separate actions, two motions on the LUP amendment and two motions on the IP amendment, in order to act on this recommendation.

A. Deny the Land Use Plan Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in denial of the Land Use Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Motion: *I move that the Commission certify Land Use Plan amendment LCP-3-SCO-20-0067-2 as submitted by Santa Cruz County.*

Resolution to Deny: *The Commission hereby denies certification of Land Use Plan amendment number LCP-3-SCO-20-0067-2 as submitted by Santa Cruz County and adopts the findings set forth below on grounds that the Land Use Plan amendment as submitted does not conform with the provisions of the Coastal Act. Certification of the Land Use Plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Land Use Plan amendment as submitted.*

B. Certify the Land Use Plan Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the Land Use Plan amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the appointed Commissioners:

Motion: *I move that the Commission certify Land Use Plan amendment LCP-3-SCO-20-0067-2 by Santa Cruz County if it is modified as suggested in this staff report.*

Resolution to Certify: *The Commission hereby certifies Land Use Plan amendment number LCP-3-SCO-20-0067-2, if modified as suggested, and adopts the findings set forth below on grounds that the Land Use Plan amendment with the suggested modifications conforms with the provisions of the Coastal Act. Certification of the Land Use Plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

C. Deny the Implementation Plan Amendment as Submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the Implementation Plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission reject Implementation Plan amendment LCP-3-SCO-20-0067-2 as submitted by Santa Cruz County.*

Resolution to Deny: *The Commission hereby denies certification of Implementation Plan amendment number LCP-3-SCO-20-0067-2 as submitted by Santa Cruz County and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment as submitted.*

D. Certify the IP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the Implementation Plan amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present:

Motion: *I move that the Commission certify Implementation Plan amendment Number LCP-3-SCO-20-0067-2 by Santa Cruz County if it is modified as suggested in this staff report.*

Resolution to Certify: *The Commission hereby certifies Implementation Plan amendment number LCP-3-SCO-20-0067-2, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

2. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed Land Use Plan and Implementation Plan amendments, which are necessary to make the requisite Coastal Act and Land Use Plan consistency findings, respectively. If Santa Cruz County

accepts the suggested modifications within six months of Commission action (i.e., by August 11, 2022), by formal resolution of the Board of Supervisors, the modified amendments will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Suggested modifications are included in Exhibit 2 (LUP amendment) and Exhibit 4 (IP amendment). Where applicable, red text in ~~cross-out~~ and underline format denotes proposed text to be deleted/added by the County. Blue text in ~~double cross-out~~ and double underline denotes text to be deleted/added by the Commission.

1. Modify the proposed LUP amendment as shown in Exhibit 2

2. Modify the proposed IP amendment as shown in Exhibit 4

3. FINDINGS AND DECLARATIONS

A. Description of Proposed LCP amendment

The proposed amendment primarily serves to update the LCP's Safety Element, which is a chapter of the County's LUP, and concurrently updates the IP sections that carry out the Safety Element. The Safety Element and its associated IP components include policies addressing a wide range of geologic and environmental hazards and how those hazards affect new development. They serve to ensure that development and the public are safe from hazards by, for example, requiring technical reports on geologic stability, regulating where and how structures can be built in relation to known hazards, and requiring notice and disclosure of such hazards risks.

More specifically, the Safety Element includes a series of policies addressing seismic safety and site stability, grading and erosion control, floodplain development, and fire risk. Among other requirements, these policies require new development to be sited and designed in a manner that reduces and mitigates such risk. For example, with respect to seismic safety, Objective 6.1 states the overall objective is: "To reduce the potential for loss of life, injury, and property damage resulting from earthquakes by: regulating the siting and design of development in seismic hazard areas; encouraging open space, agricultural or low density land use in the fault zones; and increasing public information and awareness of seismic hazards." To accomplish this goal, the Safety Element's policies require a full geologic review of new development in designated fault zones, require new development to be located away from such fault zones where feasible, and require, as a condition of new development in potential geologically hazardous locations, the recordation of a Notice of Hazards. This general construct of hazard risk identification, technical review and study, avoidance and minimization of identified hazard risk, and required recordation of potential hazard risk on the property's title is generally carried forward for other hazard types regulated under this LUP element.

The proposed amendment includes a multitude of changes, with most of them being minor clarifications while others are more substantive. In general, the proposed amendment maintains the chapter's policy construct identified above but augments it with additional standards, findings, and procedures. It also includes a new chapter regarding climate change and the risks associated with it, including how climate change may exacerbate the impacts associated with flooding, fire, and other such hazards. The

amendment also adds significant new updated background information regarding each hazard type and the County's short and long-term goals to address and abate such hazard risk. As proposed, the Element's overarching goals are described below:

The goals, objectives, policies and implementation measures of this Public Safety Element are derived from the necessity to protect the community from natural hazards, as well as from hazards produced from the built environment. Primary goals of the Safety Element include:

SE-1: To protect human life, private property and the environment.

SE-2: To minimize public expenses by preventing inappropriate use and development or location of public facilities and infrastructure in those areas which, by virtue of natural dynamic processes or proximity to other activities, present a potential threat to the public health, safety and general welfare.

The amendment then lists 15 other goals to address particular hazards issues as well as committing the County to continuously monitor hazards issues and provide policy updates as needed, and to actively seek funding for mitigation and adaptation projects, including to ensure resiliency of County infrastructure. And, of particular note, the amendment seeks to ensure the public does not bear the costs of private development risk. A particular theme of the proposed language is to ensure that private property owners are aware of, understand, and internalize potential hazards risk when making development decisions, including by requiring notices and declarations to be recorded against the property that articulates known and potential hazards.

In addition to wordsmithing and other minor clarifying changes, the following provides a summary of the more pertinent/substantive changes proposed for each subchapter/hazard type:

Seismic Hazards and Slope Stability

The proposed amendment maintains the existing policy construct of requiring geologic review for development within known fault zones and areas of potential liquefaction, of requiring development to be set back at least 25-50 feet from the edge of a fault (100 feet for critical facilities) and excluding these buffer areas from density calculations, and requiring the recordation of a notice of hazards on the property. The proposed changes are mostly related to this required notice and more affirmatively requiring the notice be recorded on the property/title deed as a condition of project approval and prior to issuance of a building or grading permit. The notice must also include an "Acceptance of Risk, Liability Release, and Indemnification" form from the County that "include(s) information about the nature of the hazard(s) as determined by the geologic and/or geotechnical investigation, provide(s) that the current and all future owners and successors in interest accept the risks to people and property, and includes release of liability of and waiver of claims against the County of Santa Cruz for any damages or injury in connection with the permitted development" (see proposed Policy 6.1.9 on page 17 of Exhibit 1). These requirements support the overall intent of the amendment

to have property owners, rather than the public, be aware of, avoid, mitigate for, and internalize hazards risk.

Climate Change

The proposed amendment adds a new section related to climate change that includes a detailed introduction that describes the effects and hazards related to climate change and the need for implementation of measures to mitigate for and adapt to it. The section also includes a summary of greenhouse gas emissions and reduction targets, including stating that the County met the target of reducing 2020 emissions to 1990 levels and commits itself to meeting the State target of reducing such emissions to 80% below 1990 levels by 2050. Among the ways to meet this goal is through transportation and land use planning, including through walkable infill development. The chapter also specifies that adaptation and mitigation actions/requirements are specified in other LCP sections, including the rest of the Safety Element, as well as the County's Climate Action Strategy (CAS) and Local Hazard Mitigation Plan (LHMP). The proposal states that these two hazard planning documents form the basis for many of the Safety Element's newly proposed provisions. The proposed new section then includes two new objectives which call for implementation of solutions contained within the CAS and LHMP, essentially cross-referencing these documents for climate change actions.

Grading and Erosion Control

Most of the proposed changes to grading and erosion control address requirements for permits other than CDPs, including specifying which standards apply to Grading Permits, Winter Grading Permits, Land Clearing Permits, Slope Exception Permits, and Agricultural Grading Permits. These are all different types of local authorizations depending on the amount, type, timing, and characteristics of proposed grading and earthwork that are separate from and in addition to any required CDP. The subchapter is currently structured in a manner that lists out all required standards for grading generically without regard for different permit types, whereas the proposed changes make certain standards applicable only to particular permit types. For example, whereas the existing Policy 6.34.4 requires the preparation and approval of an Erosion Control Plan for all development, the proposed language only requires such a plan be prepared in conjunction with Grading Permits, Winter Grading Permits, and Land Clearing Permits. Other existing standards regulating grading, such as prohibiting grading on slopes greater than 30% (with the exception only for a single-family residence on an existing lot when no other buildable site exists), requiring containment of sediment on-site during construction activities, and in general requiring grading, cuts/fills, and vegetation removal to be minimized, remain unchanged and part of the standard of review for CDPs.

Flood Hazards

This subchapter addresses inland flood hazards and risks along creeks, streams, and their floodplains, rather than those flood risks along the shoreline (i.e., related to coastal hazards from ocean forces at the ocean/land interface). The amendment mostly repeats the construct in other subchapters related to the study, identification, avoidance/mitigation, and disclosure of potential flood risks, with proposed language ensuring that the best available science is being used when making such

determinations. It also requires such actions for development proposed in all potential flood areas as opposed to only those mapped in the 100-year floodplain. In other words, instead of relying solely on mapped 100-year floodplains, the amendment broadens the scope to ensure that development in any areas potentially at risk for flood impacts based on the best available science is appropriately reviewed. For otherwise permissible development within a flood hazard area, the amendment incorporates building techniques, including floodproofing and elevation requirements, pursuant to Federal Emergency Management Agency (FEMA) requirements, and moves many of the IP's existing provisions addressing flood risk to a new IP Chapter 16.13. That new chapter includes a series of standards addressing how development in areas subject to flood risk are to be sited and designed, with the overarching goals being to "protect human life and health and property from the dangers of flooding" and "retain the natural channel, shoreline, and floodplain creation process and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species." The primary regulatory standard is to ensure that structures are sited outside of potential flood hazard areas (i.e., proposed IP Section 16.13.460 states "Structures shall be located outside of the flood hazard area when a buildable portion of the property exists outside of the flood hazard area") and, for those structures that cannot do so and are otherwise permissible, to incorporate required floodproofing and other measures to ensure that the development itself is safe from flood risk in a manner protective of sensitive biological habitat.

The amendment also includes certain coastal hazards provisions as well. These include requiring assessments for projects potentially subject to coastal flooding as exacerbated by sea level rise, as well as requiring a Notice of Potential Geologic/Coastal Hazard, Acceptance of Risk, and Liability Release for new development potentially subject to coastal hazards and to record such notice against the property to assume such risk. Coastal hazards in these provisions include, but are not limited to "episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storm surge, tsunami, tidal scour, coastal flooding, liquefaction and the interaction of same."

Fire Hazards

The subchapter on fire includes extensive new background information regarding the extent and severity of fire risk in the County. The language describes the large number of residences and other development built in rural areas within the Wildland Urban Interface (WUI), and states that "Santa Cruz County is ranked 9th among 413 western state counties for percentage of homes along the WUI and 14th in California for fire risk." There are few proposed fire policy changes, with the most significant being the addition of policies addressing the establishment of defensible space around development and regulations for disturbance of sensitive habitats in creation of defensible space. These policies require a distance of space between flammable vegetation and habitable structures depending on the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Such vegetation removal is also to be carried out in conformance with all environmental laws, including those that regulate sensitive habitats unless an exception is necessary to protect public health, safety, and welfare. However, these policies, as proposed, are not

part of the LCP but rather part of the General Plan and would apply to permits/authorizations other than CDPs.

Other changes include new policies related to Air Quality, Hazardous and Toxic Materials, Hazardous Waste Management, and Electric and Magnetic Energy and New Electric Facilities, as well as removal of the Noise subchapter from the Safety Element and insertion of a new Environmental Justice subchapter. However, the policies in these sections are not currently, nor proposed to be part of, the LCP.²

Together, the proposed changes touch on multiple coastal resource considerations, including landform alteration, bluff erosion, environmentally sensitive habitat area (ESHA), public safety, and hazard adaptation and mitigation. In sum, the County's intent with the proposed amendment is to bring the Safety Element up-to-date with relevant new background information identifying hazards types, issues, and concerns and updating/augmenting the process by which hazards are reviewed, avoided, mitigated, and disclosed.

Please see **Exhibit 1** for the proposed LUP amendment text and **Exhibit 3** for the proposed IP amendment text.

B. Evaluation of Proposed LCP Amendment

Standard of Review

The proposed amendment affects both the LCP's LUP and IP components. The standard of review for LUP amendments is that they must be consistent with and adequate to carry out the policies of the Coastal Act. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP.

Land Use Plan Amendment

Applicable Coastal Act Policies

Because of the breadth of subject matter covered under the County's proposed updates to its Safety Element, the changes relate directly to a number of Coastal Act policies. The Coastal Act addresses the risks associated with development from flood, fire, and geologic hazards, and requires the minimization of such risk so as to ensure that building in potentially dangerous areas does not impair coastal resources, such as water quality, natural landforms, scenic coastal views, and sensitive habitats.

Specifically, the Coastal Act protects marine and freshwater resources, including in terms of ensuring the protection of coastal water quality, avoiding impacts on sediment and nutrient transport, minimizing alterations of streams, rivers, and riparian vegetation, and only allowing a limited set of uses within these aquatic habitats. Coastal Act Sections 30231, 30233, and 30236 specifically state:

Section 30231 Biological productivity; water quality

² With the exception of one policy, Policy 6.107.25, that prohibits hazardous waste treatment/storage/disposal facilities in the coastal zone and is unchanged in this proposed submittal.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay,

and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where the improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236 Water supply and flood control

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

The Coastal Act contains strong protections for environmentally sensitive habitats by limiting development-related disturbance and impacts on these areas, as described in Coastal Act Section 30240:

Section 30240 Environmentally sensitive habitat areas; adjacent developments

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30251 describes views along the coast as public resources that warrant protection and enhancement, including via minimizing natural landform alteration and ensuring compatibility of new development with its surroundings:

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

And Section 30253 of the Coastal Act requires minimization of public and private risks to new development from geologic, flood, and fire hazards, including the need for new development to ensure long-term structural integrity, minimize erosion geologic instability, and to overall reduce coastal resource impacts.

Section 30253 Minimization of adverse impacts

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.*
- (d) Minimize energy consumption and vehicle miles traveled.*
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

In short, the Coastal Act includes strong protections to ensure that development is safe from hazards risk so as to ensure the protection and enhancement of coastal resources.

Land Use Plan Consistency Analysis

The existing Safety Element is a comprehensive set of policies that address a range of land use constraints to make sure that development is sited and designed in a manner that eliminates or mitigates hazards risks to acceptable levels. It implements the Coastal Act policies specified above by, among other things, ensuring development is sited away from fault zones, flood and fire prone areas, and in a manner without significant grading and landform alteration. The proposed amendment maintains this construct and augments it with additional clarity both substantively (i.e., the regulatory standards new development must meet) and procedurally (i.e., specifying the reports, studies, and disclosure requirements in the CDP application process).

Generally speaking, the LUP components of the County's LCP amendment consist largely of language changes that clarify requirements related to technical studies and disclosure of hazards risk. For example, while the existing LUP requires the declaration of a notice on the property regarding potential geologic hazards. The proposed language goes into much greater detail by specifically having such notice describe the nature of the hazard by professional geologists/engineers, require all current and future owners to accept those risks, release the County from liability of claims of defense against damages or injury from those risks, and for flood hazard abatement, state that: "any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner. That cost of abatement and/or future removal of structures shall be the responsibility of the property owner." These changes serve to strengthen the application of the certified LUP—and therefore its implementation of the Coastal Act—by adding certainty to its provisions, making it more accessible and comprehensible to the public, and making clear that owners bear the burden of the risks and consequences of developing where known hazards exist. Such internalization of private property risk is an important public policy objective as it prevents the public from being forced to bear the burden of lawsuits or other financial obligations related to hazard abatement. It also notices and binds current and future owners. Thus, at this broad level, the proposed changes related to the identification, mitigation, and disclosure of potential hazards risk is consistent with the Coastal Act and an important LCP improvement.

Along with these changes, the proposed LUP amendment does contain a few more substantial alterations that merit closer review and analysis. Some of these proposed changes raise Coastal Act conformance issues, as explained below.

Climate Change

The proposed new climate change subchapter contains a large background/introductory section on the causes and effects of climate change as well as discussion of potential mitigation and adaptation measures that can be employed in Santa Cruz County. The subchapter also references the County's Climate Action Strategy (CAS) and Local Hazard Mitigation Plan (LHMP) documents. The CAS and LHMP were developed in separate processes and are partially the impetus for many of the changes being proposed in the overall Safety Element update. Other than the introductory/background section, the proposed new Climate Change subchapter contains only two objectives, which are both proposed to be included as LCP policies. Objective 6.2.1 calls for implementation of the CAS and LHMP and states that "Updates to the CAS and LHMP shall not require amendment of the General Plan and Local Coastal Program." In other words, the proposed policies incorporate these documents into the LCP by reference and further states that projects, programs, and other measures that emanate from these documents over time are de facto LCP compliant and need not be reviewed under LCP amendment provisions. While climate change and its multitude of impacts relate directly and indirectly to much of the Coastal Act's Chapter 3 policies, and although the Commission is clearly supportive of addressing climate change through both mitigation and adaptation measures, as a general rule, cross-referencing outside documents in an

LCP tends to be problematic for the very reason described in the proposed policy: doing so tends to muddy what is and isn't a certified component of the LCP and can make future changes and amendments difficult to track. This also leads to the risk of policies that are not part of the certified LCP being used as the standard of review for coastal development permits (CDPs). This is particularly true for issues as complex and evolving as climate change. New ideas regarding mitigation and adaptation approaches can be controversial and expensive, and thus it is important to ensure that they go through an appropriate public process, including with the Commission. In this case, since most of the text in the chapter is background/context and since climate change issues are already embedded throughout the rest of the Safety Element's regulatory policies (including in terms of flood, fire, and geologic review³), it is appropriate to simply remove the subchapter's two objectives from the LCP. By doing so, the extensive background information can provide important LCP context regarding climate change issues and impacts, and the County can still use the CAS and LHMP to study and identify new policies, programs, and projects to address climate change issues. But such changes would need to be specifically incorporated into the LCP via the amendment process in order to be the standard of review for CDPs. As modified, the new climate change subsection can be found consistent with the Coastal Act.

Fire Hazards

As mentioned previously, most of the changes to the fire hazards subchapter relate to policies that are not part of the LCP, including those related to defensible space and sensitive habitats which implicate both Coastal Act Sections 30253 regarding fire risk minimization as well as 30240 regarding alteration of sensitive habitat in furtherance of creating "defensible space" around development to avoid fire damage. Thus, the LUP as proposed is missing clear policies describing how fire safety is to be carried out for both new development and existing development, particularly when ESHA is involved. Without such clear language, fire safety mitigation may run afoul of Coastal Act Section 30240, including inappropriate impacts to sensitive habitats. To address these issues in other LCPs, including in recent updates in Marin County and the cities of Half Moon Bay and Morro Bay, the Commission has approved fire hazards policies that differentiate defensible space and habitat protection protocols between existing development and new development. Namely, for new development, fire clearance must be accounted for as part of the project's siting and design, including taking into consideration adjacent habitats and their buffers so as to ensure consistency with applicable ESHA requirements. And for existing development, a series of requirements are included to address potential ESHA impacts, including avoidance and minimization strategies, as well as mitigation for unavoidable impacts. Suggested modifications incorporate these policies into the LCP. As modified, the proposed fire hazards policies are consistent with the Coastal Act and may be used as the standard of review for CDPs.

Flood Hazards

³ As well as the separate LCP amendment (LCP-3-SCO-20-0066-2) regarding coastal hazards and issues surrounding beach and bluff erosion, development setbacks and redevelopment, and shoreline armoring, all as influenced by climate change and sea level rise, which staff intends to bring to the Commission in the near future.

As discussed before, the intent of the Flood Hazards chapter is to regulate flood risks from creeks and streams and their associated floodplains. Coastal hazards, namely those at the ocean/land interface from ocean forces and exacerbated by sea level rise, are regulated under a separate 'Coastal Bluffs and Beaches' subchapter in the Safety Element. That subchapter explicitly targets the unique and specific issues related to coastal hazards, including bluff erosion, shoreline armoring, ocean dynamics, sea level rise, and beach protection, whereas the Flood Hazards subchapter addresses flood issues associated with fluvial systems: streams, creeks, lakes, and their associated floodplains. However, some of the proposed policy changes in this subchapter also mention coastal hazards issues, including when describing required analyses, risk disclosures, and avoidance measures. While clearly these are important issues to be addressed, interspersing coastal hazards policies in this chapter that regulates inland flood issues adds redundancy and potential confusion (and conflict) regarding what policies apply to which hazard type. The coastal hazards chapter is the proper place to address coastal hazards issues, and so suggested modifications are added to delete references to coastal hazards in this subchapter, while also making clear that the flood hazard chapter addresses non-coastal flooding risk.

A suggested modification is also added that makes clear that all development in and along creeks and their floodplains/riparian habitats must be in conformity with the LCP's provisions regarding sensitive habitats. These policies restrict the types of allowed uses in these habitat areas, and thus the flood hazards provisions must be understood as applying to only those uses that are otherwise permissible in these areas in the first place. As modified, the flood hazards subchapter appropriately and clearly addresses flood risk in a clear manner.

Grading and Erosion Control

As described before, most of the proposed changes to the grading and erosion control subchapter make standards that are currently broadly applicable to all types of authorizations that regulate grading, such as CDPs, to now only apply to specific County grading permits. Thus, important standards that currently regulate grading in the coastal zone, such as requirements for Erosion Control Plans, ensuring site runoff does not exceed pre-development levels, prohibiting most development on slopes greater than 30%, are no longer enforceable components of the LCP during CDP review. To fix this and ensure that grading, erosion control, water quality, and other landform alteration issues are appropriately regulated for CDP purposes, suggested modifications are included that add back these existing requirements. The modifications also add language making clear that all grading and land alterations (and not just structural development) must be consistent with the LCP's provisions regarding sensitive habitats such as streams, wetlands, ESHA, and their corresponding buffers. As modified, the chapter reinstates important grading and erosion control protocols so as to ensure the protection of visual resources, water quality, landforms, and sensitive habitats consistent with the Coastal Act.

Implementation Plan Analysis

The standard of review for the proposed IP amendment is whether such amendment conforms with and is adequate to carry out the LUP, including as modified as described above. In general, the LCP is set up in such a manner that the detailed regulatory policies for specific issue areas such as land use hazards are specified in the LUP, and the IP carries out those policies by cross-referencing back to them and specifying the application requirements and other triggers needed for their implementation. In other words, generally speaking, the IP includes standards that mirror and implement the policies of the LUP. Since the proposed amendment's changes to the IP generally mirror the proposed LUP changes, for all the same reasons described in the preceding analysis, suggested modifications are required to ensure the IP receives the same conforming changes as the LUP. As such, the changes discussed above, including making clear that the new IP Chapter 16.13 regulating flood hazards applies to inland as opposed to coastal flood issues and retaining important provisions regarding grading and erosion control (such as limiting development on steep slopes, minimizing landform alteration, and protecting water quality), are also made here in the IP. In addition, some introductory text is added that mirrors that described in the LUP to provide important goals and context for these IP provisions, including that the purpose of these requirements are to identify and disclose potential and known geologic hazards, and to avoid development within them, including restricting development in such areas through deed restrictions, conservation easements, and other instruments. As modified, the IP is consistent with and adequate to carry out the LUP as modified.

Conclusion

As described, the amendment as proposed generally strengthens the LCP by more affirmatively requiring review, avoidance, mitigation, and disclosure of known and potential hazards risks, and the suggested modifications described herein are meant to both ensure that standards applicable to CDP review are clear and enforceable, and to ensure that certain hazards issue areas include the best and most up-to-date policy prescriptions, including from other LCPs.

Accordingly, the LUP amendment with the suggested modifications can be found consistent with the Coastal Act, and the IP amendment with the suggested modifications can be found consistent with the certified LUP.

C. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, after conducting an Initial Study, the County determined that there was no substantial evidence that the proposed amendment would "have a significant effect on the environment," and the County Board of Supervisors approved a CEQA Negative Declaration on September 15, 2020.

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, has addressed all comments received, and has concluded that the proposed LCP amendment is expected to result in significant environmental effects, including as those terms are understood in CEQA, if it is not modified to address the coastal resource issues identified herein (all above findings are incorporated herein in their entirety by reference). Accordingly, it is necessary for the Commission to suggest modifications to the proposed LCP amendment to ensure that it does not result in significant adverse environmental effects. Thus, the proposed LCP amendment as modified will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).