



## Santa Cruz County CA

### Agenda Item 8532

**Continued public hearing to consider resolution amending the General Plan/Local Coastal Program Public Safety Element and Conservation and Open Space Element and certifying CEQA Negative Declaration determination and to consider four Ordinances to amend Santa Cruz County Code Chapters 16.10 Geologic Hazards, 16.20 Grading Regulations, and 16.22 Erosion Control, and adopt new Chapter 16.13 Floodplain Regulations, as outlined in the memorandum of the Planning Director (deferred from January 28 to March 10, 2020)**

#### Information

<b>Department:</b>	Planning: Sustainability and Special Projects	<b>Sponsors:</b>	Planning Director Kathleen Molloy
<b>Category:</b>	PLN SSP - Board Letter	<b>Projects:</b>	Master Calendar
<b>Functions:</b>	Land Use & Community Services		

#### Links

**Reference** [DOC-2019-816](#) : Public hearing to consider resolution amending the General Plan/Local Coastal Program Public Safety Element, Conservation and Open Space Element and CEQA Notice of Exemption determination; ordinance amending Santa Cruz County Code Chapters 16.10 Geologic Hazards, 16.13 Floodplain Regulations, 16.20 Grading Regulations, and 16.22 Erosion Control, continue the Board of Supervisors public hearing to November 5, [(amended by BOS) December 10,] 2019, and take related actions, as outlined in the memorandum of the Planning Director

**Reference** [8104](#) : Continued public hearing to consider resolution amending the General Plan/Local Coastal Program Public Safety Element, Conservation and Open Space Element and certifying CEQA Negative Declaration determination; Ordinance amending Santa Cruz County Code Chapters 16.10 Geologic Hazards, 16.13 Floodplain Regulations (new), 16.20 Grading Regulations, and 16.22 Erosion Control, as outlined in the memorandum of the Planning Director (deferred from December 10, 2019 to January 28, 2020)

**Reference** [DOC-2020-87](#) : Defer continued public hearing to consider resolution amending the General Plan/Local Coastal Program Public Safety Element, Conservation and Open Space Element and certifying CEQA Negative Declaration determination; Ordinance amending Santa Cruz County Code Chapters 16.10 Geologic Hazards, 16.13 Floodplain Regulations (new), 16.20 Grading Regulations, and 16.22 Erosion Control, to March 10, 2020, as recommended by the Planning Director

#### Attachments

[Resolution, CEQA Negative Declaration, Public Safety Element Amendments, Conservation and Open Space Element deletions](#)  
[Ordinance Chapter 16.10 Geologic Hazards](#)  
[Chapter 16.10 edits \(strikeout-underline copy\)](#)  
[Ordinance adding Chapter 16.13 Floodplain Regulations](#)  
[Ordinance Chapter 16.20 Grading Regulations amendments](#)  
[Chapter 16.20 edits \(strikeout-underline copy\)](#)  
[Ordinance Chapter 16.22 Erosion Control Amendments](#)  
[Chapter 16.22 edits \(strikeout-underline copy\)](#)  
[Public Safety Element edits \(strikeout-underline copy\)](#)  
[Planning Commission Resolution 2019-03](#)

[Previous agenda materials, 10/8/2019 Memo with vote result](#)  
[Planning Commission staff report 10/10/2018 \(web link\)](#)  
[Planning Commission staff report 12/12/2018 \(web link\)](#)  
[Planning Commission staff report 3/13/2019 \(web link\)](#)  
[Planning Commission staff report 11/13/2019 \(web link\)](#)  
[Planning Commission 11/13/2019 staff report \(memo only\)](#)  
[Public Safety Element Section 6.4 changes since 12-10-2019 \(strikeout-underline copy\)](#)  
[Chapter 16.10 changes since 12-10-19 \(strikeout-underline\)](#)  
[Related Correspondence \(page 1 of 250\)](#)  
[Related Correspondence \(online and on file\)](#)

## Financial Impact

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Mitigation fees that are collected from projects involving shoreline protection structures in the future, would improve the ability of the Parks and Public Works Departments to maintain, construct and improve public access to the coast and recreation assets within the County's coastal areas.

## Board Letter

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### **Recommended Action(s):**

- 1) Conduct the public hearing (deferred from January 28, 2020) on the proposed amendments to the Public Safety Element and the Conservation and Open Space Element of the General Plan / Local Coastal Program (GP/LCP), the proposed amendments to Chapters 16.10, 16.20 and 16.22 of the Santa Cruz County Code, and the proposed addition of Chapter 16.13 to the Code;
- 2) Adopt the attached resolution adopting the CEQA Negative Declaration and updating and amending the GP/LCP Safety Element and Conservation and Open Space Element, and directing staff to submit the Local Coastal Program amendments to the Coastal Commission for certification; and
- 3) Adopt the attached ordinances amending the County Code and Local Coastal Implementation Plan as related to Chapter 16.10 Geologic Hazards, Chapter 16.13 Floodplain Regulations, Chapter 16.20 Grading Regulations, and Chapter 16.22 Erosion Control.
- 4) Direct staff to implement amendments outside of the coastal zone 30 days after adoption, and within the coastal zone upon final certification by the Coastal Commission.

### **Executive Summary**

The project consists of an update of the General Plan/Local Coastal Program (GP/LCP) Safety Element addressing seismic hazards, slope stability, climate change, coastal bluffs and beaches, grading and erosion hazards, flood hazards, fire hazards, and environmental justice. The Conservation and Open Space Element of the GP/LCP is also being amended, however that consists only of deleting the existing Air Quality section in that Element to shift air quality policies into the new Public Safety Element. To implement the GP/LCP Safety Element updated policies, it is also proposed to amend and add County Code Title 16 chapters addressing geologic hazards, floodplain regulations, grading regulations, and erosion control. The topic that has attracted the most public input is that of Coastal Bluffs and Beaches ("CB&B" - Section 6.4 of proposed GP/LCP; implemented by SCCC Chapter 16.10 Geologic Hazards). The CB&B policies and regulations are being updated to address climate change and sea level rise (SLR), as required by Section 65302(g) of the CA Government Code.

To ensure clarity, it is noted that the last Attachment of this report shows the changes made to the recommended amendments since the last publication of these materials which occurred for the December 10, 2019 Board of Supervisors meeting, which ended up being continued and deferred ultimately to this March 10, 2020 date. The Attachment details added/deleted text within Safety

Element Section 6.4 CB&B and Chapter 16.10, from the prior December 10<sup>th</sup> “clean” versions to the now-recommended provisions.

At this time, it is recommended by staff and the Planning Commission that the Board of Supervisors hold and complete its public hearing, and then take action to adopt the Negative Declaration, approve the proposed amendments, and refer the LCP amendments to the California Coastal Commission for certification. The amendments would go into effect outside of the coastal zone 30 days after adoption, and within the coastal zone upon final certification by the Coastal Commission.

## **Background**

This staff report for the March 10, 2020 Board meeting (updated from the staff report previously published for the December 10, 2019 Board meeting which was deferred) provides further information only as relates to the Coastal Bluffs and Beaches policies and implementing regulations; the prior staff report for the Board’s October 8, 2019 public hearing is attached and provides more comprehensive information regarding other aspects of the proposed amendments, and those aspects are not reviewed herein.

The Board of Supervisors received a staff presentation and opened the public hearing for the proposed update and amendments at its meeting of October 8, 2019. Both on that date and in the years prior to the Board’s public hearing, much public input had been received and considered, including from other regulatory agencies such as the Coastal Commission; from organizations such as the Coastal Property Owners Association and Realtors Association; from property owners/homeowner groups such as Pajaro Dunes HOA; from environmental organizations such as the Surfrider Foundation; from coastal engineers and scientists; and from a multitude of other individual property owners and citizens.

At its October 8, 2019, the Board considered the staff presentation and public input, and indicated its intention to pursue adoption of a Staff Alternative to the GP/LCP Section 6.4 Coastal Bluffs and Beaches policies. The Board acted to refer that material to the Planning Commission for review and recommendation because it was substantively different from what the Planning Commission had forwarded as its recommendation to the Board. The Board also directed certain changes to the Staff Alternative Section 6.4 and additionally authorized staff to make further changes to Section 6.4 and implementing ordinances as needed to reflect the Staff Alternative as clearly as possible and to ensure internal consistency.

The Planning Commission considered the Section 6.4 Staff Alternative at its meeting of November 13, 2019 and took unanimous action to support the Staff Alternative, also directing certain additional changes and authorizing staff to make yet further changes as might be warranted to the section and to implementing ordinances in order to maximize clarity and ensure consistency.

In summary, since the time that the Board first opened this subject public hearing on October 8, 2019, staff has incorporated refinements to the language within the proposed amendments as directed by the Board and the Planning Commission. Furthermore, in addition to considering additional public input obtained at the November 13, 2019 Planning Commission, staff has held a variety of stakeholder informational meetings upon request, in order to provide opportunities to explain the proposed amendments in a less formal setting and assist stakeholders with preparation to participate in the final public hearing before the Board. These informational meetings were requested by and held with representatives of the Pajaro Dunes HOA, the Coastal Property Owners Association, and the Realtors Association. Given the level of constituent questions and interaction occurring in Supervisorial Districts 1 and 2, staff recently also presented a Powerpoint and answered questions about the proposed amendments at public informational meetings held during the evenings of February 13<sup>th</sup> at Rio Sands and March 2<sup>nd</sup> at Live Oak Elementary School. While it is unusual to hold public meetings in between continued public hearings, it is important to emphasize that these were informational/Q&A meetings and not “input” sessions with any expectation that the substance of the

proposed amendments would change as a result. The questions asked at the informational meetings have helped staff learn where more clarity of language was needed. The attached proposed amendments therefore reflect the direction of the Board of Supervisors and of the Planning Commission to incorporate refinements in a manner consistent with the initial Staff Alternative, into Section 6.4 and Chapter 16.10. The proposed regulations remain consistent with the Planning Commission's recommendations, with text refinements for clarity and internal consistency.

The proposed Section 6.4 CB&B is no longer considered a Staff Alternative; the revised version is now considered the Recommended Section 6.4 proposed amendments. Further, the attached strikeout-underline version of the Public Safety Element, which includes Section 6.4, reflects changes from the *existing adopted* Public Safety Element to reflect the *currently proposed* Public Safety Element (i.e. the variety of changes along the way toward the final proposed Element are not captured in the strikeout-underline; although the last attachment to these materials identifies the changes between the current amendments and the December 10<sup>th</sup> version that was published for that hearing which was ultimately continued and deferred to this March 10<sup>th</sup> date). A more detailed description of the changes made in response to Board and Commission direction, and to stakeholder and public Q&A meetings, is reviewed toward the end of this report, following the below analysis of key aspects of the now-proposed CB&B amendments.

## ANALYSIS

### Summary of Approach and Key Aspects of Final Proposed Amendments to GP/LCP Section 6.4 Coastal Bluffs & Beaches Policies and SCCC Chapter 16.10 Geologic Hazards

**Context Based.** The final set of recommended CB&B policies reflects an approach that varies depending upon the geographic and developed contexts of property locations. The *geographic contexts* reflect Santa Cruz County's location along the Monterey Bay, with different site orientations to the Bay resulting in different oceanographic and erosion/deposition forces, and county locations along the Bay also different from other locations in California that are more directly affected by forces of the Pacific Ocean. The *developed contexts* differ due to the historical pattern of development, with most urbanized areas being "existing developed areas" at the time the Coastal Act was adopted, and with over one-half of the urbanized area already protected by permitted shoreline protection structures that protect existing development. Some coastal bluff areas already have very narrow shorelines with occasional pocket beaches. Other areas contain broad beaches that are heavily used by the public and visitors from around the world, and those have highest priority for ensuring continued public access to beaches for the long-term future.

The general context-based hierarchy within the unincorporated area is presented below:

APPROACH BY AREA	AREA
Shoreline Protection Exception Area Pursue GHAD & Modern Replacement Seawall with Public Access	Soquel Point to Capitola limits (Including APN 028-304-78 and downcoast to the Capitola city limit)
Incentivized Managed Retreat/Conditional Accommodation One Time Projects; unless and until Shoreline Management Plans refine vision	Twin Lakes to Soquel Point and South County urban areas
Protect Beaches/Coastal Lagoons; One Time >50% Project Max 10' elevated structures; no new shoreline protection	Beaches/Coastal Lagoons
Managed Retreat; no new shoreline protection structures	Outside Urban/Rural Services Line

**Distinct FEMA and Geohazard 50% Thresholds Each May Apply.** As compared to the County's existing CB&B policies in its certified GP/LCP, the update provides a much more robust strategy to address existing impacts of shoreline protection structures, through required evaluation and improvements and/or mitigations when coastal permits are requested for projects that involve new or reconstructed structures. The threshold for being considered "new or reconstructed" is being lowered from modification of 65% of Major Structural Components (MSC) of an existing structure to 50% of MSC (described as ">50% MSC," which is considered a substantial remodel tantamount to a "new" or "replacement" structure. Note that different thresholds apply to shoreline protection structure projects, and existing law will continue for those types of projects, as explained in Section 16.10.070(H)(3)(o) and (p) which has been added to summarize existing State law addressing what types of "repair and maintenance" activities require a coastal permit. For "new or reconstruction" project, either on-site, in-kind or in-lieu fee mitigations will be required in order to address impacts of development (and of shoreline protection structures) on a) sand supply to beaches and b) public recreation coastal resources.

It needs to be understood that sites within the FEMA flood zone, more typically for development on or at beach level, remain subject to existing FEMA regulations that contain a "50% of value of existing structure" threshold to define "substantial improvement". Under these existing and continuing regulations, the value of improvements made to a structure over a five-year period is calculated, and if exceeding 50% of value then the structure must be elevated above the floodplain level for the site. Therefore, at a location on or fronting a beach located in a flood zone, BOTH the FEMA "50% of value over 5 years" AND the COUNTY GEOHAZARDS "50% modification of MSCs after certification of the Safety Element" thresholds may come into play. If neither threshold is triggered, then the project would not trigger elevation and would not be considered to count against the "one-time" limit on major projects for sites located outside of the proposed Shoreline Protection Exception Area (SPEA). However, if a structure is elevated, most likely it will also modify 50% or more of the Major Structural Components and would be considered a "new or reconstruction/ replacement" project, which in some locations could be the "one time" project.

**Twenty (20) Year Reviews/Updates.** The 2020 Public Safety Element Update has a stated 20-year time horizon, with the next 2040 update able to consider conditions and science as they evolve, and appropriate adaptive policies included within the 2040 update. Also, under the County's proposal, new Coastal Permits may be approved with conditions of approval that require "review after 20 years and renewal of mitigations as warranted", based on conditions as they are found to exist in 20 years. This does not mean that Coastal Permits themselves would expire, but that it's possible that a new round of in-lieu or mitigation fees might be required based upon actual impacts to coastal resources that may be occurring at that time in the future. It is also provided that the County would conduct 5-year reviews and report-backs over the next 20 years, to ensure policies remain appropriate and to make amendments as may be warranted. These periodic reviews/updates, roughly on the timing of five-year updates of the Local Hazard Mitigation Plan (LHMP), can also be considered part of the County's adaptive approach (the LHMP will be updated in 2020, 2025, 2030, and 2035 prior to 2040).

**Medium Risk Aversion Scenario.** The 2020 Update and implementing regulations incorporate a "medium risk aversion" scenario, meaning a five percent probability that SLR meets or exceeds 0.9 feet between the 2000 base year and the year 2040 (and from 3.1 to 4.3 feet from 2000 to 2100) based on the Coastal Commission's Sea-Level Rise Guidance projection for Monterey.

**Managed Retreat in Rural/Open Space/Agricultural Areas.** Along the coast, climate change over the next 20 years will most likely be experienced as more damage in certain locations from more intense storm wave/surge activity, and greater impacts over a broader area are expected in the decades beyond 2040. For this reason, the CB&B policies proposed by Santa Cruz County reflect a strategy over the next 20 years of "Managed Retreat" (and no new shoreline protection) for areas located *outside* of the Urban and Rural Services Lines (U/RSL), measures to preserve beaches and coastal lagoons, and "Incentivized Longer-Term Managed Retreat" for certain existing

developed/urbanized areas located *inside* the U/RSL - which the Update also terms “Conditional Accommodation, Acceptance of Risk, and Adaptation.”

**Incentivized Longer-Term Managed Retreat in Urban Areas.** “Incentivized Managed Retreat” is shorthand for a strategy that allows properties within the U/RSL (i.e. urbanized areas) to pursue one “new, reconstruction/redevelopment” project consisting of modification of 50% or more of Major Structural Components after the effective date of the Update. This is not a “cumulative” calculation of multiple projects, but one single project that is a “major remodel or new/replacement project”. The “cumulative” calculation only comes into play in FEMA flood zones, where a 5-year period is used to determine whether the value of project improvements trigger the requirement for the structure to be elevated about the floodplain. Each site within the urban area, unless located within a designated Shoreline Protection Exception Area, would be allowed a “new” project only one time, and only in exchange for acceptance of a package of conditions of approval, mitigation measures, and agreements for potential future activities and triggers based upon conditions as they evolve in the future. This is essentially a method for the property owner and the County to agree to an adaptation program for the subject site, up to and including the potential for future abatement and removal of structures in the long term as effects of sea level rise mean that the structure is dangerous to occupy and/or infeasible to avoid, manage and provide services to.

**Shoreline Management Plans.** Incentives to prepare Shoreline Management Plans (SMPs) are incorporated into the proposed policies, including but not limited to the possibility that an adopted SMP would designate certain additional areas as a Shoreline Protection Exception Area, or might offer alternate policies to the “one time only” approach within the Management Plan area.

**“Shoreline Protection Exception Area”** would be locations designated to be protected for the long term in a manner that reduces impacts on coastal resources, such as by replacement of rip rap and disparate materials with a new modern vertical seawall with integrated public access. The East Cliff Drive Parkway/Opal Cliffs area from Soquel Point to the Capitola city limits (defined as the properties including APN 028-304-78 downcoast to the city limit) would be designated a Shoreline Protection Exception Area at the time of adoption of the 2020 Update, with owners encouraged to work with the County to form a Geologic Hazard Abatement District (GHAD) and pursue a modern unified project that incorporates public access.

**“Engage, Accept and Get Ready” Approach with Public Benefits and Internalization of Private Costs.** The County’s proposed approach is practical, and legally and politically supportable. It does not take a view that there is an immediate urgent crisis that coastal properties are experiencing that supports extreme restrictions on use of private properties at this time, but an “*engage, accept and get ready*” approach. Under the County’s approach, both the public sector, potential GHADs and property owners become aligned over the next 20 years in a manner that provides public benefits (including protection of critical public infrastructure and mitigation of development impacts on coastal resources), and ensuring internalization of private property risks and of future costs of repair and abatement that will result from increasing impacts of climate change and sea level rise.

As one of the conditions of approving a coastal development permit for a “new or reconstructed / redeveloped structure”, owners would be required to record on title/deed for the property a Notice of Geologic/Coastal Hazards, Acceptance of Risk, Release of Liability and Indemnification. Any new approved shoreline protection structures would be governed by a Monitoring, Maintenance and Repair Program, with five-year reports and other requirements and activity triggers based on conditions that are determined to exist in the future. Current and future owners are thereby put on notice and accept the risks of damage from hazards, as well as to meet requirements to reduce existing and/or mitigate future impacts, including the potential for future additional “rounds” of mitigation every 20 years that shoreline protection structures continue to exist (e.g., as a condition of coastal development permit approval and in order to extend the terms of a Monitoring, Maintenance and Repair Program). The Notice and conditions would also acknowledge that at some point in the

future, it may not be feasible to retain certain improvements in certain areas, for a variety of reasons, including but not limited to migration of the mean high tide line and public trust lands inland, and practical/ economic infeasibility to repair/maintain certain structures due to physical or dangerous conditions. Technical experts retained by the property owner, along with the County and potentially Coastal Commission, would be involved in making those future determinations on a site-by-site basis based upon conditions at the time of evaluation.

In summary, the key points of the proposed CB&B policies include the following:

- ..... The 2020 Public Safety Element and CB&B policies would have a **20-year Horizon**, with updated policies to be adopted within a future 2040 Safety Element.
- ..... The projection for SLR would reflect a **Medium Risk Aversion** scenario, which means a five percent (1 in 20) probability that SLR will be 0.9 feet from 2000 baseline to year 2040, and 3.1 to 4.3 feet from 2000 baseline to year 2100.
- ..... **Locations outside of the U/RSL** would not be eligible to obtain permits for shoreline and coastal bluff protection structures, and new, replacement or significant remodel (>50% of Major Structural Components) development projects would be required to provide a 75-year geologic setback (100 years for critical structures) which would be established without consideration of any existing protection structure. This is essentially the **“Managed Retreat”** strategy that has been favored by the California Coastal Commission.
- ..... A **“Shoreline Protection Exception Area (SPEA)”** is designated for the **East Cliff Drive Parkway/Opal Cliffs Drive area between Soquel Point and Capitola city limit** reflecting that the vision for the area would be comprehensive implementation (which may occur in phases) of a modern vertical seawall like the RDA seawall that was constructed along East Cliff Drive and parkway, including public access and aesthetic improvements. Owners would be encouraged to form a GHAD so that a project(s) can be designed and implemented in a manner that allows costs to be paid over a 30-year period on property tax bills.

In the interim, owners would be allowed to pursue new, reconstruction and substantial remodel >50% projects, but would be required to reduce impacts on coastal resources that occur with existing shoreline protection structures, and would be required to accept a package of conditions that include recordation on title of a Notice of Hazard etc., require sand and recreation mitigations/in-lieu fees, and accept “check-ins” every 20 years that likely involve renewal of mitigations/in-lieu fees, extensions of terms of Monitoring, Maintenance and Repair Programs, as well as additional requirements based on then-existing conditions and impacts that are occurring.

- ..... **“Shoreline Management Plans (SMP)”** would be pursued and encouraged for **Locations within Urban Services Line/RSL, but not in SPEA**. Starting on the effective date of the 2020 Public Safety Element, owners would be allowed to carry out only one “new or replacement/reconstruction (>50% MSC)” type of project, unless a future SMP was adopted that provided otherwise (such as by designating sub-areas to be additional Shoreline Protection Exception Areas, or alternate policies to the “one time” policy, other type of alternate strategies). In this manner, an incentive is created for property owners to collaborate and participate in preparation of SMP(s). The “one-time” project allowance would also come with the package of conditions described above (reduce existing impacts on coastal resources, provide sand and recreation mitigations and/or in-lieu fees, record Notice of Hazards, accept risk and future adaptation program, etc.). The County would seek SMP grant funding and a SMP would be most beneficial for the Twin Lakes to Soquel Point area.

- ..... **Projects located on Beaches / Lagoon** areas that are affected by wave run-up (V-zones), that propose to elevate structures above flood level, would also be **limited to a one time “new or reconstruction/redevelopment (>50% MSC) project, AND a maximum of about 10 feet elevation above grade**, which essentially means about a “one story” non-habitable space below one habitable story given zoning height limits, in order to prevent a future of structures perched on tall stilts over beach/lagoon areas. In that the FEMA “50% of Value” calculation of “substantial improvement” of work done over any five-year time period would still be done, it is possible that the FEMA requirement to elevate a structure would be triggered, which would likely also mean that the project will be “replacement/new” project which would be considered that site’s one time project under the county’s climate change and sea level rise policies and regulations. Riparian setbacks as required per code would preserve coastal lagoons.
  
- ..... **For areas affected by the “One Time Policy” the New or Reconstruction / Redevelopment (>50% MSC) Projects would be calculated from date of adoption of the 2020 Public Safety Element Update.** Currently, County of Santa Cruz considers only the most recent five-year timeframe, for the calculation of percent change to major structural components that defines the threshold for “reconstruction.” The Coastal Commission has more recently emphasized a calculation that is cumulative from the time that the Coastal Act was adopted in the 1970s. Given lack of constructive notice to property owners, differences in calculations/ definitions that have been applied over time by the Coastal Commission and local governments, and the lack of accurate records back to the late 1970s, the County is proposing to “start the calculations” from the date that the 2020 Public Safety Element is adopted. The County would also look at each project on its own, not cumulatively, in order to accommodate typical “repair and maintenance” and small addition types of projects that are typically exempt or excluded from coastal permit requirements and basically allow for “normal” continued use of a home. This is a significant shift from the current County approach which uses a five-year calculation that rolls forward, but is also a significant difference from the “since 1977” approach the Coastal Commission has desired to use, and so the approach can be considered a compromise.
  
- ..... **Specific new “Geologic Setback Reduction Exception” provision is added to the regulations**, whereby an owner could request a geologic setback exception which would reflect a reduced setback from the bluff edge, and thus a shorter expected design life of the improvement. A package of conditions of approval would be required, to recognize that future damage may occur within a shorter timeframe and result in the need to remove/abate structures. In this way, a project may be approved that does not meet the standard 75-year geologic setback, but if approved for a reduced geologic setback of, for example, 45 years, then that is reflected within the Notice recorded on title and in the MMRP, and all current and future parties are on notice that the structure has a shorter expected life than typical and may need to be abated in approximately 45 years and those costs will be borne by the private property owner.

## **Description of Changes Made to October 8<sup>th</sup> “Staff Alternative” to Incorporate Board and Commission Direction and Public Input**

Direction provided by the **Board of Supervisors** on October 8, 2019 included:

- Indicated Board intention to pursue Staff Alternative Section 6.4 CB&B, therefore provided direction for certain changes to that Alternative, directed that staff make any necessary changes to the implementing ordinances to ensure consistency with the policies of the Alternative, authorized staff to make other changes to clarify and ensure internal consistency, and referred the Staff Alternative Section 6.4 to the Planning Commission for its review and recommendation;



- Directed staff to work with stakeholders, obtain and review litigation language as referenced from the San Diego case regarding indemnification and determine whether further modifications to the proposed language are necessary;
- Explain more clearly in the amendments that new regulations are not going to affect existing permit conditions or existing improvements; new requirements would only be applicable as new coastal development permits are sought by property owners;
- Explore the use of policy and ordinance tools to incentivize the removal of riprap along the coastline, which would increase access to usable beach by the general public - i.e., there should be an incentive for owners to collaborate and participate in preparation of SMPs;
- Include language regarding design of coastal armoring structures and conditions of approval, to take into account offshore resources including but not limited to surfing areas and sand mitigation;
- Prior to the continued public hearing by the Board, meet with stakeholders to answer questions and engage in useful dialogue that could help further clarify the final policies and implementing regulations; and
- Staff and Planning Commission to consider the sand mitigation fees, especially in South County to ensure that they are justifiable, and possibly exempt Pajaro Dunes (sand depletion/accretion area that seasonally occurs naturally/annually).

As a result of **Planning Commission** direction and associated public testimony, the following information or clarifications have been incorporated:

- Clarified that terms of existing permits are not affected by updated policies; applications for new coastal development permits and acceptance of permit conditions are the activities addressed by the updated policies and requirements.
- Recognized that removal of riprap requires coordinated action by multiple property owners because riprap protection often spans multiple properties and is interconnected. The policy encouraging groups of property owners to develop Shoreline Management Plans provides a collaborative mechanism for addressing this situation in a comprehensive manner. Modern vertical seawalls are preferred for areas where protection is allowed; with some potential to integrate existing protection materials, such as by a modest level of rip rap at the base of new modern vertical walls (Board direction, Policy 6.4.37; also Planning Commission direction re integration).
- The policy regarding shoreline and coastal bluff armoring requires consideration of oceanographic conditions affecting the site and assessment of impacts on shoreline processes, sand supply, and recreational resources. Combined with the guiding principle that shoreline development may have impacts on surfing resources, the Safety Element provides adequate direction for staff to consider these types of potential impacts of certain proposed projects as warranted. (Board direction, Policy 6.4.25)
- Staff was not able to verify a "San Diego case" regarding indemnification. The public commenter sent a follow-up link to a newspaper article on a different subject regarding sanctioning of certain Coastal Commission members for improper ex-parte communication. However, after meeting with property owner stakeholders, some adjustment to the waiver of liability and indemnification language was incorporated into the proposal. Staff believes these stakeholders are now satisfied. (Board direction)

- The policy addressing shoreline and coastal bluff armoring includes requirements to mitigate adverse impacts on sand supply and recreational resources. The provision in the policies for payment of mitigation fees has been clarified to specify that sand mitigation fees do not apply in beach/dune environments because the established fee only applies to coastal bluff environments, and dunes/beaches are generally naturally re-established on a seasonal basis. The recreation mitigation fee has been clarified to specify that the fee calculation would be the same method as is used by the County to establish charges for encroachments on county-owned property in the coastal zone. (Board direction, Policy 6.4.25[j])
- A change was made to the introduction to highlight the need to protect natural lagoon processes as roads like East Cliff Drive cross coastal lagoons, and bridges may be needed in the future. (Planning Commission direction)
- Clarification of the discussion regarding building heights and maximum elevation of structure (approximately 10 feet) to emphasize this applies to projects on beaches and not on coastal bluffs. (Planning Commission direction)
- Revised discussion of desired area(s) for development of Shoreline Management Plans. (Planning Commission direction)
- Deleted the discussion early in Section 6.4 regarding differences in interpretation of the Coastal Act regarding “existing” v. “new” structures. (Planning Commission direction)
- In the Shoreline Protection Exception Area where armoring would be allowed, indicated that existing armoring may be integrated into a new armoring structure if appropriate, such as a modest incorporation of rip rap material at the base of a new modern vertical seawall. (Planning Commission direction)
- Added a reference to the required riparian setbacks in the discussion regarding development along coastal lagoons. (Planning Commission direction)
- Added a guiding principle regarding coordination on regional sediment management. (Planning Commission direction)
- Requirements for periodic reporting on monitoring maintenance and repair of existing armoring and review of technical reports was modified to require that monitoring reports shall be reviewed and accepted by the County. (Planning Commission direction, Policy 6.4.25[k])
- Various changes were made to clarify and refine certain guiding principles and policies for internal consistency and clarity. (various pages)
- Appropriate changes have been made to the implementing ordinance Chapter 16.10 Geologic Hazards, to reflect the policy amendments as revised. (Board direction)
- Clarifications were made to reflect that the “substantial improvement” calculations occur only within FEMA floodplain areas, and it is a calculation to determine whether the subject structure is required to be elevated above floodplain level. That calculation includes the value of all improvements made within the past 5 years, and if the value totals to 50% or more of the value of the structure, it must be elevated. Elevation of the structure will likely then trigger the “one time” status for that parcel, in that the project would involve 50% or more modification of Major Structural Components, and this substantial remodel/replacement/new elevated structure (located outside of designated Shoreline Protection Exception Area) would be considered the “one time” project under the County’s Section 6.4 policies. If damage occurs in

the future to the elevated "new" structure involving >50% MSCs, it would not be allowed to be rebuilt but would need to be made safe in a manner that does not trigger the 50% of MSC, which may result in removal from the beach/lagoon/floodplain per the recorded Conditions of Approval/MMRP. (Clarification for consistent interpretation by County, Coastal Commission, FEMA, Stakeholders)

- Section 6.4 policy and Chapter 16.10 provisions added to more clearly address what is considered "Repair and Maintenance" and whether a coastal development permit is required for various types of repair and maintenance. (Reflecting State law for clarity and consistency in interpretation by County, Coastal Commission, and Stakeholders)

## **Environmental Review**

The Initial Study and proposed Negative Declaration for the proposed project were reviewed by the County's Environmental Coordinator and a preliminary determination to issue a Negative Declaration was made on June 20, 2018. The public comment period began June 22, 2018 and expired on August 1, 2018 for a total of 41 days rather than the standard 30 days. In that the set of proposed amendments have the overall effect of strengthening policies and requirements related to public health and safety, no potentially significant impacts were identified, and no mitigation measures were required.

The Initial Study has now been revised to eliminate portions of the previously defined project related to the Noise Element and airport land use compatibility. While initially included within the proposed project description, those matters were subsequently separated from the proposed project and independent General Plan and Local Coastal Program amendments were recently processed. Therefore, text in the Initial Study addressing those issues has been deleted.

Staff has reviewed the Initial Study to ensure that changes to the content of the final version of the proposed amendments do not change any of the conclusions of the Initial Study regarding impacts. Staff has concluded the Initial Study conclusions remain valid, and there are no new or substantially more severe impacts due to refinements included within the final version of the proposed amendments. The changes either clarify or reinforce policy language and remain consistent with the earlier version of the proposed amendments. The designation of the Shoreline Protection Exception Area from Soquel Point to the Capitola city limits recognizes an urbanized area of the coast that is threatened by erosion and would otherwise qualify for armoring and establishes the type of armoring in terms of engineering design, aesthetics and public access amenities that is preferable in the Exception Area. The existing East Cliff Drive shoreline protection project constructed by the County Redevelopment Agency illustrates the vision for the Exception Area (and is featured as a model within the CCC Sea Level Rise Guidance Document). The vision for this Exception Area has consistently been the same in all versions of the Safety Element Update; labeling such as a Shoreline Protection Exception Area does not change the analysis or conclusions. The changes further address restrictions related to longer-term expectations for development in other urbanized areas outside of the Shoreline Protection Exception Area(s) and incentivize creation of Shoreline Management Plans. In addition, the changes clarify that renewal of a Monitoring Maintenance and Repair Program for approved shoreline protection structures may require additional mitigations in future 20-year increments as the structures may be allowed to exist into the future. A Negative Declaration remains the appropriate environmental determination.

## **Consistency of Proposed Coastal Bluffs & Beaches Policies with Coastal Act**

The Coastal Act recognizes that the California coastal zone contains valuable natural and coastal resources, which need to be protected in a manner that involves balancing natural areas with urbanized developed areas that contain economic and visitor-serving assets. Maintaining and enhancing public/visitor access to the entirety of the coastal zone with its variety of contexts, as well as considering private property rights, are principles included within the voter-approved Coastal Act. The Coastal Act recognizes that existing development, and future developments that are carefully

planned and developed consistent with the policies of the Coastal Act, are essential to the economic and social well-being of the people of California (Coastal Act Section 30001).

Through the Measure J growth management initiative approved by voters, the County of Santa Cruz adopted an Urban and Rural Services Boundary shortly after the Coastal Act was adopted in the 1970's, and it recognizes distinctions between then-existing urbanized and natural/agricultural/open space areas. The County's local policy framework is consistent with the Coastal Act in that it creates an overall balance of natural and coastal resource protection in rural areas, with ongoing residential and commercial land use development within the urbanized areas of the County in a manner that maintains and enhances public access to coastal beach areas as well as visitor-serving urbanized commercial and residential areas.

Due to Measure J and the Coastal Act, rural/agricultural coastal areas of the County have remained mostly undeveloped, the urban area of the County is "built," and approximately half of that urbanized coastline is already armored with various types of shoreline and coastal bluff armoring. Given this context, the proposed coastal bluffs and beaches and shoreline protection policies of Section 6.4 of the Public Safety Element Update reflect a "hybrid approach" that allows certain future development in certain parts of the urbanized area to conditionally rely on existing coastal armoring. Shoreline armoring would not be the approach in rural areas, and an "incentive managed retreat" strategy for portions of urbanized areas where shoreline protection is determined not to be the longer-term approach (i.e. areas not placed within shoreline protection areas).

The CCC's 2015 Sea Level Rise Guidance Document recognizes the difficulties of applying Coastal Act policies to a wide variety of existing natural and man-made conditions in urban areas, and the importance of considering individual development decisions in context and on a case-by-case basis. The proposed amendments are structured to allow for site specific decision-making while maintaining certain baseline requirements to achieve the appropriate balance of development with coastal resource protection and enhancement, and imposing adaptation measures for the future.

Developed structures, neighborhoods and visitor-serving assets are explicitly addressed by the Coastal Act, as meeting social, economic, and recreational needs of Californians. Protection of natural resources and recognition of private property rights are also guiding principles of the Coastal Act. The proposed CB&B amendments are consistent with the Coastal Act because they strike an appropriate balance of these various goals through specific project analysis requirements and establishing mitigation and adaptation pathways to improve current conditions and prepare for future sea level rise, including phasing out structures as they become more threatened, repeatedly damaged, or destroyed.

### **Coastal Commission staff letter dated December 9, 2019**

Coastal Commission staff submitted a letter dated December 9, 2019, in which it acknowledged that county and coastal staff have worked collaboratively over several years. Coastal staff indicates that it is highly supportive of the effort to update LCP coastal hazard policies. It appears that coastal staff recognizes the practical realities that the County is attempting to consider in its policies; as these practical realities have been evident in how several projects that both county and coastal staff have processed and conditioned over the past several years. Coastal staff did highlight several concerns, which are reviewed below with county staff responses.

2040 Time Horizon. Coastal staff supports the stated 2020 - 2040 time horizon of this Safety Element (Policy 6.4.1), but is uncertain how the horizon will be implemented in practice with permitting and planning prior to 2040. Coastal staff questions what happens when 2040 arrives, and in the past has inquired about "consequences" if a new Safety Element is not adopted by 2040.

In response, county staff points out that the county's Local Hazard Mitigation Plan (LHMP) is required to also address climate change and coastal hazards, the LHMP is required to be updated every five

years, and each LHMP is incorporated by reference into the GP/LCP Safety Element. Since the GP/LCP must retain internal consistency, this approach can essentially be considered to result in five-year periodic reviews, and supports an adaptive process of policy refinement as time goes by and SLR conditions reveal themselves. Regarding how planning and permitting occur in the interim, that is what the entirety of Section 6.4 and Chapter 16.10 (as well as other sections of the LCP) governs; the policies are implemented through Conditions of Approval, terms of Monitoring, Maintenance and Repair Programs (MMRPs) and extensions thereof (i.e., the 20-year check-ins), mitigation/in-lieu fees to address sand and recreation impacts (with potential for new sets of fees required each 20 years), as well as through creation of Shoreline Management Plans and Geologic Hazard Abatement Districts.

Redevelopment Definition. Coastal staff appreciates that the County is lowering the threshold of what is considered “redevelopment” or “new” from 65% of Major Structural Components (MSCs) to 50% of MSCs, but indicates that the current Coastal Commission practice has been that 50% of any single MSC (ie. roof framing, exterior wall framing, floor framing and foundation) is “new”/“redevelopment”, while the County’s calculation is based on a “weighted measurement” used for all (“whole house”) proposed modifications of MSCs.

County staff strongly believes that principles of nexus and proportionality support a “whole house” approach. Telling an owner that just because they are replacing one-half of their roof framing on an existing home such as may occur with a small second story addition (or modifying two walls but nothing else of the existing structure, etc.), that the existing structure will then be classified as an entirely “new”/“redeveloped” structure, does not pass the “straight face test” and is met with comments about governmental overreach. Moreover, county staff believes that in order to get owners to accept the broad “package of conditions” including the MMRPs, sand and recreation mitigation/in-lieu fees and 20-year renewals thereof, the modern Notice of Hazards and Acceptance of Risk etc., that applicants must be allowed to pursue meaningful projects. Minor projects to existing homes will not be able to trigger the broad Conditions & Mitigations package of requirements in a manner that is consistent with legal principles of nexus and proportionality.

Triggers for Improvements to Shoreline Armoring in Exception Area. Coastal staff indicates that “there does not appear to be policy language explicitly requiring upgrades to existing riprap armoring as a condition of approval for development that is allowed to rely on existing armoring within the Shoreline Exception Area.” Coastal staff wants to ensure that the proposed policies will result in an improvement over the status quo to maximize protection of coastal resources and public access.

Again, the nature of the proposed project will drive the appropriate conditions of approval. County staff believes that it is clear that within the Shoreline Exception Area the vision and policies support essentially an extension of the existing East Cliff Drive vertical seawall (constructed by County RDA and shown as a model project within the Coastal Commission’s adopted Sea Level Rise Guidance Document) with public access along the coastline within the Exception Area, and as substantial remodels (>50% MSCs), redevelopments or new homes are proposed, it is expected that existing riprap will be replaced with modern seawalls, hopefully as joint projects with adjoining property owners, and ideally through a GHAD comprehensive project. In fact, the policies support replacement of existing riprap with modern projects even not in specific association with a home project, in order to open up beach areas to the public and reduce existing impacts on coastal resources. As a result of the County’s proposed update of the Coastal Bluffs and Beaches policies, the Coastal Property Owners Association has indicated that it is currently having discussions about forming a GHAD and beginning the design process for a modern seawall for the Exception Area.

Further Policy Clarification. Coastal staff states that since the policies and regulations are complicated, more clarification may be needed to implement what they understand to be the “shared vision for the update”, but that they believe all of these types of issues can be addressed after the County submits its proposed LCP Update to the Coastal Commission, and do not object to the Board

of Supervisors taking action at this time to approve the amendment and direct submittal to the Coastal Commission.

County staff appreciates the support of Coastal staff, and also looks forward to bringing this substantial effort to a successful conclusion. We agree that it is important to consider local context, historic patterns of development, geography/geology, legal principles, and practical realities of permitting and conditioning development projects involving existing and new structures.

## Conclusion

In conclusion, county staff believes that the currently proposed amendments have considered all public, stakeholder and coastal staff comments and made appropriate refinements during the lengthy review process, and that the Public Safety Element Update and related ordinance amendments are consistent with the Coastal Act and ready for Board adoption and submittal to the Coastal Commission. The proposed policies and regulations are stronger than currently exist in the County's LCP with regard to addressing climate change, sea level rise, and reduction of impacts on coastal resources and public access to the coast.

## Body

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### Strategic Plan Element(s)

Sustainable Environment - Climate Change. The proposed amendments increase resilience to climate change impacts, including sea level rise and changing weather patterns.

## Discussion

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