

REQUESTED REVISIONS TO THE SUGGESTED MODIFICATIONS

PROPOSED BY SANTA BARBARA COUNTY

1. **Modification 9: Requirement for Coastal Development Permits for all intensifications of agriculture.** Modification 9 includes revisions to the land use tables to require a Coastal Development for agricultural activities. To address this, the proposed revision to Section 35.20.040 (Exemptions from Planning Permit Requirements) in Modification 11 (Exemptions) is requested to be revised as shown below. Language requested to be deleted is shown with a strike-through; language proposed to be added is shown with a double underline.

35.20.040 - Exemptions from Planning Permit Requirements

C. Exempt activities and structures, Coastal Zone. Within the Coastal Zone, the following types of development (and only the following types) are exempt from the requirements of this Development Code to obtain a Coastal Development Permit, except as noted below.

...

3. Agricultural activities. As part of existing, on-going lawfully established agricultural operations, the following development and uses are exempt from the requirement to obtain a Coastal Development Permit, except as provided in Section 35.20.040.C.1 above. In the Coastal Zone, new or expanded areas of agricultural activities are not exempt and require the issuance of a Coastal Development Permit in compliance with Section 35.82.050 (Coastal Development Permits) unless they are in compliance with Subsection 3.d and 3.g., below.

...

d. Cultivated agricultural, orchards and vineyards, historic legal use. Cultivated agriculture, orchards and vineyards where the agricultural activities occur within existing areas of cultivated agriculture, orchards, and vineyards. New cultivated agriculture, orchards and vineyards where the agricultural activities do not occur within existing areas of cultivated agriculture, orchards, and vineyards may also be exempt if the development of new cultivated agriculture, orchards or vineyards:

(1) Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance.

(2) Is not located within 200 feet of a lot line, or within 50 feet of the top of bank of any creek, stream or watercourse, or within 500 feet of an Urban area as designated on the Comprehensive Plan maps.

(3) Is not located within environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

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g. Grazing, historic legal use. Grazing when shown as an "E" in the ~~Land Use Tables in Chapters 35.21 through 35.26 (Table 2-1 and following) and the Animal Keeping Tables (Table 4-1 and following),~~ in Section 35.42.060 (Animal Keeping) and when located in existing grazing areas where the use does not increase the intensity of use. The normal rotation of livestock from one pasture to another does not qualify as increasing the intensity of use. This exemption does not include confined animal facilities unless such development is otherwise exempt in compliance with this Section. New grazing located outside of existing grazing areas may also be exempt if the grazing:

(1) Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance.

(2) Is not located within 200 feet of a lot line, or within 50 feet of the top of bank of any creek, stream or watercourse, or within 500 feet of an Urban area as designated on the Comprehensive Plan maps.

(3) Is not located within environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

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2. **Modification 9: Requirement for Coastal Development Permit for keeping of animals.** Modification 9 includes revisions to the animal keeping tables to require a Coastal Development Permit for animal keeping in most instances. To address this, the proposed revision to Section 35.20.040 (Exemptions from Planning Permit Requirements) in Modification 11 (Exemptions) is requested to be revised as shown below. Language requested to be deleted is shown with a strike-through; language proposed to be added is shown with a double underline.

35.20.040 - Exemptions from Planning Permit Requirements

C. Exempt activities and structures, Coastal Zone. Within the Coastal Zone, the following types of development (and only the following types) are exempt from the requirements of this Development Code to obtain a Coastal Development Permit, except as noted below.

...

- 2. Improvements to a structure, other than a public works facility.** The following development and uses may constitute improvements to a structure, other than a public works facility, that are exempt from the requirement to obtain a Coastal Development Permit except as provided in Section 35.20.040.C.1 above. For purposes of this section, where there is an existing structure, other than a public works facility, (1) all fixtures and other structures directly attached to the structure; and (2) landscaping on the lot, shall be considered a part of that structure. Additionally, the following development and uses may be determined by the Director to be improvements to a structure, other than a public works facility, even when the development and use is not directly attached to the existing structure, provided that the development and use is accessory to the existing structure:

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b. Animal keeping. Animal keeping when shown as an "E" in the ~~Land Use Tables in Chapters 35.21 through 35.26 (Table 2-1 and following)~~ and the Animal Keeping Table (Table 4-1 and following) in compliance with Section 35.42.060 (Animal Keeping), not including confined animal facilities unless such development is otherwise exempt in compliance with this Section. Animal keeping not shown as "E" in the Animal Keeping Table (Table 4-1 and following) may also be exempt if the animal keeping:

- (1) Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance.
- (2) Is not located within 50 feet of the top of bank of any creek, stream or watercourse.
- (3) Is not located within environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

Animal keeping that does not qualify for an exemption may be allowed with a Coastal Development Permit issued in compliance with Section 35.82.050 (Coastal Development Permits).

- 3. Agricultural activities.** As part of existing, on-going lawfully established agricultural operations, the following development and uses are exempt from the requirement to obtain a Coastal Development Permit, except as provided in Section 35.20.040.C.1 above. In the Coastal Zone, new or expanded areas of agricultural activities are not exempt and require the issuance of a Coastal Development Permit in compliance with Section 35.82.050 (Coastal Development Permits) unless they are in compliance with Subsection 3.d and 3.g., below.

...

c. Animal keeping. Animal keeping when shown as an "E" in the ~~Land Use Tables in Chapters 35.21 through 35.26 (Table 2-1 and following)~~ and the Animal Keeping Table (Table 4-1 and following) in compliance with Section 35.42.060 (Animal Keeping), not including confined animal facilities unless such development is otherwise exempt in compliance with this Section. Animal keeping not shown as "E" in the Animal Keeping Table (Table 4-1 and following) may also be exempt if the animal keeping:

- (1) Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance.
- (2) Is not located within 50 feet of the top of bank of any creek, stream or watercourse.
- (3) Is not located within environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

Animal keeping that does not qualify for an exemption may be allowed with a Coastal Development Permit issued in compliance with Section 35.82.050 (Coastal Development Permits).

3. Modification 9: Restrictions on school facilities allowed by Conditional Use Permit in agricultural zones. Footnote (11) of Table 2-1 (Allowed Land Uses and Permit Requirements for Agricultural Zones) is requested to be revised to read as shown below. Requested new language is shown with a double underline.

- (11) Limited to the expansion or reconstruction of lawful, existing facilities, including the development of new facilities located on a lot that is both adjacent to and under the same ownership as the lot on which the lawful, existing facility is located. Lawful, existing school facilities are considered to be conforming development and are not subject to the restrictions of Chapter 35.101 (Nonconforming Uses, Structures, and Lots).

4. Modifications 9 and 13: Requirement for Coastal Development Permits for voluntary mergers of existing, separate legal lots. Modifications 9 and 13 propose to add new language specifying that lot mergers are development requiring a Coastal Development Permit subject to a public hearing and appeal to the Coastal Commission. To address this, the proposed revision to Section 35.20.040 (Exemptions from Planning Permit Requirements) in Modification 11 (Exemptions) is requested to be revised as shown below. Language proposed to be added is shown with a double underline.

35.20.040 - Exemptions from Planning Permit Requirements

C. Exempt activities and structures, Coastal Zone. Within the Coastal Zone, the following types of development (and only the following types) are exempt from the requirements of this Development Code to obtain a Coastal Development Permit, except as noted below.

...

- 2. Improvements to a structure, other than a public works facility.** The following development and uses may constitute improvements to a structure, other than a public works facility, that are exempt from the requirement to obtain a Coastal Development Permit except as provided in Section 35.20.040.C.1 above. For purposes of this section, where there is an existing structure, other than a public works facility, (1) all fixtures and other structures directly attached to the structure; and (2) landscaping on the lot, shall be considered a part of that structure. Additionally, the following development and uses may be determined by the Director to be improvements to a structure, other than a public works facility, even when the development and use is not directly attached to the existing structure, provided that the development and use is accessory to the existing structure:

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- i. Mergers.** Voluntary mergers that the Director determines do not have the potential to result in an increase in the development potential of any of the the lots involved in the merger.

5. Modification 10: Restrictions on primary residences located in agricultural zones in order to qualify as a principal permitted use. The proposed new language contained in Subsection F.

(Principal permitted dwellings (Coastal Zone)) of Section 35.21.030 (Agricultural Zones Allowable Land Uses) requested to be revised as shown below. Language requested to be deleted is shown with a strike-through; language proposed to be added is shown with a double underline.

35.21.030 - Agricultural Zones Allowable Land Uses

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F. Principal permitted dwellings (Coastal Zone).

1. In the Coastal Zone, the primary dwelling on the lot may be considered a component of the principal permitted agricultural use and permitted as a Principal Permitted Use (PP) when in compliance with the following standards:
 - a. There is an existing principal permitted primary agricultural use on the lot on which the primary dwelling is located.
 - b. The occupancy of the dwelling is restricted to the operator of the principal permitted primary agricultural use including the family of the operator, or the owner of the lot including the family of the owner of the lot.
 - c. The gross floor area of the primary dwelling does not exceed ~~3,000~~ 5,000 square feet.
 - d. The ~~principal~~ primary dwelling and all accessory structures and landscaping associated with the primary dwelling shall occupy a development area of no more than 10,000 square feet, that complies with the following:
 - (1) For lots that are at least 10 acres in gross area but less than 20 acres in gross area, the development area shall be 10,000 square feet except that for each full gross acre of lot area in excess of 10 gross acres the development area may be increased by an additional 1,000 square feet to a maximum of 20,000 square feet.
 - (2) For lots that area 20 acres or greater in gross area, the development area shall be no greater than two acres or three percent of the gross lot area, whichever is less.
2. Before issuance of a Coastal Development Permit in compliance with Section 35.82.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.82.110 (Land Use Permits) for a primary dwelling as a Principal Permitted Use (PP), a Notice to Property Owner prepared by the Department shall be recorded by the property owner in the County public records. The Notice to Property Owner shall specify, at a minimum, that the compliance with these standards is required is order for the primary dwelling to be occupied.
3. If compliance with these standards cannot be demonstrated then primary dwelling may be permitted as a non-principal permitted use and the decision of the review authority to approve or conditionally the application for the accessory use or structure may be appealed to the Coastal Commission in compliance with Section 35.102.060 (Appeals to the Coastal Commission).

- 6. Modification 10: Restrictions on residential accessory uses designated as principal permitted uses in the agricultural, resource management, and residential zones.** The proposed revisions to the allowable land uses in all zones are requested to be revised as shown below. Language requested to be deleted is shown with a strike-through; language proposed to be added is shown with a double underline.

35.21.030 - Agricultural Zones Allowable Land Uses

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- E. Accessory structures and uses.** Each use allowed by Table 2-1 (Allowed Land Uses and Permit Requirements for the Agricultural Zones) may include accessory structures and uses that are customarily incidental to the primary use.
1. **Accessory To A Principal Permitted Use within the Coastal Zone.** Accessory structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal

Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use (PP), in compliance with the following:

a. Accessory to the principal permitted primary agricultural use. For the purpose of determining whether an accessory development subordinate to the principal permitted primary agricultural use can be processed as a component of the Principal Permitted Use, agricultural accessory development shall be interpreted as defined in Section 35.110.020 (Definitions of Specialized Terms and Phrases) under the term "Accessory Agricultural Structure."

b. Accessory to the principal permitted primary residential use. For the purpose of determining whether an accessory development subordinate to the principal permitted residential use can be permitted as a component of the Principal Permitted Use, residential accessory development shall be limited to the following: Except as provided in Subsection E.1.c., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a residence, and does not change the character of the residential use, may be permitted as a component of the Principal Permitted residential use.

(1) Garages.

(2) Landscaping.

(3) Pools, spas and hot tubs.

(4) Storage sheds.

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35.22.030. – Resource Protection Zones

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E. Accessory structures and uses. Each use allowed by Table 2-4 (Allowed Land Uses and Permit Requirements for the Resource Protection Zones) may include accessory structures and uses that are customarily incidental to the primary use.

1. Accessory to a Principal Permitted Use within the Coastal Zone. Accessory structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use, in compliance with the following:

a. Accessory to the principal permitted primary residential use. For the purpose of determining whether an accessory development subordinate to the principal permitted residential use can be permitted as a component of the Principal Permitted Use, residential accessory development shall be limited to the following: Except as provided in Subsection E.1.b., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a residence, and does not change the character of the residential use, may be permitted as a component of the Principal Permitted residential use.

(1) Garages.

(2) Landscaping.

(3) Pools, spas and hot tubs.

(4) Storage sheds.

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35.23.030. - Residential Zones Allowable Land Uses

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E. Accessory structures and uses. Each use allowed by Tables 2-7, 2-8, and 2-9 (Allowed Land uses and Permit Requirements for Residential Zones) may include accessory structures and uses that are customarily incidental to the primary use.

1. Requirements for all accessory structures and uses. All accessory structures and uses shall comply with the following: ~~provided that the accessory structures or uses are~~

- 4a. Within the R-1/E-1, EX-1, ~~MR-O,~~ R-2, DR, SLP, SR-M and SR-H zones, accessory structures and uses when that are accessory to dwellings shall be restricted to those that are for the exclusive use of the residents of the site and their guests and shall de not involve a commercial enterprise on the site.; ~~and~~
- 2b. The accessory structures or uses are In compliance with all applicable requirements of this Development Code, including standards for specific uses and structures and uses in Chapter 35.42 (Standards for Specific Land Uses).

2. Accessory to a Principal Permitted Use within the Coastal Zone. Accessory structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use, in compliance with the following:

a. Accessory to the principal permitted primary residential use. ~~For the purpose of determining whether an accessory development subordinate to the principal permitted residential use can be permitted as a component of the Principal Permitted Use, residential accessory development shall be limited to the following: Except as provided in Subsection E.2.b., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a residence, and does not change the character of the residential use, may be permitted as a component of the Principal Permitted residential use.~~

- ~~(1) Garages.~~
- ~~(2) Landscaping.~~
- ~~(3) Pools, spas and hot tubs.~~
- ~~(4) Storage sheds.~~

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35.24.030. - Commercial Zones Allowable Land Uses

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E. Accessory uses and structures and uses. Each use ~~nonresidential~~ allowed by Tables 2-14, 2-15, and 2-16 (Allowed Land uses and Permit Requirements for Commercial Zones) may include accessory ~~uses and structures and uses~~ that are customarily incidental to the primary use.; ~~provided that:~~

...

2. Accessory to a Principal Permitted Use within the Coastal Zone. Accessory uses and structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use, in compliance with the following:

a. Accessory to the principal permitted commercial use. ~~For the purpose of determining whether an accessory development subordinate to the principal permitted commercial use can be permitted as a component of the Principal Permitted Use, commercial accessory structures and uses shall be limited to the following: Except as provided in Subsection E.2.b., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a commercial use, and does not change the character of the commercial use, may be permitted as a component of the Principal Permitted commercial use.~~

- ~~(1) Equipment, maintenance, and other minor outbuildings.~~
- ~~(2) Infrastructure.~~
- ~~(3) Landscaping.~~
- ~~(4) Parking.~~

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35.25.030. - Industrial Zones Allowable Land Uses

GE. ~~Accessory uses and structures and uses.~~ Each A use allowed by Table 2-20 (Allowed Land Uses and Permit Requirements for Industrial Zones) may include accessory ~~uses and structures~~ and uses that are customarily incidental to the primary use as follows.

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2. **Accessory to a Principal Permitted Use within the Coastal Zone.** Accessory structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use, in compliance with the following:

a. **Accessory to the principal permitted industrial use.** For the purpose of determining whether an accessory development subordinate to the principal permitted industrial use can be permitted as a component of the Principal Permitted Use, industrial accessory structures and uses shall be limited to the following: Except as provided in Subsection E.2.b., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a industrial use, and does not change the character of the industrial use, may be permitted as a component of the Principal Permitted industrial use.

- ~~(1) Equipment, maintenance, and other minor outbuildings.~~
- ~~(2) Infrastructure.~~
- ~~(3) Landscaping.~~
- ~~(4) Parking.~~

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35.26.030. - Special Purpose Zones Allowable Land Uses

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D. ~~Accessory uses and structures and uses.~~ Each use allowed by Tables 2-22, and 2-23 (Allowed Land Uses and Permit Requirements for the Special Purpose Zones) may include accessory ~~uses and structures~~ and uses that are customarily incidental to the primary use. ~~provided that~~

...

2. **Accessory to a Principal Permitted Use within the Coastal Zone.** Accessory structures and uses that are incidental, appropriate and subordinate to a use designated as a Principal Permitted Use (PP) may be considered a component of the Principal Permitted Use, and permitted as a Principal Permitted Use, in compliance with the following:

a. **Accessory to the principal permitted special purpose use.** For the purpose of determining whether an accessory development subordinate to the principal permitted special purpose use can be permitted as a component of the Principal Permitted Use, special purpose accessory structures and uses shall be limited to the following: Except as provided in Subsection E.2.b., below, any structure and/or use that is customarily a part of, and clearly incidental and secondary to a special purpose use, and does not change the character of the special purpose use, may be permitted as a component of the Principal Permitted special purpose use.

- ~~(1) Equipment, maintenance, and other minor outbuildings.~~
- ~~(2) Infrastructure.~~
- ~~(3) Landscaping.~~
- ~~(4) Parking.~~

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7. **Modification 14: Elimination of flexibility is approving certain lot line adjustments.** The

proposed revisions to Section 35.30.110 (Lot Line Adjustments) are requested to be revised as shown below. Requested added language is shown below with a double underline and restores the language to the language as submitted.

35.30.110 - Lot Line Adjustments

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B. Required findings for approval. The approval of a Lot Line Adjustment application shall require that the review authority first make all of the following findings.

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3. Except as provided in this Section, all lots resulting from the Lot Line Adjustment shall comply with the minimum lot size requirements of the applicable zone. A Lot Line Adjustment may be approved that results in one or more lots that are nonconforming as to size, provided that it complies with all of the following requirements.

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c. The Lot Line Adjustment will not result in a greater number of residential developable lots than existed prior to the adjustment. For the purposes of this Subsection B.3 only, a lot shall not be deemed residentially developable if the documents reflecting its approval and/or creation identify that, 1) the lot is not a building site, or 2) the lot is designated for a non-residential purpose including well sites, reservoirs and roads. A lot shall be deemed residentially developable for the purposes of this Subsection B.3 if it has an existing one-family dwelling constructed in compliance with a valid County permit, or existing and proposed lots comply with all of the following criteria.

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(6) Environmentally sensitive habitat.

(a) Coastal Zone. Within the Coastal Zone, development of the lot avoids or minimizes or minimizes impacts where appropriate where appropriate to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

(b) Inland area. Within the Inland area, development of the lot avoids impacts to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.

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8. Modification 21: Restrictions on minor improvements located near coastal bluffs and bluff staircases and access ways. The proposed revisions to Section 35.60.060 (Bluff Development - Coastal Zone) are requested to be revised as shown below. Requested added language is shown below with a double underline.

35.60.060 - Bluff Development - Coastal Zone

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C. Landscaping, grading, and drainage. Within a required blufftop setback, drought-tolerant vegetation shall be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements (e.g., patios and fences that do not require structural foundations or otherwise impact bluff stability) may be permitted but in no case shall minor ancillary structures or improvements be sited closer than 15 feet from the bluff edge except as provided in Subsection C.1., below. Ancillary structures shall be removed or relocated landward when threatened by erosion. Surface water shall be directed away from the top of the bluff or be handled in a manner satisfactory to prevent damage to the bluff by surface and percolating water.

1. Fences required for safety purposes and public facilities that qualify as minor improvements (e.g., public bike paths and trails) may be located closer than 15 feet from the bluff edge but in no case shall said fences and public facilities be located closer than five feet from the bluff edge.

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E. Bluff face development, drainage structures. No development shall be permitted on the bluff face, except for engineered staircases or access ways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face.

1. Lawful staircases and access ways that provide beach access and are not available for use by the general public that existed as of [date of certification of the LUDC] are determined to be legal, conforming structures and are not subject to the restrictions of Chapter 35.101 (Nonconforming Uses, Structures, and Lots).

9. Modification 34: Codifying potential sea level rise scenarios. Proposed new Section 35.60.070 is requested to be deleted and replaced with the following text which re-organizes the text of the modification as suggested by Coastal Commission staff in a more efficient manner and includes the allowance for the use of a sea level rise rate based on the best available scientific information available at the time of project review.

35.60.070 Coastal Hazards Analysis– Coastal Zone

The following standards are applicable within the Coastal Zone only. Development at nearshore sites shall comply with the following standards.

A. General requirements for coastal hazard analysis.

1. The best available scientific information with respect to the effects of long-range sea level rise shall be considered in the preparation of findings and recommendations for all requisite geologic, geo-technical, hydrologic, and engineering investigations.
2. All development located at nearshore sites shall be analyzed for potential coastal hazards from erosion, flooding, wave attack, scour and other conditions in conjunction with sea level rise scenarios indicated below depending on the type of development, and shall also consider localized uplift or subsidence, local topography, bathymetry, geologic conditions, and potential tsunami inundation areas.
3. The hazard analysis shall be used to identify current and future site hazards, to help guide site design and hazard mitigation and identify sea level rise thresholds after which limitations in the development's design and siting would cause the improvements to become significantly less stable.

B. Residential and Commercial, Coastal Hazard Analysis in Consideration of Sea Level Rise.

1. The coastal hazards analysis for residential and commercial development shall utilize a range of potential sea rise scenarios from three to six feet per century unless the best available scientific information available at the time of project review supports a different range of potential sea level rise scenarios.
 - a. For design purposes, residential and commercial projects shall assume a minimum sea level rise rate of three feet per century unless the best available scientific information available at the time of project review supports a different minimum sea level rise rate.
 - (1) A greater sea level rise rate shall be used if the development is expected to have a long economic life, or if the proposed development has few options for adaptation to sea level higher than the design minimum, or if the best available scientific information at the time of review supports a higher design level.

C. Energy Facilities and Other Critical Development, Coastal Hazard Analysis in Consideration of Sea Level Rise.

1. The coastal hazards analysis for critical facilities, energy production and distribution infrastructure, and other development projects of major community significance shall be performed for using a minimum rise rate of 4.5 feet per century unless the best available

scientific information available at the time of project review supports a different minimum potential sea level rise rate.

a. For design purposes, energy projects and critical infrastructure shall assume 4.5 feet per century unless the best available scientific information available at the time of project review supports a different minimum sea level rise rate.

(1) A greater sea level rise rates shall be used if the development is expected to have a long economic life, or if the proposed development has few options for adaptation to sea level higher than the design minimum, or if the best available scientific information at the time of review supports a higher design level.