

Draft Findings of the Monterey County LCP Periodic Review

CHAPTER 10: Implementation & Administration

Table of Contents

CHAPTER 10: Implementation & Administration.....	429
A. Coastal Act Policy Framework	429
B. Monterey County Certified Local Coastal Program	429
C. Preliminary Local Coastal Program Implementation Issues	430
1. Overview	430
2. Issues Analyzed In Detail	431
a. Issue IM-1: Enforcement	431
(1) Enforcement Program and Cases Background	431
Tracking of Violations	431
Nature of Violations	432
Penalties	432
Program Management.....	433
Public Input.....	433
(2) Implementation Issues	434
b. Issue IM-2: Easement Program	435
(1) Easement Program Background	435
(2) Implementation Issues	439
3. Other Implementation Issues	440
a. Issue IM-3: Coastal Zone Boundary and Permit Jurisdiction.....	440
(1) Background.....	440
(2) Implementation Issues	440
b. Issue IM-4: Exemptions and Emergencies	440
(1) Background.....	440
(2) Implementation Issues	440
c. Issue IM-5: Amendments and Extensions of Locally Approved Coastal Development Permits	441
(1) Background.....	441
(2) Implementation Issues	441
d. Issue IM-6: Allowable Uses, Conditional Uses, Non-conforming Uses, and Variances	442
(1) Background.....	442
(2) Implementation Issues	442
e. Issue IM-7: Application Requirements.....	442
(1) Background.....	442
(2) Implementation Issues	442

f. Issue IM-8: Noticing	443
(1) Background.....	443
(2) Implementation Issues	443
g. Issue IM-9: Local Coastal Program Amendments and Documents	443
(1) Background.....	443
(2) Implementation Issues	443
h. Issue M-10: Intergovernmental Coordination	444
(1) Background.....	444
(2) Implementation Issues	444
I. Issue IM-11: Information Updating	445
(1) Background.....	445
(2) Implementation Issues	445

CHAPTER 10: Implementation & Administration

A. Coastal Act Policy Framework

A core principle of the Coastal Act is to maximize the public's ability to participate in planning and regulatory decisions. Section 30006 of the Coastal Act requires:

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

To facilitate such participation, the Coastal Act and the *California Code of Regulations* establish specific procedures for processing coastal development permits (CDPs) at the local level following local coastal program (LCP) certification, as well as for administering amendments to the certified plan. This includes specific procedures regarding the provision of public notices and hearings, and opportunities to appeal certain local decisions on CDPs to the Coastal Commission.

Another important objective is to ensure that the development review process provides adequate information to identify potential impacts to coastal resources and analyze LCP consistency. At the same time, these procedures should be structured in a way that maximizes efficiency. Thus, permit-processing requirements may vary depending on the type, extent, and significance of the development, or LCP amendment, being proposed. The Coastal Act and *California Code of Regulations* provide a range of procedures to account for this.

B. Monterey County Certified Local Coastal Program

Regulations for implementation of the County LCP are found primarily in *County Code* Chapters. All development within Monterey County's coastal zone requires a coastal permit, unless it is exempted in specific cases. "Development" is defined in the County's LCP as it is in Coastal Act Section 30106b with clarifications for changes in intensity (including transfer of development credits), grading and site disturbance (archaeological/historical sites), and major vegetation removal. The exemptions are those taken basically verbatim from Coastal Act Sections 30610 and 30106 and corresponding *California Code of Regulations* 13250-13253 and 13359 at the time of certification (the latter have since been revised). Development located within defined scenic road corridors cannot be exempted from permit requirements.

Depending on the type of development, coastal permits may be issued by the Zoning Administrator, Subdivision Committee, or Planning Commission. The *Code* contains an internal appeal provision to the Board of Supervisors, at no fee.

The *County Code* contains noticing, hearing, appeal and other procedures that follow those outlined in Article 17 of the *California Code of Regulations*. The *County Code* also contains procedures for Coastal Commission staff review of easement documents, consistent with Section 13574 of the *Code of Regulations* and the Commission's standard forms at the time of certification (the latter have since been revised).

The County's coastal permit procedures parallel those of the Coastal Commission's in many other respects as well, including emergency permits, required findings, permit amendments, permit assignments, revocations, condition compliance, and enforcement remedies.

The County's *Coastal Implementation Plan* (CIP) attempts to be internally consistent among all the various provisions. Coastal regulations are not to be superseded by other regulations. For example, definitions within the coastal regulations supersede those found elsewhere in the County's zoning ordinance. The *County Code* does allow conditional variances (which are all appealable) but only for variances as to yard setbacks, coverage, and area requirements and not to allow override of Land Use Plan policies. The *County Code* also allows some development on any existing lot of record, if consistent with all zoning provisions other than those for minimum lot size density.

C. Preliminary Local Coastal Program Implementation Issues

1. Overview

Implementation of the LCP involves many steps, from application through public noticing and hearing to monitoring, enforcement and condition compliance. This chapter provides a preliminary indication of the issues involved with LCP procedures, and the way in which they are implemented in Monterey County with regards to conformance with the Coastal Act and the *California Code of Regulations*. Many of the issues presented earlier in this report contain an implementation component. Because this Periodic Review focused on key LCP policy recommendations, in part to coordinate with the County's 21st Century Monterey County General Plan update process, the procedural issues identified in this section will be discussed further with County staff and the community and may lead to specific recommended revisions as the County prepares its updated zoning code revisions. Some of the issues raised may be ones that may not actually require code changes but may be best be addressed through discussions on improved procedures. Most of these issues were identified by reviewing comments Commission staff has sent to the County over the years. Two issues – enforcement and easements – are reviewed in more detail below.

In addition, the County and Coastal Commission staff are aware of the benefits of increased training and coordination with regard to processing coastal permits and LCP amendments. To the extent resources allow, staff will pursue opportunities to share information from the GIS system developed for this Periodic Review.

2. Issues Analyzed In Detail

a. Issue IM-1: Enforcement

(1) Enforcement Program and Cases Background

Certification of a local coastal program gives a local government the authority to carry out enforcement actions in response to violations of its LCP *County Code*. Chapter 9 of the Coastal Act contains enforcement policies that enable local governments with certified LCPs to issue their own restoration orders, to request that the Commission issue cease-and-desist orders, or to pursue litigation for appropriate injunctive and monetary relief to resolve unpermitted development activity.

Also as part of the Periodic Review, Commission Central Coast enforcement staff met with County Code Enforcement staff and management in December 2002, February and March 2003, to discuss how the County's code enforcement program functions, how current County enforcement ordinance(s) and proposed changes are or would be implemented, how enforcement cases are tracked, how case resolution occurs, and how county enforcement staff coordinate with other department and agency staff. The County developed and adopted a program in October 2001 called "*Mitigation Monitoring and/or Reporting Program*," that applies to all issued permits. The program contains a set of procedures for the County to follow regarding mitigation and compliance monitoring, reporting, and enforcement to ensure compliance with conditions of an approved permit.

Tracking of Violations

The County's Code Enforcement Program has been active since LCP certification. Since 1988, the number of coastal zone enforcement cases opened and closed by the County's Code Enforcement Program has been in the hundreds, if not thousands. Each code enforcement officer is responsible for working on between 80 and 100 enforcement cases at any given time.

Up until 1997, the County tracked their cases using an old, outdated mainframe computer. They utilized a data system that kept data on individual cases by case number and status -- open/pending, closed or suspended. The County did not sort information based upon violation issue type (grading, removal of vegetation, placement of structure, etc.). In 1997, the County installed and began using a new database system -- *PERMITS Plus* -- to track their cases. In converting the data kept on the old mainframe computer system to the new *PERMITS Plus* system, many of the cases, especially closed cases, were somehow not converted and now cannot be tracked or accounted for by the County.

A query of the *PERMITS Plus* database for enforcement cases opened by the County from January 1, 1997 through December 11, 2000, shows a total of 479 cases pursued or being pursued by the County, distributed equally between open/pending, suspended, no merit and closed cases. The results of the query also lacked case specificity. There were no dates for when the cases opened or closed, so length of time to resolve violations was not tracked. Another query of cases received by Code Enforcement from January 1, 2000 through March 24, 2003, shows a total of 348 cases pursued or being pursued by the County. Of these cases, 235 (68 percent) were for open/pending cases, 52 (15 percent) were no merit cases, and 61 (17 percent) were closed cases.

Nature of Violations

Since the County implemented its certified LCP in 1988, caseload volume has varied, as have the type, nature, resource impact, location and time required for achieving case resolution. In the early years of County coastal enforcement efforts, many of the violations involved reports of unpermitted grading and property owners placing and occupying trailers on their land without coastal development permits (CDPs). In the mid to late 1990s, the most common type of violation in the County's coastal zone was unpermitted grading. Today, especially in the North County planning area, many of the violations involve the removal of major vegetation - trees, maritime chaparral, pickleweed, etc. in environmentally sensitive habitat areas (ESHA) near or in wetlands.

Queries of more recent cases using the *Permits Plus* system, as noted above, bear this out. Since 1997, the most common type of violation Countywide, as well as in the Big Sur Coast planning area, was unpermitted grading. In the North County planning area, the most common type of violation was the placement of travel trailers or mobile homes without a CDP, followed by grading and the removal of vegetation in environmentally sensitive habitat areas without CDP. There were also a substantial number of violations for converting garages to living units without permits. In the Carmel planning area, the most consistent violation was the remodel of single-family dwellings without a CDP.

Penalties

At the time of LCP certification, the County acknowledged that its LCP would only be as effective as its enforcement of permit requirements. Initially, the County envisioned that possible violations of the LCP would be referred to the County Planning and Building Inspection Department for investigation. Violations in the coastal areas would be resolved by imposition of civil penalties provided for in Chapter 9 of the Coastal Act.¹ When the County LCP was certified in 1988, the County included ordinance language (Section 20.142.150) that allowed the County to seek the same monetary penalties included in Chapter 9 of the Coastal Act. However, the County's Coastal Implementation Plan Section 20.104.030 also defines coastal violations to be misdemeanors or infractions of the *County Code*. Section 20.104.040 provides penalty language that authorizes the County to collect fines not exceeding \$100 for a first violation, \$200 for a second violation within one year, and \$500 for each additional violation within one year. Chapter 20.104 also allows for recordation of enforcement notices and abatement procedures for activities defined as a public nuisance.

Since certification in 1988, the County has often treated violations as misdemeanors or infractions under *County Code* Sections 20.104.030 and 20.140.040. The County has rarely enforced actions utilizing *Code* Section 20.142.50 that mirrors Coastal Act penalties, and consequently, collected penalties have not resulted in deterring violations from occurring in the coastal zone. Based on recent discussions with County Code Enforcement staff, it appears that the County only imposes the fines set forth in *County Code* Section 20.104.040, which allows a fine not to exceed \$1,000 for any

¹ The County stated in the *North County LUP* (certified in 1982) that, "violations in the coastal areas may be punished by imposition of civil penalties provided for in the *Coastal Act* rather than by misdemeanor prosecution normally used by the County."

county code violation. In the Commission's enforcement experience, a fine of a \$1,000 maximum per violation is not sufficient to deter potential violators. Would-be violators might view a maximum \$1,000 dollar fine as a necessary cost of doing business and might be more likely to violate knowing that they only face a maximum penalty of \$1,000.

Thus, the County's enforcement efforts have not always resulted in successful resolution of existing violations and/or prevention of future potential violations. Successful enforcement should rectify the unpermitted activities by restoring the land, permitting the activity and/or collecting appropriate monetary penalties when appropriate to deter violations from occurring in the coastal zone.

Program Management

To evaluate the County's enforcement program, Commission staff reviewed approximately 35 County enforcement open/pending and/or closed case files that were opened from 1986 through March 2003. Cases varied in length of time taken to resolve the case. Some of these cases were quickly resolved but others were open for quite a long time, almost 20 years in a few instances. Coastal Commission staff has faced similar enforcement issues over the years. In response, the Commission has found that establishing priorities for pursuing high priority cases and closing low priority cases could offer an alternative for expediting resolution of cases.

Over the years, the Code Enforcement Program has been administered and managed by different departments, including the County Planning and Building Inspection and Environmental Health Departments. This may have resulted in shifts in priorities and procedures. The Code Enforcement Program is currently a part of the County's Environmental Health Department. Separation of enforcement from planning staff in different departments and locations can increase the need for closer coordination in order to mutually investigate and resolve an alleged violation of unpermitted development or condition compliance. Such coordination is important to ensure that Code Enforcement staff knows if the coastal permit conditions have been fulfilled. As of July 1, 2003, the Code Enforcement Program has been integrated into the Planning and Building and Inspection Department.

In addition, rapid enforcement may be delayed by a lengthy appeals process available to individuals, which can undercut program deterrence. Currently, once County Code Enforcement opens a violation case against an individual they send out a Notice of Violation action letter to the alleged violator. Within the notice the enforcement staff specifies to the alleged violator the appropriate action to take. However, the alleged violator can appeal the required violation action to County management, the County Planning Commission and the Board of Supervisors, who are given responsibility for deciding the appropriate resolution of a coastal violation case (dismissal, fines, penalties, etc.). Although the County's practice is to give alleged violators 30 days after they receive the Notice of Violation letter to comply with the actions necessary to abate the violations, there are examples of cases remaining open for many years at the County without apparent resolution.

Public Input

As part of this Periodic Review, Commission planning staff met with County planning staff and one of the Monterey County Land Use Advisory Committees (LUAC) to gather input at the local level. In a meeting in March 2002, LUAC members expressed concerns that the County should be more diligent in enforcing the LCP to protect against resource damage. They also expressed concerns that intra-agency coordination needs to be improved so that County departments can address enforcement cases and issues in a consistent and coordinated manner.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements to enforcement procedures. This may result in more specific *Code* and procedural changes to address the following:

- Adequacy of fines for code violations commensurate with the severity of the violation and consistent with penalty levels included in both the Coastal Act and the County LCP;
- Streamlining of enforcement appeals procedures;
- Coordination between Code Enforcement and County Planning staff to actively enforce violations of conditions of coastal permits, as well as with staff from other agencies such as the Coastal Commission Enforcement Division, Department of Fish and Game, US Fish and Wildlife Service, Regional Water Quality Control Board and other responsible local, state and federal agencies;
- Balanced diligence in pursuing violations of the County's LCP committed by either private or public entities;
- Development of public education materials to educate and inform the general public and other agencies about the County's LCP and how to contact County Code Enforcement and/or Coastal Commission staff if the public observes or hears about an alleged violation;
- Measures to pursue priorities in enforcement cases, taking into consideration such things as severity of the violation with regard to coastal resource impacts (i.e., to public access, environmentally sensitive habitat areas, scenic/visual, coastal recreation, etc.), location within a particular land use planning area, violator recidivism, and extent of time required for resolution, etc; and
- Effective implementation of monitoring condition compliance and mitigations required by an approved permit as outlined in the County's "*Mitigation Monitoring and/or Reporting Program.*"

b. Issue IM-2: Easement Program

(1) Easement Program Background

To mitigate impacts of new development, Monterey County often requires the granting of property restrictions over certain resource areas as conditions of approved coastal permits. Usually the property restriction is in the form of a scenic and conservation easement to be granted to the County. Some examples of resource areas where easements are imposed include areas within the Big Sur critical viewshed, slopes greater than 25% (in North Monterey County) or 30%, and environmentally sensitive habitat areas. Such easement requirements are specified in the local coastal program. Based on such provisions Monterey County has required approximately 90 easements as conditions of coastal permits in North Monterey County and perhaps another 50 or so in the rest of the coastal zone; the precise number is not tracked.

The following analysis describes the necessary components of an easement program and outlines possible improvements in the County's process. The County has faced many of the same problems encountered by the coastal Commission in establishing an effective program to manage easements required through the coastal program. This section is based in part on a San Jose State University masters student's thesis reviewing the effectiveness of land conservation measures focusing on North Monterey County.² Also, the Commission's experience with both Public Access Easements and Conservation Easements has provided some insight into components necessary to effectively implement easement requirements, and the challenges in staffing and funding such a program. Many of the suggestions put forward in this report mirror ones that the Commission itself continues to work on in its programs. The Commission recognizes that these improvements may need to be phased in. Such requirements could be implemented in all future easements, but compiling documentation on past easements will require more time and resources. The Commission and County have an opportunity to coordinate on easement programs to more effectively track and monitoring these mitigation requirements.

The first step in the easement process is to determine and precisely map where an easement should be located, what its purpose is, and what may and/or may not occur there in the future. These clarifications should occur at the time when the permit is being considered. These points should be made explicit in the permit findings and conditions in order to both ensure that LCP policies are followed and that there is no subsequent confusion over these parameters and also should be part of the recorded document.³ Typically the County conditions a permit as follows:

A scenic easement shall be conveyed to the County over those portions of the property where [sensitive habitats, archaeological sites, etc.] exists. Scenic [or other relevant] easement deed to be submitted to and approved by Director of Planning and Building Inspection prior to issuance of building permits. (Planning and Building Inspection Department)

² Nunes, Lisa, "Evaluation of Land Conservation Measures for North Monterey County," Masters thesis, San Jose State University, May 2002.

³ This report did not analyze whether easements were actually required in all instances where the LCP would so mandate them.

However, permit review has indicated that the precise easement location is not always shown as part of the permit. In a few cases, the researcher could not even find a map of the easement area. While it is usually clear from the permit findings and conditions what is to be protected in a general sense (e.g., lands over certain percentage slope or a sensitive habitat), the more detailed parameters of what the protection entails, including what can or cannot occur in the easement area, as well as a graphic depiction of the easement area, are sometimes lacking. Also, since the County typically requires easements for portions of a parcel over 25% slope in North County, there is some ambiguity if this area also contains another resource worthy of protection. To respond to similar concerns, the Coastal Commission in its permit requirements has required more specific documentation of easements to be provided as part of condition compliance.

The second step in the easement process is to establish a baseline assessment of the easement area. This is necessary if monitoring is to occur in the future. For example, easements usually restrict future building, but there may already be an existing structure within the easement area. Some developments were discovered in easement areas by the student researchers who were unable to determine whether or not they existed prior to establishment of the easement. In most cases the student researcher found that it was possible to discern from the permit file where existing development occurred on the site at the time.

Details regarding the baseline, or initial condition of a site are also helpful for those cases where some management or restoration of an easement area will be required. Not all required easement areas are in pristine condition. For example, sensitive plant communities may include some bare ground or non-native species. Knowledge regarding the extent and location of these areas at the time of permit approval is necessary for designing and then monitoring the success of a restoration program. Most County permit files lack this information in any detail and the County LCP does not have a provision to require such baseline assessments. The researcher found only vague descriptions of existing conditions for required easement areas in some cases, such as “wooded” or “brush[y].” While many permit files contain biologic reports, these reports often concentrate on the portion of the parcel to be developed, rather than the portion that will go into easement. Yet, some of these reports do specifically at least delineate areas that they recommend be placed under easement. Rarely did files contain aerial photographs of the site in question, which are often of great assistance in evaluating previous conditions. In future coastal permits, the County should require a more comprehensive documentation.

The third step is to perfect the easement document. This involves precisely defining the area to be placed within the easement, the uses allowed and/or prohibited, and the party(ies) responsible for management, monitoring and restoration when required. The precise location of easements should be provided both descriptively (in text) and mapped, to scale, on a site plan, aerial photograph, or other such scaled basemap. As noted, the County does not typically set these parameters in the permit conditions, leaving it to the applicant and staff to agree on such precise language and delineations for the legal document. The County *Coastal Implementation Plan* contains sample legal documents that were in use by the Coastal Commission in the mid-1980’s and could use some updating (Appendix 10 of Part 6 of the Implementation Plan is the model scenic and conservation easement

form). Based on these, most easement documents have a section containing restrictions, exceptions, and reservations to describe permitted and restricted uses. In many cases, the researcher found descriptions of how the area was to be protected “(e.g., clearing of vegetation for agricultural purposes shall not be permitted on areas in excess of 25% slope, existing oak woodlands and chaparral located on areas in excess of 25% slope shall be left undisturbed and in their native state).”

The County is the default agency to accept most easements. However, the County is not currently in the position to actively monitor or manage the easements. The LCP provides that in the Del Monte Forest planning area, easements are to be accepted and managed by the Del Monte Forest Foundation. Other potential candidate entities to pick up easements may be the Elkhorn Slough Foundation (for habitat and scenic easements in North County); the Agricultural and Historical Trust (for agricultural easements in North County); the State Parks or State Lands Commission (for access easements near their facilities); and the Big Sur Land Trust (for most other easements in Big Sur). Such entities may even be willing to take over easements that the County has already obtained or to contract with the County for monitoring of these existing easements. Procedures should be developed that reflect the steps necessary to provide for future transfers to more appropriate managing entities, as well as potential funding mechanism, since non-profit agencies may be reluctant to accept easements without some form of endowment to fund management of such areas. The County does not currently require endowments for management of such areas.

Step four is to ensure that the document committing the easement is effectuated. *County Code* Section 20.64.280 contains a multi-step process for review and recordation of easements. Discussion with County staff indicates that before a building permit is issued, conditions have to be signed off. All easement documents go to the Board of Supervisors for review and then are to be recorded. A short staff report is written based on a review of the documents by County Counsel. Under *County Code* Section 20.64.280.A.6.g, which is based on the *California Code of Regulations*, all such documents are to be forwarded for legal review by the Coastal Commission as well. The Commission, however, has only been sent a handful of these documents to review, often with little time for review. There have been at least two cases where Coastal Commission review has revealed problems (i.e., the easement area shown did not cover all the resource areas it was supposed to cover) that as far as is known were never corrected. Research also revealed that some permits have been issued without the required legal documents being recorded.

The fifth step is to manage the easement. This may require a passive approach (e.g., ensure that no development occurs in it) or an active approach (e.g., habitat restoration). Even passive management may evolve into active management due to natural or indirect factors, such as invasive plants taking root in the easement area. Most easements do not address the specific type of management strategy to take. The sample easement states, “that except for roads and trails [and a blank space for other exceptions], the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made” and no use of the property shall occur “which will or does materially alter the landscape or other attractive scenic features...” In some cases biological reports and/or permit conditions require some type of on-going maintenance (such as

exotic plant removals) in easement areas, however, these requirements are not always translated into the legal document itself.

The sixth step is monitoring of easement requirements and the physical condition of the easement. The County has a permit tracking system, but this system does not contain information on easement requirements. Overall tracking that compiles and organizes all records of easements in some fashion (e.g., hard copy; computerized; tied to a GIS) would facilitate monitoring of easement requirements. For the two theses mentioned in this Periodic Review, the researchers had to determine where easements were required on their own and to find and inspect the corresponding permit files to extract the information related to the easements.⁴ The Coastal Commission has faced similar problems. Compiling information from older files and retaining information electronically is a continuing challenge, but it offers an ability to monitor the easements more efficiently.

Typical monitoring programs would inspect sites on a periodic, or annual basis. Some non-profit land management agencies conduct flights to help evaluate and manage their holdings. Use of aerial photography is also possible, as was employed by the two researchers, provided aeriels are made available. For on-site monitoring to work, the easement holder has to have access to the site and be able to identify the easement area. The sample documents do give grantees the right to go on-site. Whether they can find and access the specific easement area may be more problematic without maps of specific definition of easement areas; the researchers encountered some impediments in this regard.

The County does have a “Mitigation, Monitoring, and/or Reporting Program” which lists each permit mitigation measure and how it is to be implemented. To the extent that easement requirements are mitigation measures, they would be included. However, this would be limited to whether the easement was recorded rather than whether its provisions were being followed over time. Monitoring is necessary to ensure that there is no unauthorized disturbance of easement areas. Site visits by the researchers did find some disturbances, although as noted, given the lack of baseline data, it was difficult to tell whether disturbance occurred following or prior to establishment of the easement.

The seventh and final step is effective enforcement. Like the Coastal Commission, the County has no distinct enforcement program currently in place for addressing easements; rather, its normal enforcement provisions apply. As such, enforcement of easement requirements should be considered in any improvements to the enforcement program as discussed under Issue IM-1: Enforcement.

In conclusion, the County measures requiring easements and the County’s willingness to accept the easements serve to protect coastal resources by assuring effective mitigation of impacts. The Commission recognizes that significant resources may be necessary to establish a comprehensive

⁴ Nunes, Lisa, “Evaluation of Land Conservation Measures for North Monterey County,” Masters thesis, San Jose State University, May 2002, and Tami Nakahara, “Management Strategies For Central Maritime Chaparral,” Masters thesis, San Jose State University, in preparation.

easement program, but such a program is an important means to assure that the LCP is implemented consistent with the Coastal Act. There are many opportunities to develop a successful easement program, potentially including other entities that have experience and expertise to monitor, maintain, and enforce easement requirements over time. In the absence of such a program, coastal resources that such easement areas are designed to protect may be degraded over time.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements for development of an effective easement program. This may result in more specific *Code* and procedural changes to address the following:

- Updating of sample easement language forms;
- Consistency of policies as to when easements are to be required;
- Developing permit findings and conditions that clearly specify the area to be placed in easement, the purpose of the easement, and the parameters of the easement;
- Providing adequate graphic depiction of the easement area;
- Developing procedures to ensure that easement parameters specified in the permit are carried over into the legal documents, including those incorporated by reference (such as biologic/geologic report recommendations) and including any other specific restrictions and exceptions;
- Developing procedures to ensure that the Coastal Commission is given timely opportunity to review the legal documents as required;
- Developing methods to track all easements, including a centralized compilation of all easement material related to the easement within the County's and Coastal Commission's permit tracking databases;
- Developing effective monitoring and maintenance programs for all easements, including potential funding mechanisms;
- Acceptance of all outstanding easements; and
- Establishing clear enforcement responsibility and penalties for instances of non-compliance with the terms of the easement.

3. Other Implementation Issues

a. Issue IM-3: Coastal Zone Boundary and Permit Jurisdiction

(1) Background

In carrying out its LCP, the County must often make determinations concerning regulatory jurisdiction. Correct jurisdictional decisions can often avoid later problems and delays in coastal permitting.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to boundary issues. This may result in more specific *Code* and procedural changes to address the following:

- Access to accurate maps of the coastal zone showing jurisdictional and appeal boundaries;
- Coordination with the Coastal Commission in processing permits that fall partly or entirely within the Coastal Commission's retained permit jurisdiction so as to assure that both agencies correctly apprise applicants of their respective requirements;
- Timing of discretionary approvals required at the local level pursuant to an authority other than the Coastal Act so that they are obtained prior to directing applicants to apply to the Coastal Commission for a coastal permit (or permit amendment) in areas of retained jurisdiction;
- County provisions for processing development permits (e.g., design approval permits) in the Coastal Commission's retained coastal permit jurisdiction that are clear with regard to their relationships with the coastal permit and the local coastal program; and
- Procedures to amend permits issued by the County to be consistent with coastal permits issued by the Coastal Commission on appeal.

b. Issue IM-4: Exemptions and Emergencies

(1) Background

In carrying out the LCP, granting of exemptions from coastal permit requirements and issuance of emergency permits can conflict with other provisions of the LCP.

(2) Implementation Issues

As the County develops revised *Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to procedures for exemption and emergency permits. This may result in more specific *Code* and procedural changes to address the following:

- County provisions for exempting proposed projects from coastal permit requirements that conform to Coastal Act and *California Code of Regulation* rules, are internally consistent, and are uniformly implemented;
- County coordination with the Coastal Commission over questions of whether a proposed project is exempt from the need to obtain a coastal permit;
- A timely process for resolving disputes as to whether a proposed project is exempt from the need to obtain a coastal permit, consistent with regulations Section 13569;
- Emergency situations that meet the required definition of emergency under Coastal Act Section 30624 and regulation 13329 to qualify for emergency coastal permits;
- Requirements to ensure follow-up coastal permits are issued for all approved, non-temporary emergency developments.

c. Issue IM-5: Amendments and Extensions of Locally Approved Coastal Development Permits

(1) Background

In carrying out the LCP, granting of amendments and extensions from coastal permit requirements can conflict with other provisions of the LCP.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to procedures for amendments and extensions of coastal permits. This may result in more specific *Code* and procedural changes to address the following:

- Ensuring that amendments and extensions for permits that are appealable to the Coastal Commission are so noticed and processed by the County;
- Ensure that proposals processed as minor amendments are truly insignificant and that proposals for such amendment(s) include (an) adequate description(s) and the complete identification of any issues raised by the proposal; and
- Ensure the timely processing of permit extensions. Processing of amendments to design approvals associated with coastal permits as coastal permit amendments as well, where the project description has changed from the description in the original coastal permit approval.

d. Issue IM-6: Allowable Uses, Conditional Uses, Non-conforming Uses, and Variances

(1) Background

In carrying out the LCP, granting of variances, actions on non-conforming uses and disputes over allowable uses can conflict with other provisions of the LCP.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to permit issues. This may result in more specific *Code* and procedural changes to address the following:

- Ensuring that there is only one “principal permitted use” per zoning district for appeal purposes (i.e., all other condition uses or other permitted uses are appealable to the Coastal Commission); and
- Ensuring that all conditional and other permitted uses are appealable.

e. Issue IM-7: Application Requirements

(1) Background

In carrying out the LCP, adequate application requirements are necessary to ensure adequate review of proposed development for compliance with provisions of the LCP.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to application requirements. This may result in more specific *Code* and procedural changes to address the following:

- Developing clear procedures for determining what supplemental reports are required for a coastal permit application and for ensuring consistent application of these procedures throughout the coastal zone; and
- Submittal of adequate information required to render a decision on a coastal permit is obtained prior to the decision. Developing procedures to ensure coastal permit applicants and agents have valid property interests and that corporate or institutional applicants are appropriately identified.

f. Issue IM-8: Noticing

(1) Background

In carrying out the LCP, adequate public noticing is required to ensure implementation consistent with the Coastal Act.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to public noticing. This may result in more specific *County Code* and procedural changes to address the following:

- Follow-up noticing when a coastal permit matter is continued or appealed;
- Ensuring that Coastal Commission staff receives notification of all pending coastal permit applications within the time required by *California Code of Regulation* Sections 13565 through 13568;
- Ensuring that Coastal Commission staff receives notices of all final actions taken on County coastal permits, waivers and exceptions, including emergency coastal permits, within the time required by *California Code of Regulation* Sections 13570 through 13572;
- Ensuring that the final local action notice for County coastal permits contains required and sufficient information for Commission review, including any referenced materials (e.g., consultant reports referenced to be followed in a condition of a coastal permit), site plans and maps, to allow adequate LCP and Coastal Act consistency review; and
- Ensuring that hearing notices and final local action notices correctly indicate if a coastal permit is appealable to the Coastal Commission, and the actions necessary to file such an appeal;

g. Issue IM-9: Local Coastal Program Amendments and Documents

(1) Background

In carrying out the LCP, procedures for amending the LCP and maintaining accurate up-to-date documents are essential to ensure adequate public participation and adequate review of coastal development permits.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to amending and maintaining the LCP document. This may result in more specific *Code* and procedural changes to address the following:

- Clarification of any LCP amendments, including any revisions to *County Code* sections, that were previously approved by the County but not by the Coastal Commission, to either repeal the local action or submit an amendment for certification;
- Providing clear and consistent language in *County Code* chapters as to what constitutes components of the LCP. Make explicit that all components, when amended, must also be submitted as LCP amendments for Coastal Commission approval;
- Ensuring that *Coastal Implementation Plan* provisions (including Appendix 13 of Part 6) addressing the processing of LCP amendments are clear and internally consistent;
- Reproduction of the LCP, or production of replacement page inserts, following Coastal Commission approval of any LCP amendments, such that any final resolutions and texts (or maps) needed to effectuate the amendment are prepared and incorporated into the document. Updating of the LCP document to reflect all currently approved amendments and to correct any unintentional errors. Maintenance of the updated LCP in electronic format available on the Internet and consistency between the printed and web based versions; and
- Consistent definitions of the same term throughout the LCP and *County Code* (e.g., structure includes fencing in Carmel Area policy 2.2.4.9 but does not in Title 20).

h. Issue M-10: Intergovernmental Coordination

(1) Background

In carrying out the LCP, intergovernmental coordination is essential to maximize public participation and ensure adequate implementation of the LCP.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Coastal Commission staff will continue to discuss improvements related to intergovernmental coordination. This may result in more specific *Code* and procedural changes to address the following:

- Implementation of Other Agency/Program Recommendations. For the recommendations of the Periodic Review listed under “Other Agency/Program Recommendations,” the County may not be the agency with primary implementation responsibility. The County does, however, have an important role in working with agencies to carry out these program improvements;
- Improved coordination regarding LCP implementation. For example, encourage and improve coordination with other agencies involved with the projects for which the County issues coastal permits; encourage participation of various agencies, including the Coastal Commission, when conducting training sessions for its staff on coastal matters; and

emphasizing training of staff from other County departments on the implementation of the LCP and on the Commission's retained jurisdiction;

- Tracking of permits issued;
- Maximizing resource and permit information sharing between the County and Coastal Commission staff;
- Developing procedures for coordination with the Coastal Commission to proactively identify issues that may arise and result in an appeal in order to minimize the number of actual appeals;
- Identifying opportunities for resolving matters appealed to the Coastal Commission and for expediting resolution of appeals, where appropriate;
- Prompt transmittal of the complete County record on any appealed coastal permit to the Coastal Commission; and
- Improving coordination between the 21st Century Monterey County General Plan update and State Parks and Recreation General Plan update(s) or preparations for individual park units.

I. Issue IM-11: Information Updating

(1) Background

In carrying out the LCP, monitoring of coastal permit processing is often a key component of carrying out certain LCP policies and is necessary to implement the LCP in conformity with the Coastal Act.

(2) Implementation Issues

As the County develops revised *County Code* provisions in response to the 21st Century Monterey County General Plan update, the Commission staff will continue to discuss improvements related to permit tracking. This may result in more specific *Code* and procedural changes to address the following:

- Required tallies (e.g., how many units have been approved in North County and caretakers units in Big Sur) clearly stated on all permits, pursuant to *County Code* Section 20.64.180.G.3;
- Ensuring that final project descriptions contained in adopted staff reports match the final project approval; and
- Ensuring that final project descriptions contained in the adopted staff reports contain the detail necessary to understand how the relevant LCP provisions are to be followed (e.g., number of trees to be removed by species; maximum floor area ratio and site coverage).