



Legislation Text

File #: 2022-1038, **Version:** 1

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Permit Sonoma
Staff Name and Phone Number: Gary Helfrich, (707) 565-2404
Vote Requirement: Majority
Supervisorial District(s): Countywide

Title:

1:45 PM -Sonoma County Local Coastal Plan Update (PLP13-0014)

Recommended Action:

Hold a public hearing and adopt the Local Coastal Plan update as recommended by the Planning Commission.

Executive Summary:

The California Coastal Act requires local governments in the Coastal Zone to either prepare a Local Coastal Program or to formally ask the California Coastal Commission to do so. To preserve local control, Sonoma County has prepared a Local Coastal Program. The Local Coastal Program must regulate land use and protect coastal resources consistent with the Coastal Act. The Coastal Commission then must certify that it complies with the Coastal Act. In Sonoma County, the Local Coastal Program consists of three components: Local Coastal Plan, Coastal Zoning Ordinance, and Coastal Administrative Manual.

The Sonoma County Local Coastal Plan update has been a 9-year long process, involving extensive public outreach, research, and numerous revisions. The Planning Commission opened the public hearing for the Local Coastal Plan on July 26, 2021 and concluded the hearing on June 29, 2022 and has recommended a draft of the Local Coastal Plan for adoption by the Board of Supervisors.

After the Board of Supervisors adopts the Plan, and the California Coastal Commission certifies it, Permit Sonoma will begin implementation of the Plan by updating the Coastal Zoning Ordinance and Coastal Administrative Manual for consistency. These updates are anticipated to be developed in early 2023 and will go through the same process of Planning Commission recommendation, Board of Supervisors adoption, and Coastal Commission certification as the Local Coastal Plan.

The Local Coastal Plan is intended to be consistent with the General Plan, but where policy areas overlap, the policy which on balance is the most protective of coastal resources takes precedence.

Discussion:

Background:

General Plan 2020 adopted Land Use Program 1 as part of the 2008 General Plan update. The Land Use Program 1 identifies a need to update the Local Coastal Plan in order to improve integration and consistency with the General Plan while assuring that the Local Coastal Plan remains consistent with and carries out the policies of the California Coastal Act ([Coastal Act link <https://www.coastal.ca.gov/coastact.pdf>](https://www.coastal.ca.gov/coastact.pdf)) The

California Coastal Act declares that that the basic goals of the state for the coastal zone are to:

- (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

To initiate the Local Coastal Plan Update, County staff held three public workshops in spring 2013 as part of the initial scoping and plan update process. Input received was used to develop a *Preliminary Review Draft*, which was released in June of 2015. Six additional workshops were held after publication of the *Preliminary Review Draft*, but lack of staffing and inadequate funding delayed development of a final public review draft.

In September of 2019, the *2019 Public Review Draft* was published and presented to the public in a series of 12 public workshops, ending with a Board of Supervisors workshop session on May 25, 2021. In response to public input and direction received from the Board of Supervisors, Permit Sonoma Staff prepared the *Revised Public Review Draft 2021*, which was considered by the Sonoma County Planning Commission at their July 26, 2021 meeting. The Planning Commission determined that given the scope of the plan and significant public interest, the hearing would be continued on a monthly basis to consider the *Revised Public Review Draft 2021* on an element-by-element basis beginning in October of 2021. As part of this extended hearing schedule, Permit Sonoma and Coastal Commission staff worked together to provide the Planning Commission with a line-by-line markup of the *Revised Public Review Draft 2021* to improve consistency with the California Coastal Act.

The Planning Commission review was held on the following dates:

- Oct 7, 2021: Review noise policy, establish hearing schedule
- Nov 10, 2021: Public Safety and Public Facilities Elements
- Dec 9, 2021: Agricultural Resources, Water Resources, and Circulation & Transit Elements.
- Jan 13, 2022: Cultural Resources and Land Use Elements.
- Feb 3, 2022: Land Use continued and Open Space & Resource Conservation Elements.
- Mar 3, 2022: Open Space & Resource Conservation (continued) and Public Access Elements.
- Mar 28, 2022: Review of Coastal Commission recommendations and direction for preparing revised draft.

Consistent with direction from the Planning Commission, Permit Sonoma staff prepared the Revised Public Review Draft - June 2021 of the Local Coastal Plan, incorporating all of the Coastal Commission staff recommendations, as well as recommendations provided by the Planning Commission during the meetings to

date.

On June 29, 2022, the Planning Commission held a 7-hour hearing for final review and recommendation to the Board of Supervisors. The *Planning Commission Recommended Draft July 2022* incorporates these recommendations to the Board of Supervisors.

On August 30, 2022, the Board of Supervisors held a public workshop to provide direction to staff and provide an opportunity for public input on the *Planning Commission Recommended Draft July 2022*.

Plan Reorganization

In response to Coastal Commission input, elements begin with descriptions of element purpose, relationship to other elements, and complete text of relevant sections of the California Coastal Act. The proposed policies now directly quote Coastal Act sections rather than paraphrase text. In elements with multiple topic areas, separate subsections for each topic are provided listing goals, objectives, policies, programs, and incentives relevant to the topic. This reorganization also resulted in comprehensive renumbering of goals, objectives, policies, programs, and incentives.

Revision Notes

The following parenthetical notes are included in the *Planning Commission Recommended Draft July 2022* to allow tracking of changes and recommendations:

GP2020	General Plan 2020 policy that has been incorporated into the Local Coastal Plan
GP2020 Revised	General Plan 2020 policy that has been incorporated with revisions into the Local Coastal Plan
Existing LCP	Policy carried over from the 2001 Local Coastal Plan.
Existing LCP Revised	Policy from the 2001 Local Coastal Plan that has been revised.
New	Policies that were identified as new in the June 2021 Public Review Draft Local Coastal Plan.
CCC Revised	Revisions recommended by the Coastal Commission as part of their review of the <i>June 2021 Public Review Draft</i> .
PC Revised	Revisions to the <i>June 2021 Public Review Draft</i> recommended by the Planning Commission.

Future Plan Review and Update

A challenge in preparing this update of the Local Coastal Plan was that the current plan has not had a review or significant revision since it was certified by the Coastal Commission on December 12, 2001. To encourage timely incremental updates, the Planning Commission recommends adding the following to Section 2 of the Local Coastal Plan introduction:

“Consistent with Coastal Act Section 30519.5, Sonoma County shall review the Local Coastal Program and amend as indicated by this review every five years after certification by the California Coastal Commission.”

Policy Recommendations

The June 29, 2022 staff memo to the Planning Commission contains a comprehensive list of changes that have been recommended by the Planning Commission. Below is a summary of these recommendations. Recommendations received by the public since the Board of Supervisors August 30, 2022 Local Coastal Plan public workshop are discussed as well within each of the Planning Commission topic areas.

Sea Level Rise:

The California Coastal Commission staff advised Permit Sonoma that Local Coastal Plans should use a specific measurement above current sea level to develop policy rather than using a future date as was the case in the *2019 Public Review Draft*.

During the Planning Commission hearing, the National Oceanic and Atmospheric Administration (NOAA) published the “Global and Regional Sea Level Rise Scenarios for the United States” in late February of 2022 (Attachment 4). This document, prepared in partnership with U.S. Environmental Protection Agency, National Aeronautics and Space Administration, U.S. Geological Survey, U.S. Army Corps of Engineers, U.S. Department of Defense, and the University of Hawaii at Mānoa represents a significant advance in climate change science and provides the best forecasts of sea level rise and associated impacts currently available.

An important finding of the NOAA study is that new information supports a 2.1-meter (7 foot) rise in sea level by 2100, assuming that global climate emissions continue to increase unabated.

In consideration of this report, the Planning Commission policy recommendations for resource protection, public facility resiliency, land use, and public safety assume the projected worst case scenario of a 7-foot increase in sea level. Given the rapidly evolving scientific understanding of climate change and sea level rise, and the significance of how these change will impact the Sonoma Coast, Policy C-PS-1d requires evaluating and updating hazard data every 3 years, or at intervals recommended by responsible agencies, whichever is more frequent.

Cultural and Historic Resources

The Local Coastal Plan recognized that cultural resources are tied to the identity and practices of Native American peoples, and their relationship to and identification of these resources is much different than the relationship the general non-native community has to them. The new policies in the Cultural and Historic Resources Element are intended to recognize and protect these resources.

Visitor Serving Use Campgrounds, Specific Area Policies, and Vacation Rentals

Section 5 of the Local Coastal Plan Land Use Element establishes policies for visitor serving commercial uses. Staff recommended changes are included in Attachment 9 and discussed below.

Campgrounds

The Sonoma Coast currently has 1,083 campground spaces, which account for over half of all overnight accommodations available to visitors. Additionally, campgrounds are a critical component to providing equitable access, as campground spaces represent the most affordable accommodations available. In addition to adding campground references to Policy C-LU-5e, it is also recommended to add a new policy allowing campgrounds in all land use categories where campgrounds will not interfere with the principally permitted use or have a significant adverse impact on coastal natural resources.

Site specific policies.

The current Local Coastal Plan contains a range of policies recognizing specific visitor serving uses that were established before the Coastal Act, which for the purpose of this staff report will be referred to as legacy uses. Further, the current Local Coastal Plan intentionally allows these legacy uses to continue but establishes specific policies to regulate future expansion of them. The Planning Commission recommended retaining those specific policies for expansion of legacy uses, but staff recommends that these policies be removed, in favor of regulating future expansion of the legacy uses pursuant to the same standards as other existing visitor serving uses. This would create uniform and clear policies for regulating expansions. Expansion of existing facilities, and new uses would need to be consistent with Local Coastal Plan land use policy and the Coastal Zoning Ordinance. Staff's recommendation for removing these policies is part of Attachment 9.

Vacation Rentals

On August 2, 2022, the Board of Supervisors adopted changes to the Coastal Zoning Ordinance and an amendment to the Local Coastal Plan that requires Vacation Rentals in the coastal zone to obtain a Vacation Rental License that establishes standards of operation, and a Zoning Permit that qualifies a parcel for a vacation rental subject to occupancy limits and site standards, such as parking and septic capacity.

The coastal zone component of the Vacation Rental Program must be certified by the Coastal Commission before going into effect but will likely be heard by the Coastal Commission prior to the Local Coastal Plan. The Vacation Rental Program will adopt the portion of Program C-LU-5-P1 shown in bold below. The remainder of the program will be adopted as part of the Local Coastal Plan update.

Program C-LU-5-1P: Establish performance standards for the use of existing residences for vacation rentals and hosted rentals. In developing standards consider: requirements for designated property managers, safety, parking, noise, and number of guests allowed for day time and nighttime occupancy. In addition to performance standards, identify areas where high concentration of vacation rental would impact environmentally sensitive habitat areas, water quality, or coastal access and develop land use policy to avoid these impacts.

Bodega Bay Public Utilities District

Bodega Bay Public Utilities District (BBPUD) raised a concern regarding Policy C-WR-3c, which requires public water systems to prepare master facilities plans. BBPUD objected to this requirement as it is redundant with information, monitoring, and reporting the District is required to provide to the State Water Resources Control Board and Regional Water Quality Control Board. Staff recommends the following change to Policy C-WR-3c to address concerns of BBPUD:

Policy C-WR-3c: Require public water systems to prepare master facilities plans that contain, but are not limited to, the following items and information. **In the case of water districts that are required to**

report this information to state regulatory agencies, a copy of reports submitted to these agencies can be provided in lieu of a master facilities plan:

Fire Fuel Management:

Climate change will continue to increase wildfire risk throughout California. The Open Space and Resource Conservation Element Program C-OSRC-7 is intended to streamline vegetation management programs that reduce fire fuel risk and improve the health of coastal forest ecosystems.

Noise Element:

The *2019 Public Review Draft* Local Coastal Plan Noise Element was duplicated from the Sonoma County General Plan Noise Element. These policies are intended to protect people from the adverse effects of exposure to excessive noise but do not consider or establish standards for noise impacts on biological resources. The Planning Commission recommended replacing the Noise Element with resource specific policies in the Land Use and Open Space and Resource Conservation Element.

Water Resources:

The Water Resources element was developed in recognition of the importance of water to the environment, economic stability, agricultural protection, and overall quality of life of Sonoma County Coast residents. New policies and policy revisions are intended to implement the goals of the California Sustainable Groundwater Management Act, manage development in the context of limited groundwater resources, and accommodate the impact of climate change on water availability and the effect of sea level rise on water quality.

In addition to the policies found in the Water Resources Element, Public Facilities and Services Element Program C-PF-1 will create a total water supply and use budget for the Sonoma County Coastal Zone that considers future impacts on water including, but not limited to: loss of groundwater to salt water intrusion, potential droughts, increased water usage for increased development, and fire suppression.

Environmentally Sensitive Habitat Areas (ESHA):

Policies C-OSRC-8a through C-OSRC-8e identify policy regarding biological studies, ESHA determination, and requirements to prevent disruption of habitat values. Because mapping of ESHA is constantly evolving due to regulatory changes, new information, and scientific discovery, these policies clarify that maps in the Local Coastal Plan are limited to providing general guidance but are not determinative of the presence of ESHA. Only a site-specific analysis that identifies the presence of ESHA using specific criteria will dictate the applicability of ESHA policies for a site or development. This recommendation to use a site-specific evaluation based on current site characteristics will lead to more accurate ESHA identification, than use of a generalized less accurate static map, and as a result will improve protection of coastal natural resources. This recommendation is also consistent with Coastal Commission guidance to use criteria-based ESHA designations rather than relying upon map-based designations.

Marine Habitats Policies C-OSRC-6c and C-OSRC 6e:

Comments have been received noting that policies C-OSRC-6c and C-OSRC-6e could be misinterpreted to prohibit beach access or any use of the shoreline in areas that have been used by harbor seals or sea lions at any time, past or present. This is not how the County interprets the policies.

Policy C-OSRC-6c: Public access to Offshore Rocks and onshore nesting/rookery areas used by seabirds

to breed or nest or which provide habitat for seals and sea lions shall be prohibited.

Staff Comment: This policy is based on the current Local Coastal Plan Recommendation 39, which states: “Prohibit public access to offshore rocks which are designated as seabird rookeries and nesting areas, and to habitats of seals and sea lions.” This policy has been in place for 21 years and interpretation of “habitat of seals or sea lions” has not created any conflicts between coastal access or use of adjoining private property. The County has consistently interpreted this policy to mean activities with potential to disturb seabird rookeries and nesting sites, and temporary exclusion from areas physically occupied by marine mammals. In the case of seals and sea lions, the public access prohibition applies to nursery areas during pupping season, and haul out areas such as the mouth of the Russian River where public access could result in harassment of marine mammals by human interaction. Staff recommends no change to this policy.

Policy C-OSRC-6e: Disturbance of marine mammal haul-out grounds shall be prohibited and recreational activities near these areas shall be limited to passive recreation. Public access to may be temporarily prohibited in nursery areas during seal pupping season. Disturbance or development of areas used by harbor seals and sea lions shall is prohibited.

Staff Comment: This policy is intended to resolve the potential conflict between public access and protection of resources that occurs during pupping season. Disturbance of marine mammal haul-out grounds is prohibited by the federal Marine Mammal Protection Act, and any disturbance or take of habitat requires a letter of authorization from NOAA National Marine Fisheries Service. An example is the annual breaching of the Russian River sandbar, where National Marine Fisheries Service allows incidental take (“Level B” - harassment only) by Sonoma Water that is associated with estuary management activities. Staff recommends adding the following to the last sentence of Policy C-OSRC-6e:

“Disturbance or development of areas used by harbor seals and sea lions shall be prohibited, **unless authorized in writing by National Oceanic and Atmospheric Administration National Marine Fisheries Service.**”

Pesticide Regulation

The Planning Commission recommends including a prohibition on pesticide use modeled on the City of Malibu pesticide ban that was recently certified by the Coastal Commission. While pesticides have potential short-term as well as cumulative impacts to coastal resources, California Food and Agriculture Code section 11501.1(a) preempts local governments from “prohibit[ing] or in any way attempt[ing] to regulate any matter relating to the registration, sale, transportation, or use of pesticides.” In passing this law, the Legislature found that “matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration.”

Although it restricts local authority to regulate pesticides, the Food and Agriculture Code does not limit the authority of state agencies. In the opinion of the Coastal Commission, the Commission is authorized to regulate pesticides in order to carry out the Coastal Act, and when the County exercises its authority in the Coastal Zone, it does so under the State’s authority. For that reason, County Counsel has concluded that Food and Agriculture Code does not preempt local regulation in the coastal zone to implement LCP policies that regulate pesticides. The proposed policies mirror the policies that the Commission approved in Malibu.

Maintaining and Managing Public Access Policy C-PA-1i

County counsel has commented that compelling a private landowner to provide a new accessway because they decline to continue providing access could be a taking, absent facts that there were prescriptive rights. Counsel also pointed out that the Martin's Beach case in San Mateo County clarifies that a Coastal Development Permit can be required. Accordingly, the following change to Policy C-PA-1i is recommended:

Policy PA-1j: Require a Coastal Development Permit for closure of privately owned or controlled accessways that are open to public use or vacation of rights of way associated with public access or that provide access to existing or proposed access points. ~~Proposals to close accessways and/or vacate rights of way shall be required to demonstrate that equivalent public access will be maintained within the property boundary or on an immediately adjacent parcel where the owner is willing to provide an access easement that does not adversely impact coastal natural resources. If providing alternative on-site or adjacent access is not feasible, offsite access may be considered if found to provide the same or greater access to the same area of the coast as the access point being closed.~~

Public Access at the Estero Americano:

Many comments have been received concerning access to the Estero Americano, both in support and in opposition to public access to the coast in this area. Opponents have raised issues of trespassing, vandalism, damage to Environmentally Sensitive Habitat Areas (ESHA) and requested that all references to public access to the Estero Americano be removed from the Local Coastal Plan. Proponents have argued that access to the coast is a right protected by the California Constitution and the Coastal Act, and further, that existing environmental impacts have to do with agricultural operations and not visitors. There are also disputes regarding access easements that go well beyond the scope of the Local Coastal Plan.

The Estero Americano is located within the Valley Ford Subarea on Figure C-PA-1k and three proposed accessways and well as an alternative alignment of the California Coastal Trail are shown on this map. Currently, there is no public access to the Estero Americano. The California Coastal Trail alignment is Highway 1, and does not provide access to the Estero Americano. One of the three accessways (J-2) is owned by the Sonoma County Land Trust, who supports limited supervised public access to their property. Accessway J-4 is associated with an easement purchased by the Sonoma County Ag + Open Space District. The final accessway is a water trail associated with canoeing and kayaking in the Estero Americano and adjoining public trust lands.

Trails are resource dependent development and are not prohibited in ESHA, provided that measures are taken to protect "against significant disruption of habitat values." The Coastal Act specifically contemplates that recreation areas can be in, adjacent to, or near ESHA. With the exception of an accessway outside of the County's jurisdiction on the Marin County side of the Estero, the Planning Commission did not recommend removing accessways to the Estero Americano. The Planning Commission also recommended that Public Access maps (Figures C-PA-1a through C-PA-1k) clearly identify which public accessways are existing and which ones are proposed for future development and provide notice that proposed accessways are not available for public use until developed.

It should be noted that concerns regarding trespassing, vandalism and environmental damage being related to proposed accessways have been raised by a small number of landowners with property adjacent to the Estero Americano. No similar objections have been raised outside of this area, and no environmental advocacy

organizations have raised concerns regarding public access to the Estero Americano.

Policy Option: Estero Americano Access

1. Adopt access plan and associated map as recommended by the Planning Commission with language and symbols clarifying that no access exists at this time, and use of the accessway required landowner permission. Add a new symbol and language clarifying that the Estero Americano Water Trail (J-3) refers to the Estero and public trust lands within the intertidal zone and that access at the Valley Ford Estero Americano Road Bridge on the Sonoma County side is privately owned and will require acquiring an easement to allow use of this location to launch canoes and kayaks. Development of this accessway will not be necessary if Marin County opens the Marsh Road access to public use.
2. Remove all points identifying accessways on the map associated with the Estero Americano and add a policy to the Open Space and Resource Conservation Element acknowledging the public right to access public trust lands and strongly supporting development of accessways in locations where landowners have expressed an interest in providing access or where easements have been acquired that would allow development of public access.

Staff recommends Option 1. Accessway J-1 (Coastal trail along Highway 1) and accessway J-3 are intended to identify use of existing public rights-of-way or use of public trust lands. Only accessway J-2 and J-4 identify accessways across private property. As discussed above, Sonoma Land Trust (J-2) intends to allow limited supervised public access and accessway J-4 is across an easement purchased by the Sonoma County Ag + Open Space District.

Staff Recommendation: Adopt the Local Coastal Plan as recommended by the Planning Commission with amendments as directed by the Board of Supervisors and find the project statutorily exempt from the California Environmental Quality Act per Section 15265, Adoption of Coastal Plans and Programs.

Strategic Plan:

The Local Coastal Plan update supports Climate Action and Resiliency Goal 1 Objective 2 with policies that streamline vegetation management in high fire severity areas of the coast, Goal 5 Objective 1 with policies that protect natural resources, infrastructure, and development from impacts of sea level rise, and Resilient Infrastructure” Goal 4, Objective 2 with a program to encourage development of broadband infrastructure throughout the coastal zone.

Prior Board Actions:

Resolution 01-1469

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

- Att 1: Planning Commission Recommended Draft July 2022
- Att 2: Planning Commission Draft May 2022
- Att 3: Planning Commission Hearing Minutes July 26, 2021 through June 29, 2022
- Att 4: Planning Commission Staff Reports and Memos
- Att 5: Public comments and responses provided to the Planning Commission at the June 29, 2022 meeting
- Att 6: California Coastal Commission Comments and Element Markups
- Att 7: Guidelines for the Exclusion of Temporary Events
- Att 8: Public comments received since June 29 2020 Planning Commission Hearing
- Att 9: Staff recommended revision to Land Use Element Section 5 “Visitor Serving Commercial” goals, objectives, and policies
- Att 10: PC Reso Local Coastal Plan 2022-06-29

Related Items “On File” with the Clerk of the Board:

1. Additional public comments provided to the Planning Commission and Board of Supervisors
2. Revised Public Review Draft Local Coastal Plan-June 2021
3. 2001 Sonoma County Local Coastal Plan
4. Resolution 01-1469