

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 300  
SAN FRANCISCO, CA 94105- 2219  
VOICE (415) 904- 5200  
FAX ( 415) 904- 5400  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



To: Planning Directors of Coastal Cities and Counties  
From: John Ainsworth, Executive Director, California Coastal Commission  
Date: January 21, 2022

**Re: Implementation of New SB 9 Housing Laws in Sea Level Rise Vulnerable Areas**

---

As of January 1, 2022, SB 9 (Atkins) changed the way that local governments can regulate new residential development and lot splits in single-family residential zones within designated urban areas, with the goal of increasing housing density in those areas. The new housing laws added by SB 9, Government Code Sections 65852.21 and 66411.7, contain Coastal Act savings clauses. This means that, except for public hearing requirements, the Coastal Act continues to apply in full force in the coastal zone. Accordingly, certified Local Coastal Program (LCP) provisions continue to apply but, in most places, will need to be updated to conform with SB 9 to the greatest extent possible while still complying with the Coastal Act. This memorandum focuses on how to harmonize the new SB 9 requirements with LCP and Coastal Act policies in areas that are vulnerable to sea level rise because increasing residential density in these areas presents unique challenges and risks. When updating LCPs, local governments should keep in mind that LCP provisions must continue to be consistent with all applicable Coastal Act policies in all areas.

**I. Housing in the Coastal Zone**

The State of California is experiencing a critical shortage of affordable housing. In recognition of this critical shortage, the state Legislature passed numerous laws in recent years aimed at increasing construction of additional housing units, and preferably affordable units. Many of these measures, including SB 9, state that they do not supersede or lessen the application of the Coastal Act. The Coastal Commission (Commission) recognizes the particularly critical shortage of affordable housing in the coastal zone and has strongly supported strategies to increase access to affordable housing near the coast. To address housing shortages in the coastal zone over the long-term, new residential development must be built in locations and with designs that ensure it will be safe from hazards, have access to adequate public services, and will minimize coastal resource impacts.

Importantly, siting new housing in areas projected to be impacted by sea level rise, without planning for adaptation, will not address the housing crisis over the long-term and will instead put more residences and lives at risk and exacerbate housing shortages. The hazards and other impacts associated with sea level rise require local governments to plan carefully to ensure that new housing is safe both now and for future generations. Likewise, effective January 1, 2022, a

new section was added to the Coastal Act that explicitly requires the Commission to “take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.” (Pub. Res. Code § 30270.) While the Commission has considered sea level rise in its planning, policies, and activities for many decades, the new section of the Coastal Act further emphasizes the importance of accounting for sea level rise.

New residential development in the coastal zone must be consistent with Coastal Act and LCP policies, including requirements relating to protection of coastal resources and hazards, such as Coastal Act Sections 30250, 30253, 30235 and 30240, as discussed further below. In addition to these requirements, a variety of other provisions in the Coastal Act relate to housing in the coastal zone. As relevant here, the Coastal Act does not exempt local governments from complying with state and federal law “with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted.” (Pub. Res. Code § 30007.) The Coastal Act also requires the Commission to encourage housing opportunities for low- and moderate-income households (Pub. Res. Code § 30604(f)), but states that “[n]o local coastal program shall be required to include housing policies and programs.” (Pub. Res. Code § 30500.1.) Lastly, the Coastal Act regulates where new development can be sited. New residential development must be “located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it” or in other areas where development will not have significant adverse effects, either individually or cumulatively, on coastal resources. (Pub. Res. Code § 30250(a).) Land divisions, other than leases for agricultural uses, are permitted outside existing developed areas “only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.” (Pub. Res. Code § 30250(a).)

## **II. Overview of New Legislation**

As of January 1, 2022, SB 9 adds Government Code Sections 65852.21 and 66411.7, and amends Government Code Section 66452.6. The new laws apply only to parcels located in: (a) a city that includes some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, within the city’s boundaries; or (b) an unincorporated area, *and* the parcel is located entirely within either an urbanized area or urban cluster, as designated by the United States Census Bureau. (Gov. Code §§ 65852.21(a)(1), 66411.7(a)(3)(B).) Currently certified LCPs are not superseded by the new laws and continue to apply until an LCP amendment is adopted.

The new legislation makes two primary changes to existing law:

**a. Ministerial consideration of proposals to develop two or fewer residential units in urban areas**

For projects outside the coastal zone, local governments must now ministerially consider, without discretionary review, proposals to develop two or fewer residential units in a single-family residential zone in designated urban areas when certain criteria are met. (Gov. Code § 65852.21.) Proposals to construct two new residential units and proposals to add one new unit to a parcel with an existing unit are both covered by this section. (Gov. Code § 65852.21(i)(1).) For ministerial consideration of proposed residential development to be required, proposals must meet the many criteria set forth in the statute, including that rental of any new unit created is for a term longer than 30 days. (See Gov. Code § 65852.21(a), (d)-(g).) Local governments are free to adopt objective zoning, subdivision, and design review standards for development of residential units in any residential zone that do not conflict with Government Code Section 65852.21. (Gov. Code § 65852.21(b)-(c).) This new section of the Government Code does not supersede or in any way alter application of the Coastal Act, except that local governments are not required to hold public hearings for coastal development permit (CDP) applications. (Gov. Code § 65852.21(k).) This means that, aside from CDP public hearing requirements, Government Code Section 65852.21 does not override the Coastal Act or LCP policies implementing the Coastal Act, which may involve the application of discretion. Therefore, local governments should adopt LCP amendments with standards that harmonize with SB 9 requirements as much as is feasible and that also ensure such new development is consistent with the Coastal Act and any applicable LCP policies, including requirements relating to notice of local decisions to the public and the Commission.

**b. Ministerial approval of urban lot splits**

For projects outside the coastal zone, local governments must now ministerially approve lot splits that create no more than two new lots in single-family residential zones in designated urban areas when certain criteria are met, (Gov. Code § 66411.7). However, as with the new requirements regarding residential development, this section of the Government Code does not supersede or in any way alter application of the Coastal Act, except that local governments are not required to hold public hearings for coastal development permit (CDP) applications. (Gov. Code § 66411.7(o).) Accordingly, for projects in the coastal zone, review for consistency with Coastal Act and applicable LCP policies is still required, and that may involve the application of discretion. For ministerial approval to be required outside the coastal zone, proposals must meet the many criteria set forth in the statute, including that no more than two new lots are created, and that rental of any new unit created is for a term longer than 30 days. (See Gov. Code § 66411.7.) Although discretionary review is prohibited in these circumstances in non-coastal zone areas, local governments are free to adopt objective zoning standards, objective subdivision standards, and objective design review standards applicable to urban lot splits that do not conflict with Government Code § 66411.7. (Gov. Code § 66411.7(c), (e).)

Although the new laws do not supersede the Coastal Act, and the requirement for ministerial approval does not automatically apply in the coastal zone, the laws should be harmonized with the Coastal Act as much as feasible. This could be accomplished, for example, by updating LCPs to create a checklist of objective standards for qualifying projects so that little or no discretion is involved when considering them. Overall, local governments should adopt LCP amendments with standards to ensure that such new development is consistent with the Coastal Act and any applicable LCP policies, including requirements relating to notice of local decisions to the public and the Commission.<sup>1</sup>

### **III. SB 9 Application to Coastal Act Policies Generally**

Local governments should consider how to amend their LCPs to comply with SB 9 to the greatest extent possible, while continuing to be consistent with the Coastal Act. Approval of the types of lot split and residential development projects contemplated by SB 9 is likely to increase residential density in urban areas, both in terms of the overall number of residential units and in terms of the nature of the built environment itself. In some areas, this increase in density may be able to be accommodated with limited coastal resource impacts. However, in other areas, there may be cases where such projects cause significant adverse impacts to coastal resources such as public access, sensitive habitats, and recreation areas. (See Pub. Res. Code § 30250.) For example, approval of new residential development projects and lot splits pursuant to SB 9 would not be consistent with the Coastal Act if the projects are adjacent to environmentally sensitive areas (ESHA) and are not sited and designed to prevent impacts which would significantly degrade those areas, or are incompatible with the continuance of those habitat and recreation areas. (Pub. Res. Code § 30240.) Residential areas in the coastal zone are often intertwined with significant coastal resource areas, such as along the immediate shoreline, between the first public road and the sea, near LCP-designated scenic areas, and near sensitive habitat areas. LCPs generally include a myriad of provisions protecting these coastal resources; LCP provisions designed to implement SB 9 should not conflict with or inappropriately diminish any such LCP protections that already apply. At the same time, SB 9's focus on ensuring that applicable standards are objective and processed ministerially means that local governments should consider ways to evaluate the potential for coastal resource impacts at the LCP planning stage, such as by using checklists or other such ministerial tools that can be employed at the CDP application stage as much as possible. Local governments are encouraged to coordinate with Commission staff as they develop LCP provisions to implement SB 9.

---

<sup>1</sup> SB 9 also amends Government Code § 66452.6 to allow local governments to provide by ordinance an additional 24-month time period before an approved or conditionally approved tentative subdivision map expires.

#### **IV. SB 9 Application in Sea Level Rise Vulnerable Areas**

As described in Chapter 3 of the Coastal Commission's [2018 Update to the Sea Level Rise Policy Guidance](#) (SLR Guidance), as sea levels rise, tidal and groundwater inundation, flooding, wave impacts, bluff and beach erosion, saltwater intrusion, and other impacts are projected to worsen and further threaten residential development and coastal resources in the coastal zone. The applicability of SB 9 in areas vulnerable to the impacts associated with sea level rise is thus a critical concern.

##### **a. Development of two or fewer residential units in sea level rise vulnerable areas**

In many cases, increasing density in areas subject to sea level rise impacts without including appropriate siting, design, and mitigation features will not be consistent with Coastal Act policies. Proposals to develop two or fewer residential units pursuant to Government Code Section 65852.21 may be permitted in sea level rise-vulnerable areas if they can be developed in such a way as to be found consistent with the Coastal Act and LCP provisions, and can be designed and sited to be safe from hazards for the expected life of the structures. Proposed projects to construct two or fewer residential units pursuant to Government Code Section 65852.21 typically qualify as "development" under the Coastal Act because such projects usually involve "the placement or erection of any solid material or structure," and/or a "change in the density or intensity of use of land. . . ." (Pub. Res. Code § 30106.)<sup>2</sup> As new development, the new units must minimize risks to life and property in areas of geologic and flood hazard; assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area; and not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Pub. Res. Code §§ 30253, 30270; *see also* corresponding LCP provisions.) New residential development must be consistent with the Chapter 3 policies of the Coastal Act and any relevant LCP policies, including that they must be sited and designed to prevent significant degradation of adjacent sensitive habitats and recreation areas and to allow the continuance of those areas into the future (Pub. Res. Code § 30240(b)).

In some areas vulnerable to sea level rise, the risk of hazards during the anticipated life of the structure may be too great to permit development of two residential units on one lot if the new unit(s) cannot be sited and designed safely and consistent with relevant Coastal Act and LCP provisions. In other vulnerable areas, development may be permitted where adaptation strategies and special conditions can minimize hazard risks and avoid impacts on coastal

---

<sup>2</sup> As discussed in the Updates Regarding the Implementation of New ADU Laws Memorandum (Jan. 2022), conversion of existing habitable space within a single-family residence into another residential unit may not qualify as development if there are no major structural changes (e.g., changes to roofs, exterior walls, foundations, etc.) and no change to the size or intensity of use of the existing structure. (See Pub. Res. Code § 30106.)

resources. Local governments and applicants should refer to the Commission’s SLR Guidance when determining whether construction of residential units pursuant to Government Code Section 65852.21 in vulnerable areas is consistent with the Coastal Act and LCP policies. Chapter 7 of the SLR Guidance describes some of the adaptation strategies to consider when planning for development in sea level rise vulnerable areas. Some adaptation strategies may require land use plans or proposed projects to anticipate long-term impacts now. Other strategies may build adaptive capacity into the plan or project itself, such as special conditions that require elevation or removal of structures when certain triggers are met, so that future changes in hazard risks can be effectively addressed while ensuring long-term resource protection.

**b. Lot splits in sea level rise vulnerable areas**

As discussed above, Government Code Section 66411.7 requires ministerial consideration of urban lot splits in single-family residential zones in designated areas outside the coastal zone when certain criteria are met. “[S]ubdivision . . . and any other division of land, including lot splits,” qualify as “development” under the Coastal Act, thereby triggering the need for a CDP or other appropriate authorization. (Pub. Res. Code § 30106.) Lot splits also qualify as development because they constitute a “change in the density or intensity of use of land.” (*Id.*) As new development, proposals to subdivide land must:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(Pub. Res. Code § 30253.) New development must also be sited and designed to prevent significant degradation of adjacent sensitive habitats and recreation areas and to allow the continuance of those areas in the future. (Pub. Res. Code § 30240(b).) In addition, new development must be consistent with all Chapter 3 policies of the Coastal Act, including Sections 30210 through 30224 protecting public access and recreational opportunities; Sections 30230 and 30231 protecting marine habitats and water quality; Section 30250 requiring development to have adequate public services; and Section 30251 protecting visual resources. Subdivisions in areas with certified LCPs must also be consistent with corresponding, relevant LCP provisions. The Commission must also consider the effects of sea level rise in its coastal resources planning and management policies and activities, including those relating to new residential development. (Pub. Res. Code § 30270.)

The Commission’s SLR Guidance states that to comply with Section 30253 of the Coastal Act or the equivalent LCP section, projects will need to be planned, located, designed, and engineered

for the changing water levels and associated impacts that might occur over the life of the development. In addition, Chapter 7 of the SLR Guidance recommends concentrating development away from hazardous areas and limiting subdivisions in areas vulnerable to sea level rise. To be consistent with the Coastal Act, including how it is interpreted through the SLR Guidance, proposals to subdivide land in areas vulnerable to sea level rise should be considered very carefully for several reasons.

First, subdividing land projected to be negatively impacted by sea level rise in the foreseeable future is not a sound way to minimize risks to life and property in areas with high flood and geologic hazards. (See Pub. Res. Code § 30253.) Instead, subdivision in these areas is likely to increase risks to life and property by allowing for increased density and intensity of use of sites that are projected to be exposed to hazards such as tidal and groundwater inundation, flooding, wave impacts, bluff and beach erosion, and saltwater intrusion. Under SB 9, a lot currently zoned for a single-family residence could support many additional residential units. For example, a lot could be subdivided pursuant to Government Code Section 66411.7, and then two residential structures could be built on each of the newly divided lots pursuant to Government Code Section 65852.21. This scenario would result in four residences on a lot that, prior to SB 9, could only support one residence. When considering the circumstances in which residentially zoned lot splits (pursuant to SB 9 or otherwise) should be allowed in the coastal zone, local governments should consider whether each of the new lots would have a buildable area that is safe from coastal hazards for the foreseeable future without relying on shoreline armoring and could be developed in conformance with relevant coastal resource protection policies of the LCP and Coastal Act.

Second, it is important to analyze the safety of proposed lot splits over the longest feasible timeframe. Hazard analyses typically evaluate potential hazards for the expected life of the development. Unlike the development of residential structures that may only need to be safe for approximately 75-100 years, land divisions tend to be permanent and have little to no adaptive capacity. Although the SLR Guidance does not suggest a specific timeframe for the hazard analysis of proposed lot splits, it does note that projects that are expected to last indefinitely should consider time frames of 100 years or more, and this is also consistent with past Commission action. For example, Commission staff recently recommended denial of a proposal to subdivide property in Orange County that was particularly vulnerable to sea level rise because, among other reasons, the project did not minimize risks to life and property and could not assure stability and structural integrity of the project, as Section 30253 of the Coastal Act requires. ([Staff Report](#), Application Nos. 5-18-0907 & 5-18-0908, August 29, 2019.) The staff report found that the proposed subdivision could last in perpetuity, potentially long beyond the anticipated life of the proposed residential structure, and that both new lots would likely be subject to sea level rise impacts after the anticipated life of the residential structure. (*Id.*) After some deliberation with the Commission at the public hearing, the applicant [withdrew](#) its application and submitted a new proposal to build two single-family residences on the lot

without subdivision. The Commission [approved](#) the new application with the condition that the property cannot be subdivided now or in the future, among other conditions addressing the property's sea level rise vulnerabilities. ([Staff Report](#), Application No. 5-20-0646, May 21, 2021.) In the zoning context, the Commission [denied](#) a request by the County of Santa Barbara to amend its Land Use Plan (LUP) to rezone a single oceanfront property from recreation/open space to single-family residential because the property was projected to be impacted by hazards in the foreseeable future, among other reasons. The Commission found that the hazards analysis for a proposed land use designation change should consider hazards for the foreseeable future because “[u]nlike residential structural development, where the Commission generally analyzes whether the structure will be stable and safe for its expected life of 75 to 100 years, the land use designation change of a parcel would be more or less permanent.” ([Staff Report](#), Application No. LCP-4-STB-18-0039-1- Part D, July 10, 2019, p. 16.) Land divisions, like land use designation changes, may last in perpetuity. Thus, the Commission's past guidance and actions demonstrate that, in most circumstances, a hazard analysis for a lot split proposal should consider the longest time frame feasible.

Third, subdivision may limit the adaptation strategies available to individuals and communities as sea levels rise. Unlike structural development, which can be designed to incorporate adaptive elements like waterproofing, elevation, or relocation, subdivisions have little to no adaptive capacity; thus, it is not always feasible to mitigate the impacts created by subdivisions. Subdividing a parcel can also limit the opportunities to adapt to sea level rise on that land by decreasing the land available on a lot for existing development to be moved landward, or for new development to be sited in a more landward or higher elevation location. Land divisions also increase the number of property interests in a site. This can add cost and logistical complexity to community-scale adaptation strategies, making it harder to form and manage geological hazard abatement districts, negotiate buyouts, and implement conservation easements, and making it more difficult to minimize hazards and protect coastal resources in the future.

Lastly, allowing subdivisions in vulnerable areas may negatively impact coastal resources and public access. Coastal resources such as beaches and wetlands will migrate and naturally adapt due to future coastal erosion and sea level rise conditions. Increased residential density and intensity of use along the shoreline and in vulnerable areas may impact coastal resources through, for example, “coastal squeeze” where shoreline development prevents beaches and bluffs from migrating inland, which causes the narrowing and eventual loss of beaches, dunes, and other shoreline habitats as well as the loss of offshore recreational areas. Having fewer structures on relatively larger lots may allow more opportunities for those structures to adapt—for example, by being moved to other parts of the lot that are safer. Depending on the geography and other site-specific conditions, creating additional, smaller lots with more structures may reduce this adaptive capacity.



In light of the potential hazards and coastal resource impacts associated with subdivision in areas vulnerable to sea level rise, many local governments have avoided such land divisions. For example, Policy 7-2 of the City of Half Moon Bay's Local Coastal LUP limits "subdivisions in areas vulnerable to environmental hazards, including as may be exacerbated by climate change, by prohibiting any new land divisions, including subdivisions, lot splits, and lot line adjustments that create new building sites unless specific criteria [are] met that ensure that when the subject lots are developed, the development will not be exposed to hazards, pose any risks to protection of coastal resources, or create or contribute to geologic instability." Likewise, San Mateo County's LCP Implementation Plan (IP) requires applications for proposed subdivisions to include a development footprint analysis that comprehensively evaluates site development constraints and potential impacts, including sea level rise impacts, prior to approval of subdivision parcel maps. These LCP policies allow lot splits, such as those authorized by Government Code § 66411.7, but only when consistent with the Coastal Act.

### **c. Identifying areas vulnerable to sea level rise**

The best available, up-to-date scientific information about coastal hazards and sea level rise should be used to determine whether proposals for lot splits and new residential units in areas vulnerable to sea level rise are consistent with the Coastal Act and LCP provisions. Local governments and applicants should refer to the SLR Guidance when conducting this analysis.

Step 1: Identify sea level rise projections. First, identify the best available, locally-relevant sea level rise projections. In line with statewide guidance, the Commission currently recognizes the Ocean Protection Council's 2018 State Sea-Level Rise Guidance as the best available science on sea level rise projections for California.

- *Tide gauges.* Appendix G of the SLR Guidance includes sea level rise projections for every 10 years from 2030 to 2150 for 12 tide gauges along the California coast; the projections from the closest tide gauge to the project site should be used.
- *Planning horizon.* Hazard analyses typically evaluate potential hazards for the expected life of the development. Some LCPs include a specified design life for new types of development. If no specified time frame is provided, a time frame may be chosen based on the type of development. For proposed development of new residential units, it is generally appropriate to analyze sea level rise impacts for at least the expected life of the proposed structure(s), often 75-100 years for residential structures, as described in Chapter 6 of the SLR Guidance. Although situations may vary, local governments and applicants should typically use a longer planning horizon of at least 100 years for lot splits because, as described in subsection (b), land divisions are expected to be permanent, unlike many other kinds of development, and have a limited ability to adapt.
- *Risk aversion scenario.* Evaluate impacts from the "medium-high risk aversion" scenario, as described in Chapters 5 and 6 of the SLR Guidance. The SLR Guidance recommends

that all communities evaluate the impacts from the “medium-high risk aversion” scenario (p. 76), and that residential structures and projects with greater consequences and/or a lower ability to adapt use this projection scenario (p. 102). In addition, impacts under other risk aversion scenarios may be helpful to analyze.

Step 2: Analyze the physical effects of sea level rise. Analyze the following hazards under the medium-high risk aversion scenario: erosion of beaches, bluffs, cliffs, and other landforms; tidal inundation of shoreline areas; flooding (wave run-up and storm impacts); and saltwater intrusion and groundwater impacts, consistent with the SLR Guidance and Coastal Act and LCP requirements.

Step 3: Assess impacts to future development and coastal resources. Determine whether the proposed residential units and/or potential building sites on new parcels are vulnerable to sea level rise impacts.

Step 4: Determine whether proposed development is appropriate. Lastly, determine whether the proposed development is consistent with the LCP and Coastal Act as proposed, or can be made consistent with design modifications, adaptive strategies, or other conditions. Development of new residential units in areas projected to be impacted by sea level rise may be inconsistent with the Coastal Act or LCPs if adaptive strategies cannot minimize the risk of hazards and protect coastal resources, as discussed in subsection (a). Lot splits may be inconsistent with the Coastal Act or LCP policies if they occur in areas projected to be impacted by the hazards associated with sea level rise over the next 100+ years under the medium-high risk aversion scenario, as discussed in subsection (b). As described in the SLR Guidance, local governments should consider whether to “[p]rohibit any new land divisions, including subdivisions [and] lot splits . . . that create new beachfront or blufftop lots unless the lots can meet specific criteria that ensure that when the lots are developed, the development will not be exposed to hazards or pose any risks to protection of coastal resources.” (SLR Guidance, p. 130.) A lot split may be appropriate if the project site is not projected to be impacted by sea level rise hazards for the longest time frame feasible, typically at least 100 years, and is otherwise consistent with the LCP and Coastal Act.

## **V. Local Government Application of SB 9 in the Coastal Zone**

### **a. Update applicable LCP provisions**

Local governments in the coastal zone are required to comply with both the Coastal Act and, to the extent they do not conflict with Coastal Act requirements, the new SB 9 requirements. Currently certified provisions of LCPs are not superseded by Government Code Sections 65852.21 and 66411.7 and continue to apply to CDP applications until an LCP amendment is adopted. Where LCP provisions directly conflict with the new Government Code provisions or require refinement to be consistent with the new laws, those LCP provisions should be updated to be consistent with SB 9 to the greatest extent feasible while still complying with Coastal Act

requirements. As discussed above, when updating LCP policies to account for SB 9, local governments should also consider how proposed lot splits and residential development might impact public access, sensitive habitats, recreation areas, and other coastal resources. Local governments should also consider new LCP provisions that limit or prohibit subdivisions in areas vulnerable to sea level rise, and that appropriately account for coastal hazards and coastal resource impacts, including as exacerbated or associated with sea level rise, for new residential development.

Although a public hearing is not required under SB 9, public notice requirements still apply. LCP amendment applications should specify how local and Coastal Act public notice requirements will be fulfilled, including the notice requirements for: (a) pending action to interested parties prior to a local decision, and (b) notice of final action to the Commission and those who have requested such notice after a local decision. LCP amendment applications should specify the procedures for issuing a Final Local Action Notice (FLAN) for local decisions on applications for development that are appealable to the Commission. Some LCP amendments may qualify for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.)

**b. Review SB 9 applications consistent with the Coastal Act/LCP and SB 9**

Local governments should generally follow the below process when considering proposed SB 9 projects outside of areas that are potentially vulnerable to sea level rise.

Review Prior CDP History. First, determine whether a CDP or other form of Coastal Act authorization was previously issued for development of the site and whether that CDP and/or authorization limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Commission district office if a Commission-issued CDP and/or authorization limits the applicant's ability to apply to construct two or fewer residential units or split the lot.

Consider Possible Expedited Permitting Processes. Second, and only if an application proposes to undertake development in an area where it will be consistent with LCP and Coastal Act hazard and coastal resource protection policies, consider whether any expedited permitting processes, such as waivers or administrative permits, are available. If a local government's LCP includes a waiver provision, and the proposed lot split and/or residential unit development proposal meets the criteria for a CDP waiver, the local government may issue a CDP waiver in place of a CDP. The Commission has generally allowed a CDP waiver only when the Executive Director determines that the proposed development is de minimis (i.e., it is development that has no potential for any individual or cumulative adverse effect on coastal resources and is consistent with all Chapter 3 policies of the Coastal Act). Such a finding can typically be made when the proposed project has been sited, designed, and limited in such a way as to ensure any potential impacts to coastal resources are avoided (such as through habitat and/or hazards setbacks, provision of adequate off-street parking to ensure that public access to the coast is

not impacted, etc.). (See Pub. Res. Code § 30624.7.) Projects that qualify for a CDP waiver typically allow for a substantially reduced evaluation process and streamlined approval. It may be appropriate for local governments to use waivers to approve applications in both appealable and non-appealable areas to streamline permitting.<sup>3</sup> Local governments interested in exploring this option should consult with Commission staff. LCP amendment applications that propose to allow waivers in appealable areas should ensure that there are proper procedures for notifying the public and the Commission of approvals for individual, appealable waivers (such as Final Local Action Notices) so that the proper appeal period can be set, and any appeals received are properly considered.<sup>4</sup>

Require and Review a CDP Application. Lastly, if a proposal is not eligible for a waiver or similar expedited process authorized by the Coastal Act and the certified LCP, including because it is located in an area potentially subject to coastal hazards and/or future sea level rise hazards, it requires a CDP. (Pub. Res. Code § 30600.) The CDP must be consistent with the requirements of the certified LCP and any relevant policies of the Coastal Act. Local governments must provide all required public notice for any CDP applications for development covered by SB 9 and process the application pursuant to LCP requirements, but local governments are not required to hold public hearings. (Gov. Code §§ 65852.21(k); 66411.7(o).) Once the local government has made a CDP decision, it must send the required final local action notice of that decision to the appropriate Commission district office. If the CDP decision on the proposed project is appealable, a local government action to approve a CDP for the proposed project may be appealed to the Commission. (Pub. Res. Code § 30603.)

---

<sup>3</sup> Most, if not all, LCPs with CDP waiver provisions do not allow for waivers in areas where local CDP decisions are appealable to the Coastal Commission. There have been a variety of reasons for this in the past, including that the Commission's regulations require that local governments hold a public hearing for all applications for appealable development (14 Cal. Code Regs § 13566), and also that development in such areas tends to raise more coastal resource concerns and that waivers may therefore not be appropriate. However, under SB 9 provisions, public hearings are not required for qualifying development. Because of this, the above-described public hearing issue would not be a concern, so it could be appropriate for LCPs to allow CDP waivers in both appealable and non-appealable areas at least related to this criterion. Local governments should consult with Commission staff should they consider proposing CDP waiver provisions in their LCP.

<sup>4</sup> The development authorized by SB 9—specifically, residential lot splits and development of new residential units that change the intensity of use—are not types of development that the Commission has typically found to be exempt from CDP requirements as improvements to single-family residences. (See Pub. Res. Code § 30610; Cal. Code Regs., tit. 14, § 13250(a).) In addition, any development that is not designated as the principal permitted use under the approved zoning ordinance or zoning district map—such as lot splits—is appealable to the Commission. (Pub. Res. Code § 30603(a)(4).)

## **VI. Conclusion**

The Commission strongly supports increased access to affordable housing and increased residential density in the coastal zone. For new housing to be a long-term solution to the housing shortage, it must be sited and designed to be safe from hazards, such as sea level rise, and to not have significant adverse effects on coastal resources. Local governments should review their LCPs to determine what changes are necessary to implement SB 9 in a manner that is consistent with the Coastal Act and appropriate for local geography, and prepare and submit LCP amendments to the Commission as soon as is feasible.

*This document was developed using federal financial assistance provided by the Coastal Zone Management Act, as amended, under award NA19NOS4190073, administered by the Office for Coastal Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author and do not necessarily reflect the views of the National Oceanic and Atmospheric Administration or the U.S. Department of Commerce.*