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# F10a

**Prepared December 1, 2023 for December 15, 2023 Hearing**

**To:** Commissioners and Interested Persons

**From:** Stephanie Rexing, North Central Coast District Manager  
Isobel Cooper, Coastal Planner

**Subject: San Mateo County LCP Amendment Number LCP-2-SMC-23-0002-1  
(Pescadero Fire Station and School)**

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## SUMMARY OF STAFF RECOMMENDATION

San Mateo County indicates that the existing fire station that serves the unincorporated Pescadero area (about 15 miles south of Half Moon Bay) is located in a high-risk flood area and is regularly impacted by flooding, and that Pescadero Middle/High School only has access to drinking water from a contaminated well on-site and therefore has been reliant on bottled water to meet students' drinking water needs since at least 2017. The County intends to pursue projects that would provide for a replacement fire station next to the school (located near the intersection of Cloverdale Road and Butano Cutoff), and that would extend water service to that station and the school, but its current Local Coastal Program (LCP) does not allow for either. Thus, the County proposes to amend its LCP Land Use Plan (LUP) to redesignate approximately 1.5 acres of the proposed fire station site from "Agriculture" to "Institutional", and to modify a series of LUP public works provisions to explicitly allow for a fire station at that site, as well to allow water supply extensions to that site and the school. In other words, the proposed LUP changes are designed to facilitate future development projects, but only the proposed LUP changes are before the Commission in this proposed amendment, and any future projects would require their own CDP applications.

The proposed LUP changes raise two main issues: whether there is adequate water supply that it can be allocated as proposed, and whether redesignating the subject agricultural property to institutional purposes is appropriate. In terms of the former, updated County data shows that there is adequate water supply in the area to serve such uses, and such a change can readily be approved consistent with the Coastal Act. As to the land use redesignation, the site in question is not currently in agricultural production, but it is also prime agricultural land, and it doesn't meet any of the Coastal Act tests that would allow for it to be converted to non-agricultural uses as proposed. However, if the site is not redesignated as proposed, then the County indicates that there are no other feasible and less environmentally damaging fire station sites in the Pescadero area, and thus denial of the change would mean that the proposed LUP amendment would not adequately minimize risks to life and property as the existing fire

station would remain in a high-risk flood area, and would not adequately protect the special community of Pescadero, which is a well-known visitor destination, both as required by the Coastal Act. Faced with such conflicting Coastal Act directives, staff believes that, on balance, the redesignation better achieves important Coastal Act hazard minimization and special community objectives, even if it results in some (non-cultivated) agricultural conversion. As a result, such redesignation can be approved in this case.

Staff does recommend some modifications to ensure that the effect of the changes is sufficiently narrowed in scope to match the above understandings, and to ensure adequate coastal resource protection in any future CDP processes. As so modified, staff recommends that the Commission approve the proposed amendment. The required motions and resolutions are found on page 4 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on November 2, 2023. The proposed amendment affects the LCP's Land Use Plan (LUP), and the 90-working-day action deadline is January 31, 2024. Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until January 31, 2024 to take a final action on this LCP amendment.

Therefore, if the Commission fails to take a final action in this case (e.g., if the Commission instead chooses to postpone/continue LCP amendment consideration), then staff recommends that as a part of that action, the Commission vote to extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:*** *I move that the Commission extend the time limit to act on San Mateo County Local Coastal Program Amendment Number LCP-2-SMC-23-0002-1 to January 31, 2025, and I recommend a yes vote.*

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### **EXHIBITS**

Exhibit 1: Proposed LUP Amendment

Exhibit 2: Maps and Photos of the Area Affected by the Amendment

## 1. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make two motions on the LCP amendment in order to act on this recommendation. First, the proposed LUP amendment needs to be denied as submitted, then the LUP amendment needs to be approved as modified, to complete the staff recommendation.

### **A. Deny the LUP Amendment as Submitted**

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in denial of the LUP amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion to Deny:** I move that the Commission certify LCP Land Use Plan Amendment LCP-2-SMC-23-0002-1 as submitted by San Mateo County, and I recommend a **no** vote.*

***Resolution to Deny:** The Commission hereby denies certification of LCP Land Use Plan Amendment LCP-2-SMC-23-0002-1 as submitted by San Mateo County and adopts the findings set forth below on grounds that the Amendment as submitted does not meet the requirements of and is not in conformity with the provisions of Chapter 3 of the Coastal Act. Certification of the Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment as submitted.*

### **B. Approve the LUP Amendment with Suggested Modifications**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the LUP amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present:

***Motion to Approve:** I move that the Commission certify LCP Land Use Plan Amendment LCP-2-SMC-23-0002-1 as submitted by San Mateo County if it is modified as suggested in this staff report, and I recommend a **yes** vote.*

***Resolution to Approve:** The Commission hereby certifies LCP Land Use Plan Amendment LCP-2-SMC-23-0002-1, if modified as suggested, and adopts the findings set forth below on grounds that the Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of Chapter 3 of the Coastal Act. Certification of the Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

## 2. SUGGESTED MODIFICATIONS

The Commission suggests the following modifications to the San Mateo County proposed LCP Land Use Plan amendment, which are necessary to make the requisite Coastal Act consistency findings. If (a) San Mateo County accepts all of the suggested modifications within six months of Commission action (i.e., by June 15, 2024), by formal resolution and action of the Board of Supervisors; (b) the Executive Director reviews the County's action and determines that it is legally adequate to meet all of the Commission's conditional certification requirements; and (c) the Executive Director reports such determination to the Commission, the modified amendment will become effective upon such Executive Director report. Where applicable, text in ~~single cross out~~ and single underline format denotes proposed text to be deleted/added by the County. Text in ~~double cross out~~ and double underline denotes text to be deleted/added by the Commission.

### 1. Modify proposed new LUP Policy 2.60 as follows:

#### 2.60 Pescadero Fire Station

~~No provision of this Local Coastal Program shall be interpreted in such a manner as to prohibit, or effectively prohibit, the construction and use of a fire protection facility and related uses at 350-360 Butano Cut Off in the Town of Pescadero shall be allowed provided it, subject to conditions of a permit under 5.6(b)(6) that achieves maximum compliance with Local Coastal Plan policies, including that all of the following requirements must be met:~~

1. No less environmentally damaging feasible alternative site exists for the facility and related uses;
2. Clearly defined buffer areas are provided between the facility/related uses and adjacent agricultural uses sufficient to ensure no loss of adjacent agricultural viability and/or productivity;
3. The viability and/or productivity of any adjacent agricultural land will not be diminished;
4. Any related public service expansions will not impact agricultural viability and/or productivity, including by increased assessment costs or degraded air and water quality; and
5. The conversion of prime agricultural land is mitigated on at least a 2:1 basis.

### 2. Modify proposed updated "Notes" Line 6 of LUP Table 2.16 as follows:

County Fire Station No. 59 average daily (CSA-11) potable water use is estimated at 326 gpd for the proposed replacement station located at 350-360 Butano Cut Off (data based on actual use for the existing fire station facility at 1200 Pescadero Creek Road). Total ~~GPD~~ gpd demand in this Table includes the proposed fire station at Butano Cut Off (326 gpd) and removal of the barracks and continued emergency

~~staffing of the apparatus bay at 1200 Pescadero Creek Road of 8 days per year at (8 gpd) — 64 gallons per year). Source: Todd Groundwater, Town of Pescadero (CSA-11) Water Supply Yield and Sustainability Study, Final, March 31, 2021.~~

### 3. FINDINGS AND DECLARATIONS

#### A. Proposed LCP Amendment

The proposed amendment directly affects APN 087-053-010, located approximately 1 mile southeast of the main town area of Pescadero and about 15 miles south of Half Moon Bay in unincorporated San Mateo County (see **Exhibit 2** for location information). Owned by the La Honda-Pescadero Unified School District, the roughly 27-acre subject parcel contains the school as well as both active and fallow agricultural fields (see **Exhibit 2**, page 2 for reference). Pescadero Middle/High School, constructed in 1960, serves approximately 170 students in grades 6 through 12 and acts as an emergency evacuation center for the south County area. The rural nature of the region surrounding the school means that the student body is drawn from an area of over 175 square miles, where approximately 80 percent of the student body identifies as Hispanic.

The school's potable water supply was historically provided via an on-site groundwater well, but between 2015 and 2017 the well had four exceedances of nitrate and coliform maximum contaminant level standards for drinking water. Most recently, in 2017, the State Water Resources Control Board cited the school district for elevated nitrate levels in the well,<sup>1</sup> and directed the district to take necessary measures to bring the water source into compliance with regulatory drinking water standards before it could be used again. The well has not been cleared yet, and thus the school has been reliant on bottled water for drinking since the 2017 citation. To solve this public health problem, the County wants to connect the school to the Community Service Area 11 (CSA-11) water delivery system, and preliminary plans indicate that a new water supply pipeline would extend from the existing CSA-11 water line (east of the intersection of Pescadero Creek Road and Stage Road) east along Pescadero Creek Road then south along Cloverdale Road where it would connect to the school (see **Exhibit 2**, page 3 for reference).

In addition, the County indicates that the County's existing Pescadero Fire Station (Fire Station No. 59, located at 1200 Pescadero Creek Road at the corner of Bean Hollow Road and Pescadero Creek Road) is located in a high-risk flood area just west of Butano Creek,<sup>2</sup> which generally runs north-south and passes beneath Pescadero Creek Road at the Butano Creek Bridge. The County indicates that this existing fire station currently experiences annual interior flooding, mold, and plumbing system backups due to flooding from Butano Creek. Seasonal flooding also restricts or blocks vehicle access relatively frequently on Pescadero Creek Road, a main road running east-west through

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<sup>1</sup> Citation No. 02\_17\_17C\_018, issued on May 10, 2017.

<sup>2</sup> The Federal Emergency Management Agency's (FEMA) National Flood Hazard Layer (NFHL) Viewer identifies 1200 Pescadero Creek Road as within Special Flood Hazard Area (SFHA) Zone AE with a Base Flood Elevation (BFE) line of 18 feet. SFHAs are high-risk flood areas defined as the land area covered by the floodwaters of a base flood. BFE is the computed elevation to which floodwater is anticipated to rise during the base (1-percent-annual-chance) flood event.

the town of Pescadero. According to the County, flooding on Pescadero Creek Road can isolate the existing fire station from the town of Pescadero, blocking critical routes to service areas, and resulting in delays in emergency response to calls received from the east side of Butano Creek.

To address these issues, the County intends to mostly demolish the existing Pescadero Fire Station<sup>3</sup> and to construct a replacement fire station on an approximately 1.75 acre site in the southwestern corner of the subject parcel at 350-360 Butano Cut Off, adjacent to the existing Pescadero Middle/High School. Approximately a quarter acre of the 1.75 acres is currently designated by the LCP as “Institutional”, with the remaining approximately 1.5 acres designated as “Agriculture”. Although the agriculturally designated portion of the site has supported agricultural uses in the past, it has been fallow since 2013, and is not currently in production. However, the entirety of the 1.75-acre area is designated as prime agricultural land if irrigated.<sup>4</sup> Similar to the school, the County intends to extend CSA-11 water service to the fire station site as well.

As to water supply, CSA-11 provides municipal water service to the Pescadero area, where the water comes from three groundwater wells located on Butano Ridge. Historically there have been concerns that these wells are insufficient to provide water for all potential demands, and their use has been restricted as a result, including in the LCP.<sup>5</sup>

In short, the County intends to pursue projects that would provide for a replacement fire station next to the school, and that would extend water service to that station and the school, but its current LCP does not allow for either. Thus, the County proposes to amend its LCP Land Use Plan (LUP) to redesignate approximately 1.5 acres of the proposed 1.75-acre fire station site from “Agriculture” to “Institutional”,<sup>6</sup> and to modify a series of public works provisions to explicitly allow for a fire station at that site, as well to allow water supply extensions to that site and the school. In other words, the proposed LUP changes are designed to facilitate future development projects, but only the proposed LUP changes are before the Commission in this proposed amendment, and any future projects would require their own CDP applications.

Specifically, the proposed LCP amendment would update land use designations for the LUP’s South Coast and Pescadero Land Use Maps to re-designate approximately 1.5 acres of APN 087-053-010 from “Agriculture” to “Institutional”, a use that enables public

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<sup>3</sup> The County proposes to retain the apparatus bay of the existing fire station to ensure that there are emergency facilities both west and east Butano Creek in case of emergencies, should the creek flood and completely block Pescadero Creek Road.

<sup>4</sup> The California Department of Conservation Farmland Mapping and Monitoring Program designates the 1.75-acre fire station site as “Prime Farmland”

<sup>5</sup> Where LUP Table 2.16 estimates annual water demands at LCP buildout in Pescadero and identifies what uses are allowed CSA-11 water.

<sup>6</sup> The subject parcel is zoned in the LCP Implementation Plan (IP) as Resource Management-Coastal Zone/Coastal Development (RM-CZ/CD), where fire stations are an allowed use, and thus the County is not also pursuing an IP amendment because it is not necessary to accommodate the fire station project.

service uses, including fire stations.<sup>7</sup> The proposed LCP amendment would also amend language in LUP Policy 2.37 (Monitoring) and Policy 2.39 (Service Area); add new LUP Policy 2.60 (Pescadero Fire Station); and replace existing LUP Table 2.16 (Estimate of Water Consumption Demand at Land Use Plan Buildout for the Town of Pescadero) within the LUP's Public Works Component. Please see **Exhibit 1** for the proposed LUP map (page 1 of **Exhibit 1**) and text amendments (starting on page 2 of **Exhibit 1**).

Such changes are intended to allow for potable water services to be extended to the replacement fire station and Pescadero Middle/High School and would require monitoring of buildout water capacity limits (for future updates) and reservation of water capacity for priority uses based on water consumption and groundwater trends. The County proposes to replace the existing Table 2.16 to include Pescadero Middle/High School as a water use and to adjust water demand estimates for the fire station. Lastly, the County proposes LUP Policy 2.60 which is intended to strictly regulate the extension of water service only to the replacement Fire Station No. 59 and Pescadero Middle/High School while still ensuring LCP consistency.

## **B. Evaluation of Proposed LUP Amendment**

### **1. Standard of Review**

The proposed LCP amendment consists of changes to the Land Use Plan only, and the standard of review for LUP changes is that they must be consistent with and adequate to carry out the Coastal Act Chapter 3 provisions.

### **2. Coastal Act Consistency Determination**

#### ***Applicable Coastal Act Provisions***

The proposed LUP changes raise two main issues: whether there is adequate water supply that it can be allocated as proposed, and whether redesignating the subject agricultural site to institutional purposes is appropriate. In terms of the former, the Coastal Act requires that development be located in areas with adequate public services able to accommodate it, and where it will not have significant adverse impacts on coastal resources, as well as limiting expansions of public works. The Coastal Act states:

***Section 30250(a).*** *New development except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

***Section 30254.*** *New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the*

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<sup>7</sup> Chapter 9 (Rural Land Use) of the San Mateo County General Plan describes "Institutional Lands" as those "... developed with educational facilities, churches, police and fire stations, government offices or other public buildings..."



*intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

In terms of agriculture, the Coastal Act also provides specific protection to such uses, including explicitly in terms of prime agricultural lands. These provisions include:

**Section 30241.** *The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

*(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*

*(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*

*(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*

*(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*

*(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*

*(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

**Section 30242.** *All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

Finally, also relevant in this case are the Coastal Act's provisions requiring that risks to life and property due to coastal hazards be minimized, and that certain special communities be protected. The Coastal Act states:

**Section 30253.** *New development shall: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. ... (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

### **Consistency Analysis**

#### Water Supply

The Coastal Act provides that new development must be sited in areas where adequate public services such as water connections are provided. While the proposed LCP amendment in and of itself would not impact water demand, it would facilitate future projects that are intended to provide for new water connections to Pescadero Middle/High School and the proposed relocated replacement fire station. According to the County's analysis,<sup>8</sup> non-potable water uses at the school could continue to be supplied by the school's well after potable water uses have been switched to the CSA-11 system. Thus, it is estimated that modifying the LCP to allow for connecting Pescadero Middle/High School to the CSA-11 system would result in a conservatively high estimate of total new demand averaging 835 gallons per day (gpd).

As to the fire station use, the existing Pescadero Fire Station is served by a well and by the CSA-11 system, where the well supplies the apparatus bay while the barracks building is served by the CSA-11 system. Current estimates of water use at the station are 326 gpd, and the replacement fire station is expected to use roughly the same or slightly less than the existing fire station. Because the County intends to retain the apparatus bay of the existing Pescadero Fire Station, which would be staffed on an emergency basis (estimated as 5-8 days per year), this remaining use is conservatively estimated to need 8 gpd.<sup>9</sup> Thus, it is estimated that modifying the LCP to account for such fire station use would result in a demand of 334 gpd total.

Provided the data is explicitly identified (see **Suggested Modification 2**), and in combination with the proposed amendments to LUP Policy 2.37 (that would require the managing entity of the water system to monitor groundwater level trends and sustainability, and to annually revise estimates accordingly), these proposed amended LUP water-related provisions will ensure that provision of water service to these uses will not adversely affect coastal resources. These provisions can therefore be found consistent with the above-cited Coastal Act policies 30250(a) and 30254.

#### Agriculture

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<sup>8</sup> As found in the County's "Water Supply Yield and Sustainability report prepared for the Town of Pescadero" (2021).

<sup>9</sup> Daily estimated water use at the apparatus bay was determined by multiplying the daily use at the barracks (326 gpd) by 8 days per year (anticipated staffing of the apparatus bay) and divided by 365, which is 8 gpd.

As to the agricultural question posed by the proposed amendment, the property proposed to be redesignated from agriculture to institutional is not currently in production, but it does constitute prime agricultural land. The Coastal Act requires that the maximum amount of prime agricultural lands be maintained in agricultural production, and only allows for conversion from agriculture to other uses in very limited circumstances, none of which apply in this circumstance.<sup>10</sup> Thus, the proposed language that would allow for the conversion of prime agricultural land is inconsistent with the provisions of Section 30241 of the Coastal Act,<sup>11</sup> requiring its denial.

At the same time, however, Coastal Act Section 30253 requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard. As discussed previously, the existing Pescadero Fire Station is situated in a high-risk flood area just west of Butano Creek, where annual and seasonal flooding compromises emergency services necessary for the health and safety of the Pescadero area, including in some cases blocking off response routes to the greater community. If the Commission were to deny the agricultural change, then it would not be minimizing risks to life and property in this community as mandated by Section 30253(a). This is further evidenced by the fact that the County has been evaluating potential replacement fire station sites for almost a decade, identifying 13 potential alternative locations, but they are all located in flood hazard areas worse than the site in question.<sup>12</sup> In addition, such denial would not be protecting the town of Pescadero, which constitutes a special community that is a popular visitor destination point given it is a historic, rural farming and ranching community that offers restaurants, shopping, and markets featuring historic New England style structures built in the 1800s all within close proximity to beaches and parks, such as Pescadero Marsh, Butano State Park, and Pigeon Point Lighthouse, offering visitors access to unique outdoor recreational activities such as referenced in Section 30253(e).

### Conflict Resolution Provisions

In actions such as this where one Coastal Act provision requires denial but denial would frustrate a mandate of another Coastal Act provision, the Commission is tasked with resolving such differences “in a manner which on balance is the most protective of significant coastal resources” (often referred to as conflict resolution).<sup>13</sup> To be clear, however, the fact that a proposal is consistent with one Chapter 3 policy and inconsistent with another policy does not necessarily result in such a conflict. In fact,

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<sup>10</sup> The site is fairly rural, and thus Section 30241’s allowable conversions related to separating agricultural and urban land uses don’t apply.

<sup>11</sup> On this point it is noted that Section 30241 actually is designed to ensure that “the maximum amount of prime agricultural land...be maintained in agricultural production.” As indicated above, the 1.5-acre agriculturally designated area in question is not in actual production and hasn’t been since 2013. As a result, conversion of such land will not in any way actually impact how much land is ‘maintained in agricultural production’, and thus one potential conclusion is that such conversion is actually not inconsistent with Section 30241. At the same time, however, the Commission has historically understood Section 30241 as protecting prime agriculture land more generally, not just such land in production.

<sup>12</sup> The site in question is located within FEMA flood hazard Zone X, an area of minimal flood hazard as mapped by FEMA.

<sup>13</sup> See Coastal Act Sections 30007.5 and 30200(b).

virtually every proposal will be consistent with some Chapter 3 policy, and almost no project would violate every such provision. Put another way, a proposal does not present a conflict between two statutory directives simply because it violates some policies and not others.

In order to invoke conflict resolution, the Commission must find that although approval of a proposal would be inconsistent with a Chapter 3 policy, denial of such proposal based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal resource effects at all because it will simply maintain the status quo. However, in some cases such denial can result in coastal resource effects that are inconsistent with a Chapter 3 policy in that some Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources.<sup>14</sup> If there is ongoing degradation of one of these resources, and a proposal would cause the cessation of that degradation, then denial would result in coastal resource effects (in the form of the continuation of the degradation) inconsistent with the applicable policy. Thus, the only way that a true conflict can exist is if: (1) the proposal will stop some ongoing coastal resource degradation, and (2) there is a Chapter 3 provision requiring that the resource being degraded is protected and/or enhanced. Only then is the denial option rendered problematic because of its failure to fulfill the Commission's protective mandate, and only then can the Commission invoke the Coastal Act's conflict resolution provisions.

With respect to the second of those two requirements, though, there are relatively few Chapter 3 provisions that include such an affirmative mandate to enhance a coastal resource. Moreover, because the Commission's role is generally a reactive one, responding to proposed development rather than affirmatively seeking out ways to protect resources, even provisions that are phrased as affirmative mandates to protect resources more often function as prohibitions.<sup>15</sup> Denial of a project cannot result in a coastal resource effect that is inconsistent with a prohibition on a certain type of

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<sup>14</sup> See, for example, Sections 30210 ("maximum access...and recreational opportunities shall be provided"), 30220 ("Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses"), 30230 ("Marine resources shall be maintained [and] enhanced"), and 30253 (Development shall "Minimize risks to life and property in areas of high geologic, flood, and fire hazard" and "(a)ssure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site").

<sup>15</sup> For example, Section 30240's requirement that environmentally sensitive habitat areas "shall be protected against any significant disruption of habitat values" generally functions as a prohibition against allowing such disruptive development, and its statement that "only uses dependent on those resources shall be allowed within those areas" is a prohibition against allowing non-resource-dependent uses within these areas. Similarly, Section 30251's requirement to protect "scenic and visual qualities of coastal areas" generally functions as a prohibition against allowing development that would degrade those qualities. Section 30253 begins by stating that new development shall minimize risks to life and property in certain areas, but that usually requires the Commission to condition projects to ensure that they are not unsafe. Even Section 30220, an affirmative mandate, can be seen more as a prohibition against allowing non-water-oriented recreational uses (or water-oriented recreational uses that could be provided at inland water areas) in coastal areas suited for such activities.

development. As a result, there are relatively few Coastal Act policies that can serve as a basis for a conflict.

Similarly, denial of a proposal is not inconsistent with Chapter 3 and thus does not present a conflict simply because the proposal would be less inconsistent with a Chapter 3 policy than some alternative project would be, even if approval of the proposal would be the only way in which the Commission could prevent the more inconsistent alternative from occurring. For denial of a proposal to be inconsistent with a Chapter 3 policy, the proposal must produce tangible, necessary enhancements in resource values over existing conditions, not over the conditions that would be created by a hypothetical alternative. In addition, the proposal must be fully consistent with the Chapter 3 policy requiring resource enhancement, not simply less inconsistent with that than the hypothetical alternative proposal would be. If the Commission were to interpret the conflict resolution provisions otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered even the smallest, incremental improvement over a hypothetical alternative proposal would necessarily result in a conflict that would justify a balancing approach. The Commission concludes that the Coastal Act's conflict resolution provisions were not intended to apply based on an analysis of different potential levels of compliance with individual provisions or to balance a proposal against a hypothetical alternative.

In addition, if a proposal is inconsistent with at least one Chapter 3 policy, and the essence of that proposal does not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the proposal's proponent cannot "create a conflict" by adding on an essentially independent component that does remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, such proponents could regularly "create conflicts" and then demand balancing of harms and benefits simply by offering unrelated "carrots" in association with otherwise unapprovable proposals. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulatable process. The balancing provisions were not designed as an invitation to enter into a bartering game in which proponents offer amenities in exchange for approval of their proposals.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the proposal without violating any Chapter 3 policies. Thus, an alternatives analysis is a condition precedent to invocation of conflict resolution. If there are alternatives available that are consistent with all the relevant Chapter 3 policies, then the proposal does not create a true conflict among Chapter 3 policies.

In sum, in order to invoke conflict resolution, the Commission must conclude all of the following with respect to the proposal before it: (1) approval of the proposal would be inconsistent with at least one of the policies listed in Chapter 3; (2) denial of the proposal would result in coastal resource effects that are inconsistent with at least one other Chapter 3 provision by allowing continuing degradation of a resource the Commission is charged with protecting and/or enhancing; (3) the proposal results in tangible, necessary resource enhancement over the current state, rather than an

improvement over some hypothetical alternative proposal; (4) the proposal is fully consistent with the resource enhancement mandate that requires the sort of benefits that the proposal provides; (5) the benefits of the proposal are a function of the very essence of the proposal, rather than an ancillary component appended to the proposal's description in order to "create a conflict"; and (6) there are no feasible alternatives that would achieve the objectives of the proposal without violating any Chapter 3 provisions.<sup>16</sup>

### Conflict Resolution Analysis

The Commission finds that the proposal meets all six above-stated tests, and thus presents a true conflict between Chapter 3 policies. As detailed above, the proposed LUP changes would lead to conversion of prime agricultural land inconsistent with Section 30241, thus meeting the first test.

This proposal meets the second test because the Commission's denial of the proposal would result in an inability for the County to remove a needed critical emergency service fire station from a site that is subject to ongoing flooding hazards because of the lack of safer alternative locations for the fire station. Thus, in the absence of this LUP amendment, the County would be unable to site a new fire station in an area that minimizes risks to life and property, and a functioning fire station is necessary to protect the special community of Pescadero. In addition, to deny the relocation of the fire station from its existing degraded, hazardous site, to a new one safe from hazards would be inconsistent with the mandates of Section 30253 of the Coastal Act given that the current fire station is located in a flood zone that impairs the ability of critical services to reach the town of Pescadero.

The third step of conflict resolution requires that the proposal results in a tangible, necessary resource enhancement over the current state. As previously discussed, because the existing fire station experiences annual/and seasonal flooding associated with Butano Creek, that not only restricts and/or blocks vehicle access on Pescadero Creek Road, which is used to access the town of Pescadero, but that also leads to interior flooding, mold, and plumbing system backups at the fire station, and because the proposal would facilitate an improvement to all of those issues, it results in a

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<sup>16</sup> As an example, the Commission applied conflict resolution to a 1999 proposal involving the placement of fill in a farmed wetland area in order to construct a barn atop the fill and to install water pollution control facilities on a dairy farm in Humboldt County (CDP 1-98-103, O'Neil). In that case, one of the main objectives of the project was to create a more protective refuge for cows during the rainy season. However, another primary objective was to improve water quality by enabling the better management of cow waste. In short, the use of the site was degrading water quality, and the barn enabled consolidation and containment of manure, thus providing the first of the four necessary components of an effective waste management system. Although the project was inconsistent with Section 30233, which limits allowable fill of wetlands to seven enumerated purposes, the project also enabled the cessation of ongoing resource degradation. The project was fully consistent with Section 30231's mandate to maintain coastal water quality and offered to tangibly enhance water quality over existing conditions, not just some hypothetical alternative. Thus, denial would have resulted in impacts that would have been inconsistent with Section 30231's mandate for improved water quality. Moreover, it was the very essence of the project, not an ancillary amenity offered as a trade-off, that was both inconsistent with certain Chapter 3 provisions and yet also provided benefits. Finally, there were no alternatives identified that were both feasible and less environmentally damaging.

tangible, necessary resource enhancement over the current situation, thus meeting the third test.

The fourth and fifth tests require that the proposal is fully consistent with the resource enhancement mandate that requires the sort of benefits that the proposal provides and that the benefits of the proposal are a function of the proposal itself and not an ancillary component appended to the proposal description in order to create a conflict. Although the proposed project is inconsistent with the requirements of Section 30241 that protect productive agricultural land and limit the conversion of agricultural land, denial of the proposal would preclude the County from achieving Section 30253's mandate for both minimizing risks from hazards and the mandate to protect the special community of Pescadero. Specifically, regarding special community character, Pescadero is a historic, rural farming and ranching community that offers restaurants, shopping, and markets and features historic New England style structures built in the 1800s which makes it a popular destination for tourists. In addition to its unique historic character, Pescadero's proximity to beaches and parks, such as Pescadero Marsh, Butano State Park, and Pigeon Point Lighthouse, offers visitors access to unique outdoor recreational activities which the Commission finds makes it a special community along the coast worthy of protection, for the purposes of 30253. This LUP update will facilitate the protection of that community, thus meeting the fourth test.

Further, it is clear that the very essence of the proposal is to minimize risks from hazards and to protect the special community of Pescadero, as required by the fifth test. The proposed LUP amendment, allowing relocation of the fire station, will remedy a current degraded condition of hazards risks to critical facilities, and will avoid significant adverse impacts to life and property in areas of high flood hazard. The benefits, which are providing a new fire station in a location with lower flood hazards and essential emergency services to the community of Pescadero, would be a direct function of the proposed LCP amendment, given the amendment is project-driven. Thus, the project meets the fifth test of the balancing approach.

The final test of conflict resolution requires there to be no feasible alternative that would achieve the objectives of the project without violating any Chapter 3 policies. As discussed above, many other sites were considered for the relocated fire station out of the flood zone in order to better minimize risks and to better protect the Pescadero special community. The current proposal was determined by the County to represent the least environmentally damaging feasible alternative to meet such objectives, including because a "no project" alternative would maintain the status quo and the existing fire station would continue to be sited in a hazardous area, suffer from damages due to flooding, and fail to provide critical public services to the town of Pescadero. In short, no alternatives were identified that were both feasible and more protective of coastal resources given that the alternative locations considered were either located in flood hazard areas, the tsunami zone, areas with slopes exceeding 20%, or sites similarly classified as prime agricultural soil, meeting the sixth and final test.

Therefore, in order to resolve the identified conflict, the Commission must take an action which is, on balance, the most protective of significant coastal resources. Such a determination is a discretionary decision for the Commission, where the pros and cons

for various outcomes can be considered and applied. In this case, the Commission determines that the impacts on coastal resources associated with hazard risks and impacts to a special community from not approving the proposed LCP amendment would be more significant than those associated with prime agricultural conversion. Here, the conversion of the 1.75 acres that would be facilitated by the redesignation of 1.5 acres would not impact any ongoing agricultural production on the site. The LCP must be clear, however, that impacts to adjacent agricultural lands must be avoided, and that any conversion of the lands in question must be mitigated on at least a 2:1 ratio.<sup>17</sup> With these policies, the impact to agriculture will not be significant, whereas the benefits to minimizing risks and protecting the special community of Pescadero would be significant. This outcome can be further assured by modifying the aspect of the proposed amendment that attempts to require approval of a future CDP for the fire station project (see proposed LUP Policy 2.60 in **Exhibit 1**) by explicitly identifying the criteria that must be met in order to allow approval (see **Suggested Modification 1**). Specifically, such modifications would make clear that in addition to meeting all other LCP requirements, a CDP application for such a future project would need to ensure that no less environmentally damaging feasible alternative site exists for the use, that buffer areas are established between agricultural and non-agricultural uses capable of ensuring no loss of adjacent agricultural viability and/or productivity, that the viability and/or productivity of adjacent agricultural land would not be diminished, that any related public service expansions will not impact agricultural viability and/or productivity, and that the conversion of prime agricultural land is mitigated on at least a 2:1 basis.

As so modified, and by applying the Coastal Act's conflict resolution provisions as described above, the proposed LUP amendment can be found consistent with the Coastal Act.

### **C. California Environmental Quality Act**

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are *not* required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, although the County adopted an Initial Study/Mitigated Negative Declaration for the proposed development that would be facilitated by the LCP amendment,<sup>18</sup> the County did not prepare any CEQA documents in support of the LCP amendment itself specifically.

In any case, the Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the

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<sup>17</sup> The Commission has fairly consistently applied a 2:1 minimum mitigation ratio on past cases where agricultural conversion is allowed. See, for example, CDPs 3-19-0463 and A-3-SLO-09-055/069.

<sup>18</sup> State Clearinghouse Number 2022060160, approved on November 16, 2022.



environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that the proposed LCP amendment is expected to result in significant environmental effects, including as those terms are understood in CEQA, if it is not modified to address the coastal resource issues identified herein. Accordingly, it is necessary for the Commission to suggest modifications to the proposed LCP amendment to ensure that it does not result in significant adverse environmental effects. Thus, the proposed LCP amendment as modified will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

### 3. APPENDICES

#### **A. Substantive File Documents<sup>19</sup>**

- San Mateo County LCP Amendment Submittal (pursuant to Board of Supervisors Resolution Numbers 079282 and 079283)
- CSA-11 Water Service Extension and Pescadero Fire Station (Station 59) Initial Study/Mitigated Negative Declaration (State Clearinghouse Number 2022060160)
- Pescadero (CSA-11) Water Supply Yield and Sustainability Study

#### **B. Staff Contact with Agencies and Groups**

- San Mateo County Planning and Building Department
- Green Foothills
- Puente de la Costa Sur
- San Mateo County Farm Bureau
- La Honda Pescadero Unified School District

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<sup>19</sup> These documents are available for review from the Commission's North Central Coast District office.