

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200

Th2.5a



August 22, 1997

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel DD
John Bowers, Staff Counsel JB

SUBJECT: **Public Hearing on Proposed Revisions to Chapter 5, Subchapter 8 of the Commission's Cease and Desist Orders Regulations**

For Commission Discussion and Possible Action on September 11, 1997

SUMMARY

On May 13, 1997, the Commission authorized commencement of a rulemaking proceeding to amend Chapter 5, subchapter 8 of the Commission's regulations. (Exhibit 1.) The proposed revisions would amend various sections in Subchapter 8 of Chapter 5 of the Commission's regulations. Subchapter 8 sets forth procedures which govern the issuance of cease and desist orders by the Commission pursuant to section 30809 and 30810 of the Public Resources Code. Specifically, staff proposes that the Commission adopt amendments to its regulations to:

- (1) expand the methods by which a notice of intent to commence a cease and desist order proceeding before the Commission may be served (section 13181(a));
- (2) correct a typographical error (section 13184);
- (3) bring the regulations into conformity with changes to Public Resources Code § 30810 enacted by the legislature in 1993 (SB 608; sections 13187(a)(2) and (a)(3)(B)); and
- (4) establish a clear standard for when a person who is subject to a cease and desist order may commence a proceeding for the purpose of rescinding or modifying that order (section 13188(b)).

A copy of the proposed amendments is attached. (Exhibit 2.) The Commission staff has taken the necessary procedural steps under the applicable sections of the Government Code (Govt. Code sections 11346.2-5.) to enable the Commission to consider whether to adopt the proposed changes at its September 11, 1997 meeting. See Notice of Intention to Amend (Exhibit 3.) and Initial Statement of Reasons (Exhibit 4.). Staff recommends that the Commission vote to adopt the revisions to sections 13181(a), 13184, 13187(a)(2), 13187(a)(3)(B) and 13188(b) as proposed in Exhibit 2. The motion to adopt the amendments as proposed by staff appears on page 5.

DISCUSSION

1. Expansion of Methods of Service of Notice of Intent to Commence Cease and Desist Order Proceeding.

14 CCR § 13181(a) currently provides that a notice of intent (NOI) to commence a cease and desist order proceeding before the Commission shall be served either as a provision of a cease and desist order issued by the executive director or by certified mail. The proposed amendment would authorize service of a NOI 1) by regular mail receipt of which is confirmed by subsequent oral communication, and 2) by hand, as well as by certified mail.

2. Correction of Typographical Error.

14 CCR § 13184 currently provides that the executive director's recommendation on issuance by the Commission of a cease and desist order be distributed to the alleged violator and otherwise to the *person* known or thought by the executive director to have a particular interest in the matter. (Emphasis added.) The proposed amendment would change the word "person" to "persons" in order to clarify that the recommendation must be mailed to any and all persons thought to have an interest in the matter.

3. Conform Regulations to Statutory Amendments.

PRC §§ 30809(a)(1) - (3) authorize the executive director to issue a cease and desist order in response to a request by either a local government or a port governing body, or in situations in which a local government or port governing body either 1) declines within its area of jurisdiction to take appropriate enforcement action that the Commission has requested, or 2) is a party to a violation. Prior to 1994 section 30810(a) authorized the Commission to issue a cease and desist order for a violation in an area of the coastal zone not subject to its permit jurisdiction only where requested to do so by a local government. In 1993 the legislature amended section 30810(a) to authorize the Commission to issue

cease and desist orders with respect to violations of local coastal programs or port master plans on the same grounds as those on which the executive director may issue cease and desist orders pursuant to section 30809(a). The proposed amendment would bring the regulations into conformity with the changes to section 30810(a) by amending 14 CCR § 13187(a)(2) and repealing 14 CCR § 13187(a)(3)(B).

4. Clarification of Standing to Commence Proceeding for Rescission of Cease and Desist Order.

14 CCR § 13188(b) currently provides that a hearing shall be held on any request by a person to whom a cease and desist order issued by the Commission is directed to rescind or modify that order. The proposed amendment to section 13188(b) would make it clear that a person who is subject to a cease and desist order may commence a proceeding for the purpose of rescinding or modifying that order only on the ground of a material change in the facts on the basis of which the Commission originally issued the order.

MATERIALS PROVIDED FOR COMMISSION REVIEW

The following exhibits are being transmitted to the Commission attached to this staff report:

Exhibit 1 - Staff report to the Commission to obtain authorization to commence the subject rulemaking

Exhibit 2 - Text of the Proposed Changes to Portions of Title 14, Chapter 5, Subchapter 8 of the California Coastal Commission's Regulations

Exhibit 3 - Notice of Intention to Amend Portions of Title 14, Chapter 5, Subchapter 8 of the California Coastal Commission's Regulations

Exhibit 4 - Initial Statement of Reasons for Proposed Amendments to Various Sections of Chapter 5, Subchapter 8 of the California Coastal Commission's Regulations

As of the date of this staff report, no comments have been received from members of the public. Staff will respond to any comments received from the public prior to any Commission action on the proposed amendments.

OPTIONS FOR COMMISSION ACTION

The Commission has the following major options for action on September 11, 1997:

1. **Adopt Regulations as Proposed**

Hold the public hearing, close the hearing, consider the regulation and vote to adopt the proposed amended regulation. If the Commission adopts the proposed amendments, staff will submit the changes to the Office of Administrative Law for approval. If approved, the amendments would then be sent on to the Secretary of State for filing. The amendments would become effective 30 days after that filing.

2. **Reject Regulations as Proposed**

Hold the public hearing, close the hearing, consider the regulation and vote to reject the proposed amended regulation.

3. **Modify Regulations In Minor Way(s) and Circulate Change(s) for Public Comment**

Hold the public hearing, close the hearing, consider the regulation and vote to modify the proposed regulation in nonsubstantial or minor ways and direct staff to circulate the regulation for public comments as modified by those nonsubstantial or minor changes. The minimum public comment period would be 15 days. The Commission would then hold a public hearing at a future Commission meeting and vote on whether to adopt or reject the regulation as modified.

4. **Modify Regulations In A Major Way and Circulate Change(s) for Public Comment**

Hold the public hearing, close the hearing, consider the regulation and vote to modify the proposed regulation in a substantial or major way and direct staff to circulate the regulation for public comment as modified by the substantial or major change. Staff would submit a new notice to OAL and OAL would publish the notice, which would commence a new 45 day comment period. The Commission would then hold a public hearing at a future meeting and vote on whether to adopt or reject the regulations as modified.

STAFF RECOMMENDATION

The staff recommends that the Commission follow the first option identified and vote to adopt the regulations as proposed. The staff recommends that the Commission adopt the following resolution:

Resolution:

The Commission hereby adopts the proposed revisions to portions of Subchapter 8 of Chapter 5 of the Commission's regulations. No alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to private persons than the proposed action.

MOTION

The appropriate motion for adoption is "I move that the Commission adopt the proposed revisions to portions of Subchapter 8 of Chapter 5 of the Commission's regulations."

Staff recommends a YES vote. A majority of the Commissioners present is required to pass the motion. Approval of the motion means the amendments have been adopted as proposed.

CALIFORNIA COASTAL COMMISSION

1500 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200

**MEMORANDUM***Tu 10a*

DATE: April 23, 1997

TO: California Coastal Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel *DDickey*
John Bowers, Staff Counsel *[Signature]*

SUBJECT: **Commencement of Rulemaking Process for Chapter 5, Subchapters 8 and 9 of the Commission's Regulations**

Staff requests Commission authorization to commence a rulemaking proceeding to adopt and amend regulations to establish and modify standards for the administration of the Commission's enforcement program. A copy of the proposed new and modified regulations is attached as Attachments A and B. (PLEASE NOTE: In Attachments A and B, proposed additions are shown by underline, and proposed deletions are shown by strikethrough.)

COMMISSION CEASE AND DESIST REGULATIONS:

The proposed amendments to the Commission's existing cease and desist order regulations (Subchapter 8) are for the following purposes:

- (1) to expand the methods by which a notice of intent to commence a cease and desist order proceeding before the Commission may be served (section 13181(a));
- (2) to correct a typographical error (section 13184);
- (3) to bring the regulations into conformity with changes to Public Resources Code § 30810 enacted by the legislature in 1993 (SB 608; sections 13187(a)(2) and (a)(3)(B)); and
- (4) to establish a clear standard for when a person who is subject to a cease and desist order may commence a proceeding for the purpose of rescinding or modifying that order (section 13188(b)).

EXHIBIT NO. 1APPLICATION NO.
April 23, 1997 StaffReport to Commence the
Rulemaking Process for

Ch. 5, Subchapter 8

California Coastal Commission

COMMISSION PROPOSED RESTORATION ORDER REGULATIONS:

Proposed new regulations (Subchapter 9, sections 13190-13197) would establish a process for the issuance of restoration orders pursuant to Public Resources Code § 30811. They are patterned closely after the Commission's existing cease and desist order regulations.

PROCEDURE:

Staff will initiate a rulemaking process pursuant to the Administrative Procedure Act (APA) (Govt. Code, § 11340, *et seq.*) to accomplish these regulatory changes and additions. The rulemaking process takes a number of months and involves various procedural steps. These include publication of notice, preparation of various documents required under the APA that must be made available concurrently with the notice, a public comment period of at least 45 days, an additional notice and comment period if the Commission makes substantive changes from those which were originally proposed, formal adoption, preparation of documents required under the APA after adoption of regulations, review by the Office of Administrative Law (OAL), and, if approved by OAL, filing of the amended regulations with the Secretary of State. Staff recommends that the Commission authorize that this process begin.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

Resolution:

The Commission hereby directs the staff to commence a process to 1) amend Chapter 5, Subchapter 8, and 2) adopt a new Chapter 5, Subchapter 9, of the California Coastal Commission's regulations.

Attachment

restord.doc

CALIFORNIA COASTAL COMMISSION

15 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200



NOTE: The following regulations are proposed for revision. (Additions are shown in underline and deletions are shown in ~~strikeout~~.)

CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES
DIVISION 5.5. CALIFORNIA COASTAL COMMISSION
CHAPTER 5. COASTAL DEVELOPMENT PERMITS ISSUED BY COMMISSION
SUBCHAPTER 8. PROCEDURES FOR THE ISSUANCE OF COMMISSION CEASE
AND DESIST ORDERS

§ 13181. Commencement of Cease and Desist Order Proceeding Before the Commission.

(a) If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in section 30810(a) of the Public Resources Code with notice of his or her intent to do so. Such notice of intent shall be given either as a provision of a cease and desist order issued pursuant to section 30809 of the Public Resources Code or by separate written communication delivered either (1) by certified mail, (2) by regular mail receipt of which is confirmed by subsequent oral communication either in person or by telephone, or (3) by hand, and shall include, at minimum, the information specified in sections 13187(a)(4), (5), and (6) together with an explanation of the basis of the executive director's belief that the specified activity meets the criteria of section 30810(a). The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.

....

Authority cited: Section 30333, Public Resources Code

Reference: Section 30810, Public Resources Code

§ 13184. Distribution of Executive Director's Recommendation.

The executive director's recommendation on a proposed cease and desist order shall be distributed to the alleged violator(s) and otherwise to the persons and in the manner provided in section 13059 of these regulations for application summaries.

Authority cited: Section 30333, Public Resources Code

Reference: Section 30810, Public Resources Code

EXHIBIT NO. 2
APPLICATION NO.
Text of Proposed Changes
to Portions of Title 14
Ch. 5, Subch. 8 of Coastal
Commission's Regulations
California Coastal Commission

§ 13187. Contents and Reporting of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the executive director and shall contain at a minimum the following:

....

- (2) if applicable, a statement that the cease and desist order is being issued ~~in response to a request therefor made by a local government (or, in the case of a cease and desist order issued by the executive director, by a port governing body)~~ pursuant to subsection (a)(1), (2), or (3) of section 30809 or 30810 ~~30809(a)(1) or 30810(a)~~ of the Public Resources Code;

....

- (3) in the case of any order issued by the executive director:

....

~~(B) if applicable, a statement that the cease and desist order is being issued pursuant to section 30809(a)(2) or (3) of the Public Resources Code;~~

(B) ~~(C)~~ if applicable, notice of the executive director's intent to commence a proceeding for the issuance of a cease and desist order by the commission relating to the same activity, including notice of the date and place of the public hearing to be held as part of such a proceeding if the executive director has scheduled one;

....

Authority cited: Section 30333, Public Resources Code

Reference: Sections 30809 and 30810, Public Resources Code

§ 13188. Rescission or Modification of Cease and Desist Orders.

....

(b) The commission, after public hearing, may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by (1) any person to whom the cease and desist order is directed, (2) the executive director or (3) any two members of the commission. A person described in subdivision (1) of this subsection (b) may commence a proceeding for the purpose of rescinding or modifying a cease and desist order only on the ground that there has been a material change in the facts upon which the order was issued. Upon receipt of a request pursuant to this subsection (b) for rescission or modification of a cease and desist order issued by the Commission, a hearing on the request shall be held at the next regularly scheduled meeting or as soon thereafter as is practicable after notice to all persons subject to the order or whom the executive director otherwise has reason to know would be interested in the matter.


Authority cited: Section 30333, Public Resources Code

Reference: Sections 30809 and 30810, Public Resources Code

CALIFORNIA COASTAL COMMISSION

400 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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EXHIBIT NO. 3

APPLICATION NO.
Notice of Intention
to Amend Portions of
Subch. 8, of Tit. 14 Ch.5
of Coastal Comm's Regs.
 California Coastal Commission

**NOTICE OF INTENTION TO AMEND SECTIONS OF THE
CALIFORNIA COASTAL COMMISSION'S REGULATIONS PERTAINING TO
ISSUANCE OF CEASE AND DESIST ORDERS**

NOTICE IS HEREBY GIVEN that the **CALIFORNIA COASTAL COMMISSION** intends to amend sections 13181(a), 13184, 13187(a)(2) and 13188(b) and repeal section 13187(a)(3)(B), of the Commission's regulations. The provisions to be amended set forth procedures for the issuance by the Commission or its executive director of cease and desist orders pursuant to sections 30809 and 30810, respectively, of the Public Resources Code.

A written comment period has been established commencing on July 4, 1997, and terminating on August 18, 1997. A public hearing is scheduled as part of the Commission's regular meeting on Thursday, September 11, 1997, at the Eureka Inn in Eureka, CA. The meeting will commence at 9:00 AM, however, the hearing on this matter may not be the first agenda item to be heard. Interested persons may comment orally about the proposed changes at the hearing or may submit written comments concerning the proposed code amendments to the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT ST., STE. 2000, SAN FRANCISCO, CA 94105-2219** before 4 p.m. on the day before the hearing. Written comments may also be submitted to the Commission on the day of the hearing at the meeting prior to the Commission's consideration of the matter. It is requested, but not required, that written comments be mailed so that they are received no later than three (3) working days prior to the date of the public hearing. It is requested, but not required, that persons who submit written comments to the Commission at the hearing provide twenty (20) copies of such comments. This will ensure that each commissioner will receive a copy.

AUTHORITY AND REFERENCE

The Commission is authorized to adopt and amend regulations pursuant to Public Resources Code § 30333. The proposed amendments would further implement, interpret, and make specific Public Resources Code §§ 30809 and 30810.

INFORMATIVE DIGEST

The California Coastal Commission is proposing to amend various sections of the Commission's regulations in Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations (CCR). This chapter encompasses, in Subchapter 8 thereof, procedures for issuance by the Commission or its executive director of cease and desist orders pursuant to sections 30809 and 30810, respectively, of the Public Resources Code.

The Commission proposes to make more effective, clarify, and conform to recent statutory amendments its cease and desist order regulations. Specifically:

- (1) 14 CCR § 13181(a) currently provides that a notice of intent (NOI) to commence a cease and desist order proceeding before the Commission shall be served either as a provision of a cease and desist order issued by the executive director or by certified mail. The Commission proposes to authorize service of a NOI 1) by regular mail receipt of which is confirmed by subsequent oral communication, and 2) by hand, as well as by certified mail.
- (2) 14 CCR § 13184 currently provides that the executive director's recommendation on issuance by the Commission of a cease and desist order be distributed to the alleged violator and otherwise to the *person* known or thought by the executive director to have a particular interest in the matter. (Emphasis added.) The Commission proposes to change to the plural this grammatically erroneous reference to a single person to whom a copy of the executive director's recommendation is to be distributed.
- (3) PRC §§ 30809(a)(1) - (3) authorize the executive director to issue a cease and desist order in response to a request by either a local government or a port governing body, or in situations in which a local government or port governing body either 1) declines within its area of jurisdiction to take appropriate enforcement action that the Commission has requested, or 2) is a party to a violation. Prior to 1994 section 30810(a) authorized the Commission to issue a cease and desist order for a violation in an area of the coastal zone not subject to its permit jurisdiction only where requested to do so by a local government. In 1993 the legislature amended section 30810(a) to authorize the Commission to issue cease and desist orders with respect to violations of local coastal programs or port master plans on the same grounds as those on which the executive director may issue cease and desist orders pursuant to section 30809(a). The Commission proposes to bring its regulations into conformity with the changes to section 30810(a) by amending 14 CCR § 13187(a)(2) and repealing 14 CCR § 13187(a)(3)(B).

- (4) 14 CCR § 13188(b) currently provides that a hearing shall be held on any request by a person to whom a cease and desist order issued by the Commission is directed to rescind or modify that order. The Commission proposes to amend section 13188(b) to make it clear that a person who is subject to a cease and desist order may commence a proceeding for the purpose of rescinding or modifying that order only on the ground of a material change in the facts on the basis of which the Commission originally issued the order.

COST TO GOVERNMENTAL AGENCIES AND SCHOOL DISTRICTS

The proposed amendments will not impose a mandate on local agencies or school districts, will not impose a cost on or result in a savings to any State agency, will not impose a cost on local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code; will not result in any other non-discretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state.

EFFECT ON INDIVIDUALS, SMALL AND OTHER BUSINESSES, AND HOUSING COSTS

The amendments that the Commission is proposing herein to make to its regulations will have no significant effect on housing costs or on private persons or businesses directly affected. Amendment of the regulations will not have a significant adverse economic impact on small or other businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendments do not impose any new or expanded reporting, record keeping, permit or other requirements on individuals or businesses. The sole effects of the proposed amendments are 1) to expand the range of options for the Commission to fulfill its responsibilities under the regulations, and 2) to conform to recent statutory changes and otherwise to clarify the regulations.

ASSESSMENT STATEMENT

This proposed regulatory action will neither create nor eliminate jobs within California, create new businesses or eliminate existing businesses, or affect the expansion of businesses, currently doing business within California.

ALTERNATIVES

The **CALIFORNIA COASTAL COMMISSION** must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT

The **CALIFORNIA COASTAL COMMISSION** has prepared a written explanation of the reasons for the proposed amendments to its regulations and has available all of the information upon which its proposal is based. Copies of the proposed amendments and all of the information upon which it is based may be obtained from the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT ST., STE. 2000, SAN FRANCISCO, CA 94105-2219**. Any inquiries concerning the proposed amendments should be directed to **John Bowers** at (415) 904-5229.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the **CALIFORNIA COASTAL COMMISSION** may adopt the proposed regulations substantially as described in this notice. If modifications are made which substantially change the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the **CALIFORNIA COASTAL COMMISSION** adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of **John Bowers** at the address indicated above. The **CALIFORNIA COASTAL COMMISSION** will accept written comments on any modified regulations for 15 days after the date on which any modified regulations are made available.

If the proposed regulations are not significantly modified, the **CALIFORNIA COASTAL COMMISSION** may adopt the proposed amendments to regulations substantially as described above.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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**INITIAL STATEMENT OF REASONS FOR PROPOSED
AMENDMENTS TO VARIOUS SECTIONS OF THE
CALIFORNIA COASTAL COMMISSION'S REGULATIONS
PERTAINING TO ISSUANCE OF CEASE AND DESIST ORDERS**

**(Prepared for comment period commencing
July 4, 1997, and ending August 18, 1997.)**

The California Coastal Commission is proposing to amend various sections of the Commission's regulations in Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations. This chapter encompasses, in subchapter 8 thereof, procedures for the issuance by the Commission and its executive director of cease and desist orders pursuant to sections 30810 and 30809, respectively, of the Public Resources Code..

The Commission proposes to:

- (1) to expand the methods by which a notice of intent to commence a cease and desist order proceeding before the Commission may be served (section 13181(a));
- (2) to correct a typographical error (section 13184);
- (3) to bring the regulations into conformity with changes to Public Resources Code § 30810 enacted by the legislature in 1993 (SB 608; sections 13187(a)(2) and (a)(3)(B)); and
- (4) to establish a clear standard for when a person who is subject to a cease and desist order may commence a proceeding for the purpose of rescinding or modifying that order (section 13188(b)).

Among other things, section 13181(a) of the Commission's regulations specifies the manner in which a notice of intent to commence a cease and desist order proceeding before the Commission is to be served upon an alleged violator. As currently written, section 13181(a) requires such notice, if not included within an executive director's cease and desist order, to be "delivered by certified mail." Recently the Commission has experienced difficulty in its efforts to commence cease and desist order proceedings as a

EXHIBIT NO. 4

APPLICATION NO.
Initial Statement of

Reasons for Proposed
Amendments to Portions of
Ch. 5, Subch. 8 of Comm's
Regs.

 California Coastal Commission

result of the refusal by certain alleged violators to accept notices sent by certified mail. The proposed amendment to section 13181(a) would expand the methods by which a commencement notice may be served by authorizing such service 1) by regular mail receipt of which is confirmed by subsequent oral communication, and 2) by hand, in addition to certified mail.

Section 13184 of the Commission's regulations contains a typographical error in that it refers in the singular to persons to whom, in addition to the alleged violator(s), the executive director's recommendation is to be distributed. The proposed amendment to section 13184 will correct this error.

In 1993 the legislature enacted SB 608 (Stats. 1993, ch. 1199), which amended Public Resources Code § 30810 to bring it into conformity with section 30809 with respect to the ability the Commission to issue a cease and desist order for a violation in an area subject to the jurisdiction under the Coastal Act of either a local government or a port governing body. The proposed amendment makes corresponding changes to the Commission's regulations by amending section 13187 (a)(2) and repealing section 13187(a)(3)(B).

Section 13188(b) of the Commission's regulations provides that a hearing before the Commission shall be held upon receipt of a request for rescission or modification of a previously issued cease and desist order. Certain persons subject to a cease and desist order have sought to use the rescission process provided by section 13188(b) as a means by which to have the Commission reconsider arguments against issuing a cease and desist order that either were or could have been presented at the original cease and desist order hearing. In a recent unpublished decision, Bogart v. Cal. Coastal Comm'n (1997) Docket No. B103320, the Court of Appeal held that, under the current language of section 13188(b), it is reasonable to require "a showing of changed of circumstances" as a precondition to commencement of a proceeding for rescission or modification of a previously issued cease and desist order. The court further held that "a hearing of a request for such relief [i.e., rescission or modification] is not the proper forum for a retrospective request for 'rehearing' of the original decision." Consistent with the court's decision, the proposed amendment clarifies section 13188(b) by making it clear that a person to whom a cease and desist and desist order is directed may request rescission or modification of that order only on the ground that there has been a material change in the facts on the basis of which the Commission issued the order.

DOCUMENTS RELIED UPON

There is no study, report, or similar document on which the Commission has relied in proposing the amendments described herein.

CONSIDERATION OF ALTERNATIVES

The Commission has not considered any alternatives to the proposed amendments. Thus, no other alternative considered by the Commission would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulation. Interested persons are invited during the written comment period or at the hearing to present information, statements or arguments with respect to alternatives to the proposed amendments.

USE OF SPECIFIC TECHNOLOGIES

The proposed amendments do not mandate the use of specific technologies or equipment.

IMPACT ON BUSINESS

The proposed amendments will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. The amendments do not impose any new or expanded reporting, record keeping, permit, or other requirements on any businesses. The effects of the amendments are limited to 1) the Commission's responsibilities under the regulations, and 2) existing regulatory provisions for which the amendments provide needed clarifications.

COMPARABLE FEDERAL REGULATIONS OR STATUTES

There are no existing comparable federal regulations or statutes.