

NOTICE OF PROPOSED APA RULEMAKING

CALIFORNIA COASTAL COMMISSION

Title 14, Division 5.5, California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Coastal Commission (Commission), as authorized by Section 30333 of the Public Resources Code, proposes to make changes to its regulations as described below after considering all comments, objections, and recommendations regarding the proposed action (Proposal).

A PUBLIC HEARING IS SCHEDULED FOR October 16, 2019. The hearing will be part of the Commission's regularly scheduled meeting at the Chula Vista City Council Chambers, 276 Fourth Ave., Chula Vista, CA 91910. Any interested person may present comments regarding the Proposal at this hearing. Any interested person may also present written comments regarding the Proposal to the attention of the agency contact as listed in this Notice no later than Monday, October 14, 2019. More information about the hearing is available at the end of this Notice.

INTRODUCTION

The Proposal continues to update Commission regulations with the goal of creating efficient and effective provisions without excessive verbiage or requirements. Many changes would repeal provisions outright, others provide for simpler procedures in plain English, some clarify existing practice, and a few others add requirements to solve particular problems. The Proposal will help further the Commission's mission to protect coastal resources and public access in the coastal zone. The following sections are affected:

Repeal: Sections 13025 and 13559.

Amend: 13032, 13053, 13055, 13056.1, 13057, 13096, 13107, 13108, 13111, 13137, 13149, 13180, 13181, 13183, 13185, 13190, 13191, 13193, 13248, 13250, 13253, 13302, 13318, 13333, 13518, 13519, 13544, 13544.5, 13547, 13549, 13551, 13552, 13569, 13573 and 13637.

AUTHORITY AND REFERENCE

Authority: Section 30333 of the Public Resources Code generally provides that the Commission may adopt or amend rules and regulations to carry out the purposes and provisions of the Coastal Act (Div. 20, Section 30000 et seq.), as well as to govern procedures of the Commission. Rules and regulations shall be consistent with the Coastal Act and other applicable law.

Reference: The proposed changes are procedural in nature and seek to update and correct for current practices and existing law. As such the proposed changes implement, interpret, and make specific numerous statutes, primarily in the Coastal Act and the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

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For specific Authority and Reference Notes (and proposed changes to Notes) for each section of the regulations, see the Express Terms (proposed amendments in ~~strikeout~~ underline), available on the Commission's rulemaking page, <https://coastal.ca.gov/rulemaking/>, or request a copy of the Express Terms from the agency contact listed in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law: The Legislature enacted the California Coastal Act in 1976, following the passage of Proposition 20, a referendum expressing the desire of the people of California to protect its most valuable resource: 1100 miles of coastline. Division 20 of the Public Resources Code, Section 30000 et seq. (the Coastal Act) established a comprehensive coastal protection program and made permanent the California Coastal Commission as a state agency. The first goal of the Coastal Act is to “[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.” (§ 30001.5, subd. (a).)

Responsibilities: Because the Proposal would implement largely procedural changes, it is important to understand the main responsibilities of the Commission. The Commission considers applications for coastal development permits in its jurisdiction; certifies long term plans, including local coastal programs that allow local governments to issue coastal development permits; considers appeals of certain local approvals; sets policy in coastal matters; conducts enforcement, from negotiations for the settlement of violations to the imposition of fines and litigation; and ensures the consistency of federally-approved development in the Coastal Zone. The Proposal does not affect federal consistency regulations.

Existing Regulations: Existing regulations are located in Title 14, Division 5.5, Section 13001 et seq. Shortly after passage of the Coastal Act, the Commission adopted a full set of procedural regulations. Several rulemakings thereafter improved and expanded the original set, but Commission now has more than forty years' experience to draw on and has a better understanding of what should (and should not) be regulated. Recently, the Office of Administrative Law (OAL) approved nonsubstantive changes (2018-1226-02N) and a regular rulemaking (2019-0619-055) that is approved but not yet effective that implemented minor changes. This second regular rulemaking continues the effort to update the regulations with substantive changes, including repeals, to procedures that are confusing, in tension with or superseded by statute, obsolete, unused, or otherwise ineffective.

The Proposal: The Proposal in particular repeals much unnecessary and obsolete language, including repeals of two sections. Several provisions that are necessary to implement would be redrafted in major ways. Section 13057 (staff reports) is revised to clarify existing practice, delete surplusage, and simplify convoluted provisions. Sections 13544, 13544.5, and 13547 (effectiveness of local plans) are revised to delete unnecessary duties and to provide specific paths for effectiveness according to how the plans are certified. Sections 13518 and 13551 (local resolutions) also drop unnecessary tasks but add that local government resolutions specify the intent for how submittals are to be certified. Sections 13111, 13318, and 13333 allow for the electronic filing of appeals with a set procedure. Sections 13180, 13181, 13183, 13185, 13190,

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13191, and 13193 are revised to clarify enforcement procedures, deadlines, and to ensure staff receives all defense information in a prompt manner. An amendment to Section 13137 would provide additional notice of existing requirements for emergency development, in particular, the requirement to file an application for a regular permit once the emergency work is done.

Finally, Section 13569 (dispute resolution) is revised to clarify that exemptions are subject to the dispute resolution procedures, set reasonable deadlines for local government determinations and Executive Director review, simplify procedures to start review, including to allow for an interested person to request review, to allow for staff resolution before a Commission hearing is scheduled, and set basic hearing procedures regarding testimony, written comments, and findings.

The Proposal also continues to make minor corrections, and add, correct, or supplement Authority and Reference Notes.

For the specific changes proposed to all affected sections of the regulations, see the Express Terms (proposed amendments in ~~strikeout~~ underline), available on the Commission's rulemaking page, <https://coastal.ca.gov/rulemaking/>, or request a copy of the Express Terms from the agency contact listed in this Notice.

ANTICIPATED BENEFITS

The Proposal is anticipated to create several benefits, primarily efficiency, consistency, accuracy, and transparency. Three major procedures are substantially redrafted (how certified local coastal program plans and long range development plans are made effective; requirements for local resolutions for the same plans; and dispute resolution for unresolved conflicts between local government and Commission staff). The section regarding staff reports is redrafted to accurately implement statutory requirements and reflect current practice. Remaining changes would repeal two sections that are redundant to, or contradictory of, statutory authority; retract provisions that were recently approved that staff now believes should not become effective; and to make minor corrections.

To the extent that procedures become more efficient and staff is freer to concentrate on matters of importance, the Commission anticipates greater protection of the environment and the promotion of fairness and social equity.

EXISTING STATE REGULATIONS

The Proposal affects only Commission procedures, and does not affect regulations under the authority of other agencies. Therefore, the Proposal is neither inconsistent nor incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

The Proposal does not incorporate any forms by reference.

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MANDATED BY FEDERAL LAW OR REGULATIONS

The Proposal is not mandated by federal law or regulations.

OTHER STATUTORY REQUIREMENTS

No other requirements are specific to the Commission, to any specific regulation, or class of regulations.

LOCAL MANDATE

The Commission has determined that the proposed changes do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

There is no cost to any local agency or school district requiring reimbursement pursuant to Government Code, Section 17500 et seq.

The Commission may experience savings when land use plans, implementation plans, long range development plans, or their amendments are approved as submitted, because the Proposal makes effectiveness immediate in most cases, removing the need for most post-certification procedures. While the number of approvals (as submitted) are unpredictable, savings are projected at approximately \$28,500 a year due to the savings in analyst time.

There is no cost to the Commission, and no cost or savings to any other state agency.

Local governments and governing authorities may experience savings if land use plans, implementation plans, long range development plans, or their amendments are approved as submitted, because the Proposal makes effectiveness immediate in most cases, removing the need for most post-certification procedures. While the number of approvals (as submitted) are unpredictable, savings are projected at approximately \$70,500 a year statewide, due to the savings in local government staff time.

The Proposal may impose incidental costs on local governments and governing authorities if documents prepared for a submittal are not already produced in an editable format (e.g., MS Word). Because the regulation makes clear a common request, savings in time for requests and answers should offset any expense.

The Proposal will not impose any other non-discretionary costs or savings to local agencies.

The Proposal will not affect any cost or savings in federal funding to the State.

HOUSING COSTS

The Proposal will not affect housing costs.

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SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Commission has made an initial determination that the Proposal will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Commission has determined, pursuant to Government Code Section 11346.3(b)(1)(A)–(D), that the proposed changes will not have an effect on: the creation or elimination of jobs within the state; the creation or elimination of businesses within the state; or the expansion of business currently doing business within the state.

The anticipated benefits, as described above, include greater efficiency, consistency, accuracy, and transparency. In turn, the Proposal may also indirectly increase protection of the environment, via a greater ability to focus on important matters affecting the state’s coastal resources, as well as the promotion of fairness and social equity as required by the Commission’s Environmental Justice policy.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT

No business reports are required.

SMALL BUSINESS

The Commission has determined the Proposal does not affect small business. Small businesses chiefly interact with the Commission as applicants for coastal development permits. The Proposal does not create any new requirements for applicants.

ALTERNATIVES STATEMENT

In accordance with Government Code Section 11346.5(a)(13), the Commission must determine: that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be:

- more effective in carrying out the purpose for which the action is proposed;
- as effective and less burdensome to affected private persons than the proposed action; or
- more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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The Commission invites interested persons to present statements with respect to alternatives to the Proposal during the written comment period.

CONTACT PERSON

Written comments and any inquiries regarding the Proposal may be submitted to rulemaking@coastal.ca.gov, or directed to:

Ms. Robin M. Mayer
Staff Attorney
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105
(415) 904-5220
robin.mayer@coastal.ca.gov

BACKUP ONLY, contact:

Ms. Louise Warren
Acting Chief Counsel
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105
(415) 904-5220
louise.warren@coastal.ca.gov

AVAILABILITY STATEMENTS

The Commission has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Commission's office at 45 Fremont St., Suite 2000, San Francisco, California, during normal business hours.

As of the date this Notice is published, the rulemaking file consists of the Notice, the Express Terms (proposed amendments in ~~strikeout~~/underline), the Initial Statement of Reasons, and all information upon which the proposed rulemaking is based. The Express Terms, Initial Statement of Reasons, and supporting materials may be downloaded from the Commission's rulemaking page at <https://coastal.ca.gov/rulemaking/>, and are available on request from the agency contact listed in this Notice.

AVAILABILITY OF SUBSTANTIAL (15-DAY) CHANGES

After the written comment period ends and following the close of the October 16, 2019 hearing, the Commission may adopt the Proposal as described in this Notice, without further notice of nonsubstantive changes. However, the Commission may modify the Proposal prior to the vote, if substantial changes are sufficiently related to the original Express Terms (the text of the

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proposed changes to the regulations). While not anticipated at this time, if sufficiently-related changes are proposed for Commission consideration, the Express Terms with the additional changes in double-underline and ~~double-strikeout~~ will be posted to the commission's rulemaking page, transmitted to interested persons, and made available from the agency contact listed in this Notice. The changes will be made available at least 15 days in advance of the hearing. (See Cal. Code of Regs., tit. 1, § 44.)

MORE INFORMATION ON THE PUBLIC HEARING

A public hearing regarding the Proposal is scheduled for 9AM, Wednesday, October 16, 2019 as part of the Executive Director's Report at the Commission's regular meeting at the Chula Vista City Council Chambers, 276 Fourth Ave., Chula Vista, CA 91910.

NOTE: Only in-person testimony (either or oral or written) will be accepted at the hearing. The Commission does not accept live comments by telephone or electronic media.

MORE INFORMATION ON WRITTEN COMMENTS

Any interested person may submit written comments relevant to the Proposal to the Commission. Send written comments to rulemaking@coastal.ca.gov, preferably as a .pdf attachment; however, no particular format is necessary for e-mailed comments. Alternatively, mail comments to: Rulemaking, Legal Division, 45 Fremont St., #2000, San Francisco, CA 94105.

To be considered by the Commission during the public hearing on October 16, 2019, written comments should be received by Monday, October 14, 2019. Late comments will not be posted to the Commission website in time for Commission consideration. However, comments (written or oral) will still be accepted at the hearing. It is requested that commenters who submit comments at the hearing bring 20 paper copies of the comment to be distributed at the hearing, or request that copies be distributed and if feasible, staff will do so. Additionally, staff will summarize any late comments during its oral presentation.

FINAL STATEMENT OF REASONS

The Commission is required to prepare a Final Statement of Reasons before submitting the Proposal to the Office of Administrative Law. Once prepared, the Final Statement of Reasons will be made available to anyone who requests a copy and will be available on the Commission's rulemaking page, at <https://coastal.ca.gov/rulemaking/>. Written requests for copies should be addressed to the agency contact identified in this Notice.

INTERNET ACCESS

All rulemaking documents and materials may be viewed and downloaded from the Commission's rulemaking page at <https://coastal.ca.gov/rulemaking/>.