

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 JUNE 12, 2019. The hearing will be part of the Commission's regularly scheduled meeting at the Best Western Plus Island Palms Hotel, 2051 Shelter Island Dr., San Diego, California 92106. 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, June 10, 2019. More information is available at the end of this Notice.

INTRODUCTION

The Proposal would implement minor changes to the Commission's regulations in order to streamline procedures, conform to changes in the law, and generally update the provisions. The Proposal will help further the Commission's mission to protect coastal resources and public access in the coastal zone.

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, including those in the Coastal Act, the Bagley- Keene Open Meeting Act (Gov. Code, § 11120 et seq.), the Permit Streamlining Act (Gov. Code, § 65920 et seq.), the Public Records Act (Gov. Code, § 6250 et seq.), and the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), among others, as well as expressing law promulgated in two published appellate court opinions.

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.

NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code of Regulations

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 the Commission has not conducted a regular rulemaking for decades. The Commission now has more than forty years’ experience to draw on and has a better understanding of what should (and should not) be regulated.

The Proposal: The Proposal seeks to update, correct, and modernize the Commission’s regulations. The amendments would 1) generalize options for notices and other communication, chiefly to allow for electronic mail; 2) require posting of key documents to the Commission website; 3) make regulatory provisions consistent with a changed California statute; 4) streamline procedures, including hearing procedures; 5) clarify to remove or prevent ambiguities; 6) specify vague provisions; 7) correct, such as updating cross-references or aligning regulatory language to the applicable statute; 8) revise structure, syntax, grammar, spelling, or punctuation; 9) repeal provisions that have lost statutory authority; and 10) revise or add authority and reference citations.

For the specific changes proposed to all 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. First and foremost is the benefit of efficiency. Communication methods are

NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code of Regulations

proposed generically (“transmit,” “reasonable means”), to allow for e-mail communication for almost every form of contact between applicants, local government, organizations, interested persons, Commission staff, the Executive Director, and Commissioners. Second, although the Executive Director already posts most items of interest to the Commission’s website, including staff reports for agenda items, the Proposal would make those postings a requirement. Accessing posted material is a considerably more convenient and precise way for the public to find particular information, at any time, and from any place. Thus, the ability to send and receive information is far easier, and the ability to retrieve documents is greatly enhanced. The Proposal enables the Commission to catch up to the 21st century.

The Proposal also promotes consistency and accuracy. Many governing statutes have been passed, many repealed, and many more amended. Published appellate case law has resolved some important conflicts in interpretation and supported the use of Commission-developed guidance in certain decisions. The Proposal seeks to update regulation text that is obsolete due to statutory changes or interpretations by the courts; for other regulations, the Proposal implements the statutory language more precisely than the existing text; and for a few provisions, the Proposal corrects clear errors.

Finally, the Proposal makes Commission and staff practices more transparent to the public, by clarifying confusing language, especially the role of the chair during meetings; acknowledging the use of digital communication and documents; and removing redundant and obsolete provisions.

EXISTING STATE REGULATIONS

Within the Commission’s own regulations at Division 5.5, Title 14, language and cross-references have been checked and proposed to be changed, where necessary, in alignment with the Proposal. The Proposal affects only Commission procedures, and therefore 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.

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.

**NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code 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 Proposal is projected to cost the Commission approximately \$380 a year and save approximately \$5380 a year in postage costs, for a net savings of \$5,000 a year. The Proposal does not affect costs or savings to any other state agency.

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.

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

NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code of Regulations

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 would implement largely procedural changes that streamline application requirements and hearings considering those applications. If there is any effect on small business, it would be more efficient communication and consideration of applications.

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.

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

NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code of Regulations

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 June 12, 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 proposed changes to the regulations). While not anticipated at this time, if sufficiently-related changes to 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, June 12, 2019 as part of the Executive Director's Report at the Commission's regular meeting at the Best Western Plus Island Palms Hotel, 2051 Shelter Island Dr., San Diego, CA 92106.

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,

NOTICE OF PROPOSED ACTION
CALIFORNIA COASTAL COMMISSION
Title 14, Division 5.5, California Code of Regulations

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 June 12, 2019, written comments should be received by Monday, June 10, 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/>.