INITIAL STATEMENT OF REASONS

California Coastal Commission Regulations, Title 14, § 13001 et seq.

PROBLEM STATEMENT

The Commission continues to update procedures in its regulations. Earlier in 2019, nonsubstantive changes (2018-1226-02N) and minor changes were approved (2019-0619-055), the latter primarily to allow for electronic communication and to explicitly require the posting of a variety of documents to the Commission website. This second regular rulemaking is to solve some key problems stemming from existing language that staff initially recognized as needing substantive edits. Procedures are clarified and updated, and many unnecessary provisions are proposed for repeal. There are no impacts to the public, and no additional requirements imposed on applicants or interested persons. Local governments and governing authorities have very minor additional requirements for submittals and dispute resolutions and are relieved of certain post-certification procedures

The Legislature enacted the California Coastal Act in 1976 (Pub. Resources Code, Division 20) 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. 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).)

The Commission's main responsibilities consist of considering applications for coastal development; certifying local coastal programs in order delegate authority for local governments to issue coastal development permits; setting policy in coastal matters; conducting enforcement, from negotiations for the settlement of violations to the imposition of fines and litigation; and ensuring the consistency of federally-approved development in the Coastal Zone.

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, including the recent rulemakings mentioned above. This set of proposed changes ("Proposal") seeks to remove a great deal of surplusage, repeal unneeded procedures, and generally fix ineffective procedures so that they are clear, efficient, and encompass the proper scope of requirements.

The Proposal would not add any new sections, and would repeal Sections 13025 and 13559. The Proposal would amend the following Sections: 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.

PURPOSE -General

The Commission's regulations are found in Division 5.5 of Title 14 of the California Code of Regulations. As a whole, the regulations implement, interpret, and make specific provisions of the Coastal Act, as well as the Government Code (chiefly, the Bagley-Keene Open Meeting Act and the Permit Streamlining Act), and the California Environmental Quality Act (CEQA). Regulatory provisions are to be construed liberally to accomplish the purposes and carry out the objectives of the Coastal Act. (§ 13003.)

Section 30333 of the Coastal Act authorizes the Commission to adopt or amend regulations to carry out the purposes and provisions of the Act, and to govern procedures for the many different matters under the Commission's jurisdiction. Section 30333.1 further encourages periodic review of the regulations in order to make revisions "necessary and appropriate to simplify and expedite the review of any matter that is before the commission." Many proposed changes aim to accomplish more expeditious review of the Commission's matters, which number in the hundreds every year.

Generally the purpose is to continue to update the Commission's regulations, in particular to change or repeal procedural requirements that are obsolete, ineffective, inaccurate, or out of compliance with statutory language. The Proposal also continues to make minor corrections, and add, correct, or supplement Authority and Reference Notes.

By type, the proposed changes are summarized as follows:

Overhaul the requirements for staff reports to match existing practice, delete surplusage, and simplify convoluted provisions. (§ 13057.)

Clarify the different paths for effective certification of local coastal programs, long range development plans, and related amendments, including that plans certified as submitted are effective immediately (with an exception where implementation plans are certified according a conditionally-certified land use plan). (§§ 13544, 13544.5, and 13547.) Repeal a provision requiring post-certification procedures for port master plans. (§ 13632.)

Delete the requirement for "multiple resolutions" for local government or governing authority resolutions, while adding a requirement for local government that the intent for certification (whether for the land use plan or implementation plan) should be made clear in the resolution. (§§ 13518 and 13551.)

Generalize the options for dispute resolution to include exemptions, provide additional notice of requirements, allow for interested persons to request review and the Executive Director to independently review local government determinations, allow for staff resolution before scheduling a hearing, and provide hearing procedures. (§ 13569.)

Clarify and update appeal procedures, including adding a procedure for appellants to file an appeal via e-mail. (§§ 13111, 13318, and 13333.)

Clarify enforcement deadlines and procedures. (§§ 13180, 13181, 13183, 13185, 13190, 13191, and 13193.)

Align to statutory or regulatory authority, including two repeals rendered unnecessary. (§§ 13025, 13549, and 13559.)

Delete unused, impracticable, or inaccurate provisions. (§§ 13032, 13053, and 13573.)

Provide additional notice of existing requirements for emergency development. (§ 13137.)

Make minor clarifications and corrections. (§§ 13055, 13096, 13107, 13108, 13250, 13253, 13302, 13519, and 13552.)

Add missing authority and reference notes. (§§ 13056.1, 13149, 13248, and 13637.)

Correct or supplement existing authority and reference notes or adjust their formatting according to OAL practice. (§§ 13053, 13108, 13248, 13544, 13544.5, 13547, 13551, 13569, and 13573.)

See below for the specific purpose of each adoption, amendment, or repeal, organized by section number.

NECESSITY – General

The Proposal continues an update to the Commission regulations with an emphasis on repealing excess verbiage. Other provisions that remain necessary at their core are re-worked to simplify requirements, state them in plain English, and tailor them to the correct scope – not require too much or too little. The proposal will help fulfill the Commission's current Strategic Plan and its anticipated update. Above all, this latest proposal continues the intention of making the regulations easier to understand and use by the Commission, staff, and the public.

See below for the specific rationale for the necessity and effectiveness of each amendment or repeal, organized by section number. No new sections are added.

Authority and Reference Notes -General

The Proposal would add an Authority and Reference Note to new regulations or existing regulations that lack a Note, and amend other Notes where the cited statute is repealed, or the language has changed and no longer applies, or the citation is otherwise imprecise.

Purpose: The purpose of all additions of or changes to Notes is to help the public, applicants, interested persons, Commissioners, and staff to find the statutory authority and provisions that the regulation implements, interprets, or makes specific.

Necessity: An authority and reference note is required for each regulation. (Gov. Code, § 11349.1(a)(2), (a)(5).) Changes to notes do not have regulatory effect (Tit. 1, §100); however, complete and correct reference notes help the public find and understand the statutory framework for the regulation.

Authority: Section 30333 of the Public Resources Code authorizes the Commission to adopt or amend regulations to "carry out the purposes and provisions" of the Coastal Act and to govern procedures of the Commission. This general power applies to all regulations. Section 30333 is cited without further explanation in the Necessity and Purpose for Specific Regulations.

Reference: Citations vary according to section. Each addition or change is described under the Necessity and Purpose for Specific Regulations.

ECONOMIC IMPACT ANALYSIS

Pursuant to Government Code Section 11346.3(b)(1)(A)−(D), the Commission has conducted an economic impact analysis for the proposed changes to the regulations (Proposal). The Proposal primarily interprets, implements, and makes specific provisions of the Coastal Act. The proposed changes are intended to improve and update procedures regarding the processing of coastal development permits, local coastal programs, and other matters before the Commission.

Creation or Elimination of Jobs within the State of California

The primary fiscal impact of the Proposal is to save Commission staff and local government staff resources under the scenario in which a local coastal program or amendment is approved as submitted. The repeal of post-certification chores means local government staff do not have to formally return the item to their legislative body, saving the preparation of a staff report and the scheduling of an agenda item. In turn, Commission staff are relieved from having to produce a minor staff report that accepts the local action (or rejects it), along with scheduling that agenda item. The combined savings in staff time are estimated at 30 workdays a year for the Coastal Commission as a whole, and 45 days for local government, combined, statewide. Thus, while the impact is helpful for freeing up resources for both staffs, it does not save enough time that an individual job would be affected.

The Proposal adds very minor requirements for local government staff that are likely more than offset by saved time. The increased clarity in the Commission's procedures should also aid efficiency. Related activities are currently being performed by existing staff and there is no need for new positions.

The primary way in which business interacts with the Commission is as applicants for coastal development permits. Except for very minor clarity edits, the Proposal does not impact applicants.

Therefore, no jobs in California will be created or eliminated.

Creation of New or Elimination of Existing Businesses within the State of California

With increased clarity and updated procedures, the Proposal may make it easier for applicants, interested persons, and consultants to work with the Commission on permit applications or appeals. However, the impacts would be incidental and neither create new businesses or eliminate existing businesses within the state.

Expansion of Businesses Currently Doing Business within the State of California

As above, the primary way in which the Commission interacts with business is via applications for coastal development permits. There are no impacts that would expand a business currently doing business within the state.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Proposal affects the health and welfare of California residents only to the extent of helping the Commission fulfill its mission to protect the coastline. The Proposal does not benefit worker safety.

The anticipated benefits, described in more detail below, include greater efficiency, consistency, accuracy, and transparency. The resulting efficiency may also indirectly increase protection of the environment, via a greater ability to focus on important matters affecting the state's coastal resources.

STUDIES, REPORTS, AND DOCUMENTS

The Commission did not rely on any other documents for this rulemaking.

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 actual practice. Appeal and enforcement procedures are clarified and additional notice of other requirements (statutory, regulatory) are provided. 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.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No reasonable alternatives have been proposed or considered. The Proposal simplifies or adds notice of practices for the Commission and staff, and in turn for applicants, interested persons, and the public. The Proposal does not adversely impact small business.

PERFORMANCE & PRESCRIPTIVE STANDARDS

By and large, the Proposal is not prescriptive; it offers more flexibility, not less.

Technology: No specific technologies or equipment are required to be used.

Procedures: The Proposal adds new procedures in several regulations. For why a requirement (not otherwise required by statute) is the only reasonable alternative, a “Prescriptive Note” is added to the Necessity rationale under the following sections: 13057, 13111, 13137, 13180, 13318, 13333, 13518, 13519, 13551, 13552, and 13569.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Commission determines the proposed changes will not have a significant adverse economic impact on business. The primary way in which business entities interact with the Commission are as applicants for coastal development permits. The Proposal does not affect the duties of applicants.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The Commission is a regulatory agency under the California Resources Agency. The proposed changes focus on streamlining Commission procedures and generally updating the regulations. As applicable only to Commission matters, the changes do not duplicate or conflict with federal regulations.

PURPOSE and NECESSITY for Specific Regulations

Unless otherwise noted, statutory citations are to the Coastal Act, Public Resources Code, Division 20, Section 30000 et seq. Regulatory citations are to the California Code of Regulations, Title 14, Division 5.5, Section 13001 et seq.

~~§ 13025. Voting -Prerequisite of Notice.~~

Purpose: Repeal obsolete and potentially misleading provisions regarding notice.

Necessity: This regulation is no longer necessary and does not represent current law accurately. All votes of the Commission require adequate notice under the Bagley-Keene Open Meeting Act (Gov. Code, § 11125(b).) Regarding the first sentence, the subject matter is irrelevant. Notice is required, for example, whether the item is the adoption of a general policy, approval of a permit requested by an applicant, or part of a variety of items on the consent calendar; emphasizing some types of actions in the regulation may create the impression that they are somehow special and that other actions need not be noticed.

The second sentence regarding personnel actions likewise is not fully accurate. The Act exempts personnel discussions and actions regarding employees. (Gov. Code, 11126(a) and (b); see in particular (a)(4) [decision may be reached in closed session].) The Attorney General's guidance ("A Handy Guide to the Bagley-Keene Open Meeting Act 2004," pp. 11-12) (Exhibit 1) explains that the personnel exception applies only to employees, including the Executive Director, but not including members of the body such as the Chair and Vice-Chair. It is possible for the decision to hire or fire an employee to be made during a closed session. Discussions and actions regarding the Chair and Vice-Chair, however, must be made in an open session.

Rather than try to repeat the nuances of the Bagley-Keene Open Meeting Act in a Commission regulation, it is more efficient and accurate to let the Act speak for itself.

§ 13032. Duties and Delegation.

Purpose, subdivision (c): Repeal an obsolete and unused subdivision.

Necessity, subdivision (c): Staff is not aware of a resolution authorizing the Executive Director to establish administrative procedures to implement Commission regulations, or if a resolution was adopted in the past, of any related procedures. The existing language attempts to promote transparency, but falls short of modern standards. Unless purely for internal use (Gov. Code, 11340.9(d)) or adopted as guidelines under certain provisions (e.g., Pub. Resources Code, § 30514(d)(4)), new administrative procedures must be promulgated as a regulation under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). In particular, the Office of Administrative Law (OAL) notes the internal management exception is to be construed narrowly

and only where it "does not address a matter of serious consequence involving an important public interest." (OAL, Guide to Public Participation in the Regulatory Process (2016), pp. 6-7.) (Exhibit 2.) Because most matters before the Commission involve important public interests, the regulations incorporate all procedures that could affect the public, including provisions that on their face, affect only staff. (E.g., § 13057 [preparation of staff reports].)

As a matter of policy, repeal of subdivision (c) would be helpful as an example of the Commission's continued effort to promote transparency.

§ 13053. ~~Where~~ Exceptions to Requirement for Preliminary Approvals ~~Are Not Required~~.

Purpose, Title: To clarify that Section 13053 provides exceptions to the requirements for preliminary approvals (described by preceding Section 13052), and to avoid the impression that the listed examples always provide relief, when in fact the exceptions are largely discretionary.

Necessity, Title: The existing title is misleading. Only the Executive Director or the Commission may waive the requirement to acquire all preliminary approvals prior to applying for a coastal development permit.

Purpose, subdivisions (a)(3) and (a)(4): To adjust the syntax in line with the deletion of subdivision (a)(5).

Necessity, subdivisions (a)(3) and (a)(4): For clarity.

Purpose, subdivision (a)(5): To remove an exception from the listed examples that is no longer appropriate.

Necessity, subdivision (a)(5): The example exception (submitting a draft Environmental Impact Report ("EIR")) no longer establishes, if it ever did, good cause for waiving receipt of a final CEQA document when the lead agency, at its discretion, decides to produce a document. In modern practice, nearly every permit application is received after the CEQA process is complete, whether the agency finds an exemption applies all the way to adopting a full EIR. In addition, even if the CEQA process is not yet complete at the time of an application, under the Permit Streamlining Act (Gov. Code § 65920 et seq.), the lack of a final EIR is not a basis for refusing to file an application as complete, although the deadlines for processing applications are tolled while the CEQA document is incomplete. Thus, deletion of this section removes any ambiguity that the lack of am EIR could be a basis for finding an application incomplete.

Purpose, subdivision (b): To express the waiver of preliminary approvals for certain joint applications is an option, not a requirement, to ensure the Commission makes findings to support the waiver, and to remove the unnecessary timing requirement.

Necessity, subdivision (b): Expressing the active tense clarifies the Commission is the actor in this provision. Adding the requirement to make findings ensures that the waiver (or modification) has rationale to support it; all Commission actions, even minor ones, require analysis. (See generally, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515 [agency must make findings to bridge "analytic gap" between the evidence and the decision].) The "shall" is deleted because the Coastal Act, in particular the cited Section 303337, does not require that the Commission waive preliminary approvals for the joint process; it just may be practicable to do so under the particular circumstances. Finally, the requirement to perform that task at the same time as adoption of the joint system is deleted as unnecessary. The Commission has discretion to time the waiver as it chooses.

Purpose, Reference Note: To alphabetize the codes in keeping with the standardized format for Notes.

Necessity, Reference Note: The logical order helps the reader see all applicable codes.

§ 13055. Fees.

Purpose, subdivision (d): Adjust syntax and spacing so that the 2-times provision ("in no case…") clearly applies to both preceding provisions.

Necessity, subdivision (d): For clarity. In some published versions "(2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount…" appears as a single sentence. Expressing as two sentences and placing the "In no case" provision in a new paragraph (flush left) clarifies either scenario (longer staff processing time, or that the owner did not undertake the unpermitted development) cannot result in less than a 2-times fee. The adjustment would be especially helpful because the first scenario of longer processing time is much more frequently the case than denial of responsibility, and ATF developers often argue they should not have to pay any increased fee due to longer processing times.

§ 13056.1. Reapplication.

Purpose, Authority Note: Section 30333 is proposed to be added [Commission's general rulemaking powers].

Purpose, Reference Note: Section 30620 is proposed to be added [procedures for development].

Necessity, Authority and Reference Note: An authority and reference note is required for each regulation. (Gov. Code, § 11349.1(a)(2), (a)(5).)

§ 13057. Preparation of Staff Reports.

Purpose, entire section: The regulation is proposed to be overhauled to present the current requirements for a staff report in a straightforward manner.

Necessity, entire section: For clarity, efficiency, and accuracy. As specified below, several existing provisions of Section 13057 are incorrect, incomplete, redundant, or contain unnecessary surplusage. Staff reports are crucial documents that supply substantial evidence for Commission decisions. The elements of a staff report have developed over time to satisfy Coastal Act, regulatory, and substantial evidence requirements (see *Topanga*, *supra*, 11 Cal. 3d 506, 515). Additionally, the existing regulation is needlessly parsed and due to redundant aspects, confusing. The overhaul would reorganize the elements in the typical order of staff reports.

Purpose, subdivision (a) leading clause: To correct the syntax to express what is being excepted is the type of report, not the report itself; correct that what is waived is the permit, not the application; and to add that the listed requirements are a minimum.

Necessity, subdivision (a) leading clause: For clarity and accuracy. Staff reports are prepared for all applications, whether for regular coastal development permits, consolidated reports, administrative permits, or waivers. The syntax is corrected to reflect that the form and the contents may vary, but not the requirement for the report itself. The edit of "waivers of permit application" to "waiver of permit" is to accurately express what is being waived. "At a minimum" is added to clarify that the list consists of the basic requirements.

Purpose, subdivision (a)(1): New subdivision (a)(1) replaces existing subdivisions (a)(2)-(a)(6) with a simpler and more accurate description of the executive summary and its key components: a capsule project description, summary of issues, and staff recommendation.

Necessity, subdivision (a)(1): For clarity and accuracy. "Executive summary" is added as that is the customary title in reports. Regarding deletions of existing subdivisions (a)(2), (a)(3), (a)(4), it is not necessary in a summary to call out significant questions of fact (there usually are none), to list all applicable policies (there may be dozens), or summarize all comments (which are available in their entirety in a tab associated with the report). Existing subdivision (a)(5) "issues" is expressed generally rather than as issues strictly concerning legal adequacy. It is important to summarize significant issues of whatever kind. For example, a proposal may be legally adequate and approvable, but nonetheless extremely controversial-- information that Commissioners and the public need to glean from the summary. Thus, describing the standard of review is not necessary (and as explained below, existing language is inaccurate). Likewise for existing subdivision (a)(6), the revision requires only the recommendation itself for the summary and deletes the cross-reference and redundant findings requirement.

Purpose, subdivision (a)(2): New subdivision (a)(2) replaces existing subdivision (a)(1). Revisions add the term "exhibits," remove surplusage, and delete an impracticable standard. Rather than requiring maps, plans, and photographs for the description, the revised provision allows staff to determine what exhibits are necessary to understand the project as proposed.

Necessity, subdivision (a)(2): For clarity, accuracy, and to allow appropriate staff discretion. Deleting "adequate" removes a vague standard that in any case, is not necessary; as further explained below, mere description cannot establish compliance. Adding "exhibits" brings in the ordinary term for how visual materials are cited in the report. (Exhibits are currently displayed in a separate tab linked to the report.) "Legible" and "reproducible" are deleted as no longer necessary; staff would not use illegible material in the first place, and all exhibits are digitized and therefore reproducible. "Other visual or graphic materials" replaces the meaningless "etc." to allow for new forms of non-verbal information. Although the staff report commonly includes a map of the vicinity and maps or photographs of the project site, "vicinity" and "project site" are deleted as staff may use its discretion in how to present the details.

Deleting "sufficient... Coastal Act" removes the unnecessary and impracticable standard. A project description and site information, no matter how robust, cannot determine if the project complies with all applicable policies of the Coastal Act (or the local coastal program, when that is the standard of review). Compliance is determined by the analysis.

Purpose, existing subdivision (b) repeal: Existing subdivision (b) regarding the inclusion of CEQA documents and the discussion of related applications is proposed to be repealed.

Necessity, existing subdivision (b) repeal: For efficiency and accuracy. Existing subdivision (b)(1) is no longer necessary; CEQA documents are not incorporated directly into staff reports. EIRs, for example, frequently run thousands of pages long. Summaries do not quite work either. The Coastal Act is both narrower and deeper than CEQA: it addresses fewer subjects, but imposes stricter requirements when resources are impacted. Generally, staff reports briefly discuss the lead agency's CEQA determinations and how they relate to the Coastal Act findings. This helps fulfill the requirements of the Commission's CEQA-certified program (Pub. Resources Code, § 21080.5), and also offers in thoughtful fashion what is relevant for the Commission decision. When important to the decision, staff will offer relevant excerpts of CEQA documents as an exhibit, place them in the substantive file (documents listed and described but not directly published), or cite them with Internet links.

The discussion of "related previous applications" is also proposed to be deleted. When relevant, staff reports will include a short summary of related decisions (not applications), whether from the past, to be considered at the same meeting, or to be considered in the future. While the discussions can provide important information, they are not always necessary. Applications themselves are not discussed except in terms of the project description.

Purpose, subdivision (a)(3): New subdivision (a)(3) replaces existing subdivision (c)'s leading clause and subdivisions (c)(1)-(c)(4) with revisions and deletions.

Necessity, subdivision (a)(3): For clarity and accuracy. Subdivision (c)'s leading clause "the staff's recommendation required by subsection (a)(6) above shall contain" is deleted as surplusage, including no further need for the cross-reference with the proposed language.

A "staff recommendation for the Commission to approve, conditionally approve, or deny the application," incorporates existing (c)(4) as a simpler expression with the more accurate term "approval" instead of "grant." "Supported by specific findings with analysis of whether the proposed development conforms to the standard of review" incorporates subdivision (c)(1) with an overall requirement for findings according to the applicable standard of review (the Chapter 3 policies of the Coastal Act, the local coastal program, or a combination, which may or may not include Section 30604 requirements.)

The new clause would also incorporate the CEQA requirements from existing subdivisions (c)(2) and (c)(3) to address mitigation and alternatives (Pub. Resources Code, § 21080.5(d)(2)(A), as well as significant environmental points raised during the evaluation process (§ 21080.5(d)(2)(D) [emphasis added]). As explained above (**Necessity, existing subdivision (b) repeal**), staff reports for approvals also contain a short discussion of previous CEQA actions and how they dovetail with the recommendation. However, existing subdivisions (c)(1) and (c)(2) create the impression that the staff report alone fulfills CEQA, when it is the entire process that is equivalent. Most comments are received after the staff report is published. (See, e.g., § 13060 [distribution of comments].) Testimony at the hearing often raises and addresses significant environmental points. (See § 13060 [order of speakers].) CEQA requirements for an approval do not end until the filing of the Notice of Decision. (§ 21080.5(d)(2)(E), § 13162.) Thus, the generalized findings are a better way to express CEQA findings at this stage.

Prescriptive Note: Subdivision (a)(3) replaces "standard of review" for "Coastal Act." As explained, the standard of review may vary. There is no alternative as analysis must address all applicable policies according to the standard of review.

Purpose, subdivision (a)(4): New subdivision (a)(4) replaces existing subdivision (c)(5) with revisions to simplify the language and to include standard conditions as part of the report.

Necessity, subdivision (a)(4): For clarity and to delete surplusage. "For approvals" replaces "In the case of a recommendation of approval with conditions," as all recommendations of approval include at least the standard conditions and almost universally, a tailored set of special conditions. "Identification of the specific" is repealed as surplusage, conditions are added, not identified, and they are specific by nature. "By the executive director" is deleted as redundant; reports and recommendations are produced by staff. Recommended "standard conditions" is added to provide notice of required standard conditions, which are adopted by the Commission as a set to be routinely applied for regular permit approvals. (When necessary, staff may recommend a variation of the standard conditions. For example, Standard Condition 2, requiring diligence in developing and setting a period for vesting of the permit, is not required for after-the-fact development, which vests on approval.) "And a discussion of why the identified conditions are necessary to ensure that the development will be in accordance with the Coastal Act" is deleted as redundant to the creation of findings generally (new subdivision (a)(3)). Staff reports explain each special condition in the context of the standard of review. For example, a special condition based on Section 30253 of the Coastal Act (requirement to minimize risks of development) is explained in the analysis for hazards. Additionally, as expressed in subdivision

(a)(3), the standard of review is generalized; the conditions for a *de novo* permit on appeal, for example, may need to conform to local coastal program standards.

Prescriptive Note: Subdivision (a)(4) explicitly includes standard conditions as part of a recommendation for approval. There is no alternative as standard conditions, once adopted by the Commission, are to be included in all approvals. The amendment makes a routine practice transparent.

Purpose, subdivision (b): Existing subdivision (d) is labeled subdivision (b), cross-references and syntax adjusted to align with the proposed edits, and "if" replaces "where."

Necessity, subdivision (b): For clarity and accuracy. "S" is added to "requirement" to encompass subdivision (a) in its entirety; "subdivision" replaces "subsection" for the commonly-used term; (6) is removed from the cross reference to (a) as it will no longer exist and the full set of requirements is meant, "hereof" is deleted as unnecessary legalese; (a)(3) replaces (c)(4) and (c)(5) as the prong addressing the staff recommendation; and "if" replaces "where" as a better expression of deciding to produce report without a recommendation.

§ 13096. Commission Findings.

Purpose, subdivision (a): To replace "(c)" in the cross reference to Section 13057 with "(a)."

Necessity: **subdivision (a)**: To correct for the proposed subdivision regarding findings.

*§ 13107. Suspension of Permit.

*The underlying text is the approved version of Section 13107 from Rulemaking 2019-0619-055. The proposed edits are in addition to, and do not conflict with, the approved amendments.

Purpose: Add "unless" the commission votes to deny the revocation, replace the address "shown in the permit application" with "permittee's last known" address for notification, and replace "permittee" for "applicant."

Necessity: For clarity, to maximize notice, and to use the correct term for the permit holder. "Unless" helps clarify that the suspension may not end – the Commission may approve the revocation. The "last known" address helps ensure the permittee is contacted. The permittee may have changed mail addresses since the application, and given the gravity of a possible suspension, the Executive Director should use the latest information available to contact the permittee. "Permittee" replaces "applicant" to reflect that the person has received the permit.

§ 13108. Hearing on Revocation.

Purpose, subdivision (a): To specify the timing of the hearing and delete "preliminary" from "recommendation."

Necessity, subdivision (a): For clarity and accuracy. Existing language can be interpreted that the revocation must happen at the next regularly scheduled meeting as long as some kind of notice has been supplied. "After a staff report and recommendation have been prepared and after notice has been transmitted" ensures that staff has sufficient time to analyze the revocation request and that the notice is sent before the hearing takes place. "Preliminary" is deleted from "recommendation" as there is typically only one staff recommendation on a given matter.

Purpose, subdivision (c): Specify that the Commission should make a "request" on the record, rather than "wish" for further investigation.

Necessity, subdivision (c): The Commission does not ordinarily need a rationale to continue a matter, but given the seriousness of a potential revocation, a continuance for the purposes of needing more investigation is best supported by an explicit request on the record. This helps ensure that the hearing is conducted with fundamental fairness and due process (§ 30320) and decisions reached without unnecessary delay (§ 13064).

Purpose, subdivision (d): Replace "either" of the grounds for "any" grounds, add cross-references to subdivisions (a) and (b) of Section 13105 that supply the grounds; and tie due diligence to approval.

Necessity, subdivision (d): For clarity and notice. Either grounds from Section 13105(a) or (b) may work to establish revocation, but each prong must be met in full. Subdivision (a) grounds not only require, for example, that the applicant intentionally supplied poor information, but that the Commission find accurate and complete information would have affected the action – that the Commission would have imposed additional or changed conditions, or denied outright. Subdivision (b) grounds require that poor noticing deprived a commenter of the right to speak and that those missing comments "could" have affected the action. Thus, the granting of revocation cannot be based on "cherry-picking" a provision. The cross-references are to provide additional notice of where the language is in the regulations.

Adding "following the approval of the permit" after "due diligence" is necessary because the existing language is silent about what due diligence means. Requests have been received as late as five years after approval, hampering the ability to collect evidence on either side. Without a standard, finding the request was not filed with due diligence is entirely subjective. Specifying approval gives a reasonable yet flexible point for the start of due diligence.

Purpose, Reference Note: Delete Section 30333 [general rulemaking powers] and replace with Section 30620 [development procedures].

Necessity, Reference Note: Supply the most apt Section of the Coastal Act that is being implemented, interpreted, or made specific. Section 30333 concerns rulemaking and does not have a provision to implement. Section 30620)(c) refers to a request for revocation.

*§ 13111. Filing of Appeal.

Purpose, subdivision(a): Make a minor correction, use "shall" for requirements, require that the appeal be submitted on a Commission form, and describe the content listed as the minimum for an appeal. Repeal the trailing provision regarding local government information.

Necessity, subdivision (a): For transparency, consistency, accuracy, efficiency, and clarity. Adding "has" is a grammatical correction. Replacing "must" with "shall" is to continue an overall effort to use "shall" consistently throughout the regulations as the standard verb for requirements. Adding "shall be submitted on a commission appeal form" reflects existing practice and helps ensure the appeal meets all requirements, expediting that the Executive Director may file the appeal. (See, e.g., § 30620(d) [process for frivolous appeals].) "And shall" contain… "at a minimum" clarifies an appeal may contain additional information but must meet all listed requirements.

The trailing provision that the appeal "should" contain information requested by the local government is proposed for repeal. The provision is not used and is redundant. The local government supplies necessary information in the final local action notice (FLAN), which once received by the Executive Director, begins the appeal period. (§ 13110.) Thus, staff has the basic information regarding the local approval before an appeal is filed.

*The underlying text for subdivision (c) is the approved version from Rulemaking 2019-0619-055. The proposed edits are in addition to the approved amendments and do not conflict with them, except for two proposed amendments that each would replace an approved amendment.

Purpose, subdivision(c): To add the requirement to use the appeal form and that it be signed by all appellants, to replace "must" with "shall," to replace "on or before" with "no later than" 5:00 p.m., and to provide for electronic filing of an appeal with certain requirements but without the necessity for a mailed copy.

Necessity, subdivision (c): For transparency, consistency, accuracy, efficiency, fairness, and clarity. Adding that the appeal shall be submitted on a commission form reflects existing practice and helps ensure an appeal contains all necessary requirements. Adding that the form is to be signed by all appellants clarifies who exactly is appealing, and that all the signatories agree with the assertions in the form. "Shall" replaces "must" to continue the effort for consistent use of the verb for mandatory provisions across the regulations. "No later than" replaces the approved "on or before" as a clearer expression of the deadline.

An important new provision would allow the electronic filing of appeals with certain restrictions. A few districts that experience numerous appeals have implemented this practice and while it has proved effective and efficient, two issues have emerged about the timing and the receiving

address. Although e-mail is generally received within seconds of it being sent, occasional interruptions in service can delay receipt. Thus, it is incumbent on the appellant to ensure the email is received on time – in other words, the appellant should not wait until 4:59 p.m. to file an appeal. To that end, "shall be deemed to be timely filed" includes that it be "received by" the district office by 5p.m. of the final day of the appeal period. The second issue is the vast array of e-mail addresses available to the appellant. To ensure the correct district office receives the appeal, "the general email account of the district office with jurisdiction over the local government" is added. Appeal forms are available according to district, and instructions with the correct email address will be added if the regulation is approved.

That transmittal to the wrong address "does not constitute proper or timely submittal" of the appeal form is added to bolster the previous provision. Further, "the appeal shall be rejected" is added to give staff clear direction, ensure fairness to appellants who filed correctly, and be as transparent as possible.

The new provisions replace the approved provision that allowed email with a mailed copy backup. The "backup" is no longer necessary with the specific procedures for emailing an appeal form. Nothing prevents an appellant from mailing an appeal if that is their choice of method, as long as it is received on time.

Purpose, Reference Note: Strike subdivision (c) from Section 30620.

Necessity, Reference Note: To conform to OAL practice, preventing having to change notes when subdivisions change.

Prescriptive Note: The requirement to use an appeal form is the best alternative because the form presents all requirements for a valid appeal, which in turn expedites processing and filing. The proposal also reflects an existing practice that is successful. Appellants have access to the forms via the Commission website, may request forms to be mailed to them, or may stop by any office to request a particular form.

The requirement for all appellants to sign is the best alternative because it ensures all appellants agree to the assertions stated on the form without reservation.

The requirement to file an appeal with the particular district office is the only alternative. It is simply not possible, with the volume of appeals filed, for staff to send forms from one office to another. The cross-communication could also confuse the determination of whether the appeal was filed in time.

§ 13137. Immediate Action Required.

Purpose: To specify that urgent work for a public purpose must comply with the requirements of Section 13144(a), add "other" to clarify compliance with the remaining provisions in the Subchapter are subject to feasibility, and add the requirement that the person performing the emergency work file an application for a regular permit

Necessity: For clarity and transparency. Existing language requires compliance with the Subchapter 4 (of Chapter 5) regarding emergency permits, to the maximum extent feasible. But that is in tension with a provision within the subchapter that requires compliance without equivocation. Section 13144(a) requires that the Executive Director be notified of the type and location of emergency action, and that once the work is done, a written rationale for why the work was done and that the scope of the work did not exceed emergency needs. These notifications are presumably always feasible, but the cross-reference provides further notice that the requirements must be met.

The requirement to file an application for a regular permit as a "follow-up" makes a typical condition for the work or permit explicit. Failure to file a follow-up application is an unfortunately common and extremely serious problem, affecting enforcement, the Commission, neighbors, and the public. Applicants who wait for a crisis, claim an emergency and perform the work, but then do not file an application, rob the Commission of an adequate chance to review the emergency work for its scale and effectiveness. The inclusion of "public agency," in addition to "person," also helps ensure that agencies are aware of this requirement.

Prescriptive Note: There is no alternative to filing an application for a regular permit after being allowed to perform emergency work. Such applications receive thorough review and analysis, the associated hearings are noticed to all interested persons, and decisions are made by the Commission based on substantial evidence. The processing of an application for a full permit is integral to preventing environmental impacts and maximizing public access.

§ 13149. Notice.

Purpose, Authority Note: Section 30333 is proposed to be added [Commission's general rulemaking powers].

Purpose, Reference Note: Section 30620 is proposed to be added [development procedures].

Necessity, Authority and Reference Note: An authority and reference note is required for each regulation. (Gov. Code, § 11349.1(a)(2), (a)(5).)

§ 13180. Definition.

Purpose, subdivision (a): Make a minor correction and adjust the syntax for the proposed amendments.

Necessity, subdivision (a): For clarity. “That” replaces “which” as grammatically correct and also to avoid presenting a subordinate clause.
Purpose, subdivision (a)(2): To make last clauses of existing subdivision (a)(2)(C) a stand-alone provision, revise to add Executive Director review of actions required by the NOI, and adjust syntax accordingly.

Necessity, subdivision (a)(2): For the protection of resources, to avoid making a bad situation worse, and for clarity. Respondents have, and may try in the future, to reverse the unpermitted development in a manner that causes more damage. To ensure that further actions, even as required in the Notice, will not do further damage, the revisions add Executive Director review of the actions to ensure the actions are legally undertaken without a permit, waiver, or other authorization. “Affirmative” is added to “actions” to clarify the actions under review are definitive actions that could affect a site. “D” is added for the fourth subdivision as the necessary formatting change, and “and” is moved to before the new subdivision marker for clarity.

Prescriptive Note: Subdivision (a)(2)(C) requires a demonstration to the Executive Director’s satisfaction that further actions to avoid irreparable injury to the resources are legal without further authorization. The review by the Executive Director is the best alternative as it protects the resources in an expedient manner.

Purpose, subdivision (c): To allow a respondent to skip offering an immediate response and agree to issuance of the order.

Necessity, subdivision (c): For simplicity, in situations where the respondent will accept issuance of the order. Under subdivision (a)(2), a detailed response must be supplied in the time frame set by the Notice of Intent, or staff will issue the order. A respondent may wish instead to acknowledge the violation, receive the order, and work with staff to resolve issues under the longer time frame.

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

Purpose, subdivision (b): To add commas after “section,” “receipt,” and “time limit.” To clarify and in the new provision, establish what happens when a respondent brings in new information after the Statement of Defense form is submitted.

Necessity, subdivision (b): For clarity, transparency, efficiency, and fairness. When staff issues a Notice of Intent (NOI) to issue an order, the NOI sets a deadline for the respondent (party) to return the Statement of Defense form. The edits to the first provision identify the party is requesting an extension for when the Statement of Defense form is due. The additions of commas section,” “receipt,” and “time limit” clarifies each is an independent clause.

The new provision is to continue to close a loophole in which a respondent was able to present multiple defenses, first to staff, then the Commission. Late information can be disruptive because staff has not been able to prepare an answer, and delays can be expensive. The provision establishes where a respondent supplies new information after the form is submitted, there must be good reason why the information is late. Where information is justifiably late, the provision clarifies the hearing may be nevertheless be delayed with a cross-reference to Section 13185 to express the full range of possibilities. Establishing the full procedure helps provide notice to respondents that they should be making every effort to prepare a full defense at the staff level.

*§ 13183. Contents of an Executive Director's Recommendation on Proposed Cease and Desist Order.

*The underlying text for subdivision (a) is the approved version from Rulemaking 2019-0619-055.The proposed strikeout would supersede (retract) an approved amendment.

Purpose, subdivision (a): Retract the recently approved provision setting publication of the staff recommendation for an order at least ten days in advance of the hearing.

Necessity, subdivision (a): Staff recommendations are not required to be published ten days in advance, but are published in reasonable time to ensure adequate notification prior to the hearing. (*Cf* "reasonable time" in § 13059 for permit reports.) To promote reaching consent, rather than unilaterally imposing a cease and desist order and taking on the risk of litigation, enforcement staff conducts intensive negotiations in the period between the publication of the agenda item and the publication of the recommendation and order. At this time, staff does not want to set a regulatory standard that could hamper those negotiations.

§ 13185. Procedure for Hearing on Proposed Cease and Desist Order.

Purpose, subdivision (d): To clarify that "to a later day of the same meeting" means to postpone.

Necessity, subdivision (d): For clarity and to match the syntax of (1) and (3).

§ 13190. Definitions.

Purpose, Title: Add an "s" to Definition.

Necessity, Title: For clarity that Section 13190 defines multiple terms used in enforcement.

Purpose, subdivision (b): To generalize "unpermitted development" to "violation."

Necessity, subdivision (b): For clarity and to use the more general term. Violations can be passive as well as active (engaging in unpermitted development). (See § 13172, as amended by Rulemaking 2019-0619-055 [violations include the failure to act.)

§ 13191. Commencement of Restoration Order Proceeding Before the Commission.

Purpose, subdivision (b): (See also Section 13181.) To clarify and in the new provision, establish what happens when a respondent brings in new information after the Statement of Defense form is submitted.

Necessity, subdivision (b): For clarity, transparency, efficiency, and fairness. When staff issues a Notice of Intent (NOI) to issue an order, the NOI sets a deadline for the respondent (party) to return the Statement of Defense form. The edits to the first provision identify the party is requesting an extension for when the Statement of Defense form is due.

The new provision is to continue to close a loophole in which a respondent was able to present multiple defenses, first to staff, then the Commission. Late information can be disruptive because staff has not been able to prepare an answer, and delays can be expensive. The provision establishes where a respondent supplies new information after the form is submitted, there must be good reason why the information is late. Where information is justifiably late, the provision clarifies the hearing may be nevertheless be delayed with a cross-reference to Section 13185 to express the full range of possibilities. Establishing the full procedure helps provide notice to respondents that they should be making every effort to prepare a full defense at the staff level.

*§ 13193. Contents of an Executive Director's Recommendation on Proposed Restoration Order.

*The underlying text for subdivision (a) is the approved version from Rulemaking 2019-0619-055.The proposed strikeout would supersede (retract) an approved amendment.

Purpose, subdivision (a): Retract the recently approved provision setting publication of the staff recommendation for an order at least ten days in advance of the hearing.

Necessity, subdivision (a): Staff recommendations are not required to be published ten days in advance, but are published in reasonable time to ensure adequate notification prior to the hearing. (*Cf* "reasonable time" in § 13059 for permit reports.) To promote reaching consent, rather than unilaterally imposing a restoration order and taking on the risk of litigation, enforcement staff conducts intensive negotiations in the period between the publication of the agenda item and the

publication of the recommendation and order. At this time, staff does not want to set a regulatory standard that could hamper those negotiations.

§ 13248. Notification of Development Approvals.

Purpose, Authority Note: Section 30333 is proposed to be added [Commission's general rulemaking powers].

Purpose, Reference Note: Sections 30610 [subdivision (e), categorical exclusions] and 30610.5 [urban exclusions] are proposed to be added.

Necessity, Authority and Reference Note: An authority and reference note is required for each regulation. (Gov. Code, § 11349.1(a)(2), (a)(5).)

§ 13250. Improvements to Existing Single-Family Residences

Purpose, subdivision (b)(4): To add an "an" to improvement to make it singular.

Necessity, subdivision (b)(4): For clarity and to express the limits on a single improvement. Many local coastal programs measure the cumulative effects of improvements over time, due to a threshold (often 50% replacement of key parts of the structure) in which the improvements are actually redevelopment and require a permit.

§ 13253. Improvements That Require Permits.

Purpose, subdivision (a)(4): To add a comma after "regional commission."

Necessity, subdivision (a)(4): For clarity and to complete the subordinate clause regarding designated resource areas. The next clause regarding 10 percent improvement is intended to apply to property that is either near the sea or in a significant resource area.

§ 13302. Coastal Development Permit Program Content.

Purpose, subdivision (f): Add "permit" to "coastal development," correct grammar, replace "and" with "or" for alternate actions, and add "application" to the denial action.

Necessity, subdivision (f): For accuracy and clarity. "Permit" is added to complete the term for what is issued; "that" replaces "which" because the following clauses are not (and do not need to be) subordinate, "or" replaces "and" because an action either approves or denies, but not both;

"application" is added because what is denied is the application, not the permit (the permit is not issued in the case of denial).

*§ 13318. Filing of Appeal from the Issuance of a Coastal Development Permit.

*The underlying text for Section 13318 is the approved version from Rulemaking 2019-0619-055. The proposed edits are in addition to the approved amendments and do not conflict with them, except for two proposed amendments that each would replace an approved amendment.

Purpose, Section 13318: To clarify which district office is the proper one to receive an appeal; to replace "on or before" with "no later than," to add that 5 p.m. on the last day of the appeal period is the deadline, and to provide procedures for the electronic filing of appeals.

Necessity, Section 13318: For clarity, transparency, and to describe a procedure in which appellants may file an appeal electronically. "Appropriate" is replaced by "with jurisdiction over the local government" to specify appeals must be sent to that district office. "No later than" replaces the approved "on or before" as a clearer expression of the deadline.

An important new provision would allow the electronic filing of appeals with certain restrictions. A few districts that experience numerous appeals have implemented this practice and while it has proved effective and efficient, two issues have emerged about the timing and the receiving address. Although e-mail is generally received within seconds of it being sent, occasional interruptions in service can delay receipt. Thus, it is incumbent on the appellant to ensure the email is received on time – in other words, the appellant should not wait until 4:59 p.m. to file an appeal. To that end, "shall be deemed to be timely filed" includes that it be "received by" the district office by 5p.m. of the final day of the appeal period. The second issue is the vast array of e-mail addresses available to the appellant. To ensure the correct district office receives the appeal, "the general email account of the district office with jurisdiction over the local government" is added.

That transmittal to the wrong address "does not constitute proper or timely submittal" of the appeal form is added to bolster the previous provision. Further, "the appeal shall be rejected" is added to give staff clear direction, ensure fairness to appellants who filed correctly, and be as transparent as possible.

The new provision replaces the approved provision that allowed email with a mailed copy backup. The "backup" is no longer necessary with the specific procedures for emailing an appeal form. Nothing prevents an appellant from mailing an appeal if that is their choice of method, as long as it is received on time.

Prescriptive Note: The requirement to file an appeal with the particular district office is the only alternative. It is simply not possible, with the volume of appeals filed, for staff to send

forms from one office to another. The cross-communication could also confuse the determination of whether the appeal was filed in time.

*§ 13333. Filing an Appeal

*The underlying text for Section 13333 is the approved version from Rulemaking 2019-0619-055. The proposed edits are in addition to the approved amendments and do not conflict with them, except for two proposed amendments that each would replace an approved amendment.

Purpose, subdivision(b): (See also Section 13318 regarding filing of appeals). To clarify which district office is the proper one to receive an appeal; to replace "on or before" with "no later than," to add that 5 p.m. on the last day of the appeal period is the deadline, and to provide procedures for the electronic filing of appeals.

Necessity, subdivision (b): For clarity, transparency, and to describe a procedure in which appellants may file an appeal electronically. "Appropriate" is replaced by "with jurisdiction over the local government" to specify appeals must be sent to that district office. "No later than" replaces the approved "on or before" as a clearer expression of the deadline.

An important new provision would allow the electronic filing of appeals with certain restrictions. A few districts that experience numerous appeals have implemented this practice and while it has proved effective and efficient, two issues have emerged about the timing and the receiving address. Although e-mail is generally received within seconds of it being sent, occasional interruptions in service can delay receipt. Thus, it is incumbent on the appellant to ensure the email is received on time – in other words, the appellant should not wait until 4:59 p.m. to file an appeal. To that end, "shall be deemed to be timely filed" includes that it be "received by" the district office by 5p.m. of the final day of the appeal period. The second issue is the vast array of e-mail addresses available to the appellant. To ensure the correct district office receives the appeal, "the general email account of the district office with jurisdiction over the local government" is added.

That transmittal to the wrong address "does not constitute proper or timely submittal" of the appeal form is added to bolster the previous provision. Further, "the appeal shall be rejected" is added to give staff clear direction, ensure fairness to appellants who filed correctly, and be as transparent as possible.

The new provision replaces the approved provision that allowed email with a mailed copy backup. The "backup" is no longer necessary with the specific procedures for emailing an appeal form. Nothing prevents an appellant from mailing an appeal if that is their choice of method, as long as it is received on time.

Prescriptive Note: The requirement to file an appeal with the particular district office is the only alternative. It is simply not possible, with the volume of appeals filed, for staff to send

forms from one office to another. The cross-communication could also confuse the determination of whether the appeal was filed in time.

§ 13518. Resolution for Submittal.

Purpose, subdivision (a): Delete the requirement that the local government produce multiple resolutions for multiple submittals (for phased or for geographic units). Add that when a resolution requires multiple submittals that the intention is clear how each submittal is to be certified.

Necessity, subdivision (a): For efficiency and clarity. The requirement for multiple resolutions for multiple submittals is struck as unnecessary, as it is purely technical. How many resolutions are adopted is irrelevant. The timing of resolutions and their formatting is up to the local government. However, a resolution should be clear about whether each submittal is proposed for the Land Use Plan or the Implementation Plan (rather than using the umbrella term "Local Coastal Program"). This ensures, among other important aspects, that Commission staff apply the correct standard of review. Land Use Plans are certified according to Coastal Act policies (see Pub. Resources Code, § 30512), and Implementation Plans (zoning, ordinances, etc.) are certified according to the Land Use Plan policies (see Pub. Resources Code, § 30513.) The addition will also help ensure that the local government's legislative body and staff are in accord as to what the submittal is proposing.

Prescriptive Note: Subdivision (a) would add that the intent for certification of each part, where there are multiple parts, be made clear in the resolution. There is no alternative because the resolution is the final expression what the submittal is supposed to accomplish before local staff sends it to the Commission.

Purpose, subdivision (b): To repeal wasteful provisions and describe what is strictly necessary to make a certified plan effective.

Necessity, subdivision (b): For efficiency and clarity. There are two types of certifications. The Commission may certify a plan as submitted, or may certify on condition that the local government accepts and implements what is termed "modifications" that are crafted to make the plan consistent with the standard of review. (§§ 30512(b), 30513.)

The repeal of subdivision (b), (b)(1), and the first sentence of (b)(2) reflects the actual practices and powers of the local government at the submittal stage. When adopting the resolution, the local government cannot predict if the Commission will certify the plan as submitted, or if the Commission will conditionally certify and impose modifications (or even deny, although that is rare). Thus, at that point the local government cannot require that the submittal to "take effect automatically." The next sentence presents the opposite issue: neither can the local government predict if further adoption will be necessary (presumably, due to modifications). In short, the local government or governing authority cannot try to control certification in advance.

The final clause regarding compliance with Section 13544 is retained and moved to become new subdivision (b), except that "under either of the alternative procedures" is deleted to match the repeal of the other clauses. The cross reference to Section 13544 provides additional notice of how the plans become effective, including that when no modifications are imposed and the Commission certifies a plan as submitted, that effectiveness is immediate. (See § 13544 as proposed.)

*§ 13519. Contents of Submittal.

*The underlying text for subdivision (b) is the approved version from Rulemaking 2019-0619-055.The proposed changes are in addition to, and do not conflict with, the approved amendments.

Purpose, subdivision (b): Add the standard of review for implementation plans and that submitted documents be editable.

Necessity, subdivision (b): For clarity and efficiency of communication. While a land use plan is certified according to the Chapter 3 policies of the Coastal Act, an implementation plan is reviewed according to the certified land use plan. (§§ 30512, 30513.) Editable documents would save time for both local and Commission staff. For example, a submittal document solely in .pdf format is difficult to edit; transferring to MS Word can add artifacts and at the least, the transfer takes time. It is essential that Commission staff be able to edit quickly and precisely so that edits can be discussed internally and with the local staff.

Prescriptive Note: Subdivision (b) adds that documents in a submittal be editable. This provides a general term rather than specific types of documents. No other alternative is efficient; the idea is to save the back-and-forth conversations that take place when Commission staff ask for the document to be sent in an editable format, or where Commission staff converts documents, to save time and potential errors that result from conversion.

*§ 13544. ~~Effective Date of~~ When Certification Becomes Effective~~of a Local Coastal Program~~.

*The underlying text for Section 13544 is the approved version from Rulemaking 2019-0619-055. Except for reorganization, the proposed changes are in addition to, and do not conflict with, the approved amendments.

Purpose, entire section: To establish that a plan certified as submitted is effective immediately, and need not be returned to the local government for action. Where a plan is certified subject to

modifications, the same requirements for local government acknowledgement and action would apply.

Necessity, entire section: For clarity and efficiency. Existing language fails to distinguish between the two types of certification, and as a result even where a plan is certified as submitted, the local government and the Executive Director are required to go through a superfluous process of acknowledgement, action, and determination that the result is legally adequate.

Purpose, subdivision (a): To clarify and separate the initial tasks applicable to all certifications.

Necessity, subdivision (a): A marker for subdivision (a) is added because the remaining language is an independent requirement. Moving the deleted sentence to subdivision (c) is to clarify that the list of post-certification tasks applies only to plans that are certified subject to modifications. Revisions are discussed below in subdivision (c).

Purpose, subdivision (b): The new provision addresses the frequent situation in which the Commission certifies a local coastal plan or amendment as submitted, and establishes those certified plans are effective immediately.

Necessity, subdivision (b): Existing language requires the local government and in the final step, the Executive Director, to take a series of actions that are not necessary and potentially wasteful. The changes are to clarify that it is not necessary for the local government to take any further action where no modifications need implementation. The “instant” effectiveness also encourages the resolution of issues before submittal, because local staff will not need to repeat formalities already approved by its legislative body.

Purpose, subdivision (c): Incorporate existing language from subdivision (a) and revise. Revisions are to describe all scenarios for conditional certification, what is required to make a conditional certification effective, and describe the delegation of authority to issue permits as one aspect of effectiveness.

Necessity, subdivision (c): For clarity and accuracy. “When the Commission has conditionally certified a land use plan, implementation plan, or amendment of either” replaces “The certification of a local coastal program” to add “conditionally” for the type of certification, express in active tense, specify the two different parts of a local coastal program, and include amendments. Each part and each amendment must be separately certified. (§ 30514(a).) “On the acceptance of modifications” is added to generally describe what conditional certification means. “The certification is not effective” is added to describe effectiveness generally, whether it results in the transfer of authority or not. The transfer of authority happens once after the initial land use plan and implementation plan are certified, resulting in the local government’s first complete local coastal program. Subsequent amendments or large scale updates affect the contents of the program but do not affect the local government’s ability to issue permits. Thus, “including for the transfer of coastal development review authority pursuant to Public Resources Section 30519” is set off with commas to express as a subordinate clause. “Shall not be deemed final

and" is deleted as legalese and surplusage; the word "final," in particular, does not have a particular meaning in the process.

Purpose, subdivisions (c)(1)-(c)(3): The provisions describing the tasks after conditional certification are placed as subdivisions of (c).

Necessity, subdivisions (c)(1)-(c)(3): For clarity that tasks are necessary only to make a conditional certification effective.

Purpose, subdivision (c)(1): "As amended" is added.

Necessity, subdivision (c)(1): To clarify that the most recently certified program, as amended, applies for the issuance of permits.

Purpose, subdivision (c)(2): To delete "order," to move the Executive Director's rejection to a separate subdivision, and to add an "and."

Necessity, subdivision (c)(2): For clarity and accuracy. "Order" is deleted from "certification order" because the Commission does not adopt an order of certification. Certification is complete on a vote that incorporates all relevant substantial evidence on the record. Moving "If the executive director…shall review.. as a resubmittal" to subdivision (d) is because it is not a task that makes a conditional certification effective, but a provision to explain what happens when the post-certification action by the local government does not satisfy the Executive Director.

Purpose, subdivision (c)(3): The final "and" is deleted.

Necessity, subdivision (c)(3): To adjust the syntax.

Purpose, subdivision (d): The language for when the Executive Director determines the local government's action is not adequate is moved without revisions and the syntax adjusted accordingly.

Necessity, subdivision (d): To clarify the Executive Director rejection functions as an independent provision.

Purpose, subdivision (e): To separate the provision from the requirements for effectiveness and add the separate subdivision mark.

Necessity, subdivision (e): For accuracy and clarity. The CEQA notice of certification is untethered from requirements for effectiveness because the existing structure is circular, requiring a report of effectiveness to make a plan effective. Further, the CEQA report, while an important responsibility of the Commission, is not necessary to make a local coastal program effective under the Coastal Act. The formatting is adjusted to reflect the provision is an independent requirement.

Purpose, Reference Note: The Public Resource Code sections are arranged in numerical order in keeping with the standardized format for Notes.

Necessity, Reference Note: The logical order helps the reader see all applicable codes.

*§ 13544.5. Effective Date of Certification of a Land Use Plan.

*The underlying text for Section 13544.5 is the approved version from Rulemaking 2019-0619-055.Except for reorganization, the proposed changes are in addition to, and do not conflict with, the approved amendments.

Purpose, entire section: To establish that a land use plan certified as submitted under Section 30600.5 is effective immediately, and need not be returned to the local government for action. Where a plan is certified subject to modifications, the same requirements for local government acknowledgement and action would apply.

Necessity, entire section: For clarity and efficiency. Existing language fails to distinguish between the two types of certification, and as a result even where a plan is certified as submitted, the local government and the Executive Director are required to go through a superfluous process of acknowledgement, action, and determination that the result is legally adequate.

Purpose, subdivision (a): To separate the initial tasks applicable to all certifications.

Necessity, subdivision (a): A marker for subdivision (a) is added because the remaining language is an independent requirement. Moving the deleted sentence to subdivision (c) is to clarify that the list of post-certification tasks applies only to plans that are certified subject to modifications. Revisions are discussed below in subdivision (c).

Purpose, subdivision (b): The new provision addresses the situation in which the Commission certifies a land use plan or amendment as submitted, and establishes those certified plans are effective immediately.

Necessity, subdivision (b): Existing language requires the local government and in the final step, the Executive Director, to take a series of actions that are not necessary and potentially wasteful. The changes are to clarify that it is not necessary for the local government to take any further action where no modifications need implementation. The “instant” effectiveness also encourages the resolution of issues before submittal, because local staff will not need to repeat formalities already approved by its legislative body.

Purpose, subdivision (c): Incorporate existing language from subdivision (a) and revise. Revisions are to describe all scenarios for conditional certification, what is required to make a

conditional certification effective, and describe the delegation of authority to issue permits as one aspect of effectiveness.

Necessity, subdivision (c): For clarity and accuracy. "When the Commission has conditionally certified a land use plan or amendment" replaces "The certification of a land use plan" to add "conditionally" for the type of certification, express in active tense, and include amendments. The land use plan and each amendment must be separately certified. (§ 30514(a).) "On the acceptance of modifications" is added to generally describe what conditional certification means. "The certification is not effective" is added to describe effectiveness generally, whether it results in the transfer of authority or not. Under Section 30600.5, a local government may receive authority to issue permits under a certified land use plan alone, without a certified implementation plan, but the transfer of authority nevertheless happens only once. Subsequent amendments or large scale updates affect the contents of the program but do not affect the local government's ability to issue permits. Thus, "including for the transfer of coastal development review authority pursuant to Public Resources Section 30600.5" is set off with commas to express as a subordinate clause. "Shall not be deemed final and" is deleted as legalese and surplusage; the word "final," in particular, does not have a particular meaning in the process.

Purpose, subdivisions (c)(1)-(c)(3): The provisions describing the tasks after conditional certification are placed as subdivisions of (c).

Necessity, subdivisions (c)(1)-(c)(3): For clarity that tasks are necessary only to make a conditional certification effective.

Purpose, subdivision (c)(1): "As amended" is added.

Necessity, subdivision (c)(1): To clarify that the most recently certified land use plan, as amended, applies for the issuance of permits.

Purpose, subdivision (c)(2): To delete "order," to move the Executive Director's rejection to a separate subdivision, and to add an "and."

Necessity, subdivision (c)(2): For clarity and accuracy. "Order" is deleted from "certification order" because the Commission does not adopt an order of certification. Certification is complete on a vote that incorporates all relevant substantial evidence on the record. Moving "If the executive director…shall review.. as a resubmittal" to subdivision (d) is because it is not a task that makes a conditional certification effective, but a provision to explain what happens when the post-certification action by the local government does not satisfy the Executive Director.

Purpose, subdivision (c)(3): The final "and" is deleted.

Necessity, subdivision (c)(3): To adjust the syntax.

Purpose, subdivision (d): The language for when the Executive Director determines the local government's action is not adequate is moved without revisions and the syntax adjusted accordingly.

Necessity, subdivision (d): To clarify the Executive Director rejection functions as an independent provision.

Purpose, subdivision (e): To separate the provision from the requirements for effectiveness and add the separate subdivision mark.

Necessity, subdivision (e): For accuracy and clarity. The CEQA notice of certification is untethered from requirements for effectiveness because the existing structure is circular, requiring a report of effectiveness to make a plan effective. Further, the CEQA report, while an important responsibility of the Commission, is not necessary to make a land use plan effective under the Coastal Act. The formatting is adjusted to reflect the provision is an independent requirement.

Purpose, Reference Note: The Public Resource Code sections are arranged in numerical order in keeping with the standardized format for Notes.

Necessity, Reference Note: The logical order helps the reader see all applicable codes.

§ 13547. Effective Date of Certification.

*The underlying text for Section 13547 is the approved version from Rulemaking 2019-0619-055.Except for reorganization, the proposed changes are in addition to, and do not conflict with, the approved amendments.

Purpose, entire section: To establish that a long range development plan certified as submitted under Section 30600.5 is effective immediately, and need not be returned to the local government for action. Where a plan is certified subject to modifications, the same requirements for local government acknowledgement and action would apply.

Necessity, entire section: For clarity and efficiency. Existing language fails to distinguish between the two types of certification, and as a result even where a plan is certified as submitted, the local government and the Executive Director are required to go through a superfluous process of acknowledgement, action, and determination that the result is legally adequate.

Purpose, subdivision (a): To separate the initial tasks applicable to all certifications.

Necessity, subdivision (a): A marker for subdivision (a) is added because the remaining language is an independent requirement. Moving the deleted sentence to subdivision (c) is to clarify that the list of post-certification tasks applies only to plans that are certified subject to modifications. Revisions are discussed below in subdivision (c).

Purpose, subdivision (b): The new provision addresses the situation in which the Commission certifies a long range development plan or amendment as submitted, and establishes those certified plans are effective immediately.

Necessity, subdivision (b): Existing language requires the governing authority and in the final step, the Executive Director, to take a series of actions that are not necessary and potentially wasteful. The changes are to clarify that it is not necessary for the governing authority to take any further action where no modifications need implementation. The "instant" effectiveness also encourages the resolution of issues before submittal, because university / college staff will not need to repeat formalities already approved by its governing authority.

Purpose, subdivision (c): Incorporate existing language from subdivision (a) and revise. Revisions are to describe all scenarios for conditional certification, what is required to make a conditional certification effective, and describe the delegation of authority to issue permits as one aspect of effectiveness.

Necessity, subdivision (c): For clarity and accuracy. "When the Commission has conditionally certified an LRDP or amendment" replaces "The certification of an LRDP" to add "conditionally" for the type of certification, express in active tense, and include amendments. The long range development plan and each amendment must be separately certified. (§ 30514(a).) "On the acceptance of modifications" is added to generally describe what conditional certification means. "The certification is not effective" is added to describe effectiveness generally, whether it results in abbreviated review procedures or not. Under Section 30605, the first certified and effective long range development program allows the governing authority to implement the abbreviated review procedure. Subsequent amendments or large scale updates affect the contents of the plan but do not affect the governing authority's ability to conduct abbreviated review. Thus, "including the implementation of the abbreviated review procedure provided in Section 13550," is set off with commas to express as a subordinate clause. "Pursuant to Public Resources Section 30606" is deleted as the regulation is sufficient for the cross reference. Instead, Section 30606 is added to the Reference Note. "Shall not be deemed final and" is deleted as legalese and surplusage; the word "final," in particular, does not have a particular meaning in the process.

Purpose, subdivisions (c)(1)-(c)(3): The provisions describing the tasks after conditional certification are reformatted as subdivisions of (c).

Necessity, subdivisions (c)(1)-(c)(3): For clarity that tasks are necessary only to make a conditional certification effective.

Purpose, subdivision (c)(1): The final period is changed to a semi-colon.

Necessity, subdivision (c)(1): To clarify the first task is part of a list.

Purpose, subdivision (c)(2): To delete "order," and to move the Executive Director's rejection to a separate subdivision.

Necessity, subdivision (c)(2): For clarity and accuracy. "Order" is deleted from "certification order" because the Commission does not adopt an order of certification. Certification is complete on a vote that incorporates all relevant substantial evidence on the record. Moving "If the executive director…shall review.. as a resubmittal" to subdivision (d) is because it is not a task that makes a conditional certification effective, but a provision to explain what happens when the post-certification action by the governing authority does not satisfy the Executive Director.

Purpose, subdivision (d): The language for when the Executive Director determines the governing authority's post-certification action is not adequate is reformatted.

Necessity, subdivision (d): To clarify the Executive Director rejection functions as an independent provision.

Purpose, Reference Note: Section 30606 is added.

Necessity, Reference Note: The abbreviated review process is referenced in the text. Section 30606 describes the abbreviated review for projects after the long range development plan is certified.

§ 13549. Notice of the Impending Development.

Purpose, subdivision (a): Add "working" to the 30 days before development may begin, delete "construction for any" from the first reference to "development," and add a requirement that notices and physical postings shall be consistent with the long range development plan.

Necessity, subdivision (a): For clarity. The Coastal Act states the notice of impending development (NOID) is due "prior" to the commencement of development, and also states no development may take place within 30 working days "after the notice." (§ 30606.) Practicably, the notice is therefore due at least 30 working days before development commences.

The deletion of "construction for any" is to ensure no development of any kind, such as grading, is begun ahead of the timeline. Development is a term widely used in the Coastal Act, is broadly defined by Section 30106, and is a more general term than construction. The requirement that notices and physical posting be consistent with the LRDP is to provide notice that procedures, as well as the substantive aspects of the project, should be consistent with the plan.

Purpose, subdivision (b): Add "working" to the 10 days for Executive Director review of the NOID.

Necessity, subdivision (b): To allow more time for review in keeping with the overall deadline in subdivision (a) that the governing authority may develop within 30 working days of issuing the NOID.

Purpose, Authority Note: Add Section 30333 [general rulemaking powers].

Necessity, Authority Note: The rulemaking powers granted by Section 30605 are limited. Adding Section 30333 includes the more general rulemaking powers.

Purpose, Reference Note: Add Section 30605 [describing Commission review of specific projects under a Long Range Development Plan].

Necessity, Reference Note: Section 30606 remains applicable, but does not describe the Commission's role in reviewing specific projects. That language is contained in Section 30605.

§ 13551. Local Government Resolution.

Purpose, subdivision (a): Delete the requirement that the local government produce multiple resolutions for multiple submittals (for phased or for geographic units). Add that when a resolution requires multiple submittals that the intention is clear how each submittal is to be certified.

Necessity, subdivision (a): For efficiency and clarity. The requirement for multiple resolutions for multiple submittals is struck as unnecessary, as it is purely technical. How many resolutions are adopted is irrelevant. The timing of resolutions and their formatting is up to the local government or governing authority. However, for local coastal programs, a resolution should be clear about whether each submittal is proposed as an amendment to the Land Use Plan or as an amendment to the Implementation Plan (rather than using the umbrella term "Local Coastal Program"). Unfortunately, complicated amendments have been accepted for filing only to discover that the local government failed to specify how certain parts are to be certified, wasting time and increasing the risk of denial. Expressing the intent in the resolution ensures, among other important aspects, that Commission staff apply the correct standard of review. Land Use Plans are certified according to Coastal Act policies (see Pub. Resources Code, § 30512), and Implementation Plans (zoning, ordinances, etc.) are certified according to the Land Use Plan policies (see Pub. Resources Code, § 30513.) The addition will also help ensure that the local government's legislative body and staff are in accord as to what the submittal is proposing.

Prescriptive Note: Subdivision (a) would add that the intent for certification of each part, where there are multiple parts, be made clear in the resolution. There is no alternative because the

resolution is the final expression of what the submittal is supposed to accomplish before local staff sends it to the Commission.

Purpose, subdivision (b): To repeal wasteful provisions and cross-reference to the effectiveness regulations.

Necessity, subdivision (b): For efficiency and clarity. The repeal of existing language reflects the actual practices and powers of the local government or governing authority at the submittal stage. When adopting the resolution, the local government or governing authority cannot predict if the Commission will certify the amendment as submitted, or if the Commission will conditionally certify and impose modifications (or even deny, although that is rare). Regarding (1), at that point the local government or governing authority cannot require that the submittal to "take effect automatically." The alternative at (2) presents the opposite issue: neither can the local government or governing authority predict if further adoption will be necessary (presumably, due to modifications). In short, the local government or governing authority cannot try to control certification in advance.

The next sentence regarding effectiveness is retained with minor revisions for clarity and without the qualification of "either procedure," since the procedures are being repealed. The references to regulation sections 13544, 13544.5, and 13547 provide additional notice of how the amendments become effective, including that where no modifications are imposed, that the effectiveness is immediate.

The final sentence is deleted as unnecessary. Although words are missing, the intent seems to be that amendments are to be processed in the same manner as original submittals. This is already clear from the Coastal Act (Pub. Resources Code, § 30514(b), and related regulations, such as Section 13552.

Purpose, Authority Note: Add Section 30333 [general rulemaking powers].

Necessity, Authority Note: The rulemaking powers granted by Sections 30501 and 30605 are limited. Adding Section 30333 includes the more general rulemaking powers.

Purpose, Reference Note: To arrange the Public Resource Code Sections in numerical order and in keeping with the standardized format for Notes.

Necessity, Reference Note: The logical order helps the reader see all applicable codes.

§ 13552. Contents of LCP or LRDP Amendment Submittal.

*The underlying text for subdivision (b) is the approved version from Rulemaking 2019-0619-055. The proposed changes are in addition to, and do not conflict with, the approved amendments.

Purpose, subdivision (b): Add that submitted documents be editable and clarify the standard of review for implementation plans.

Necessity, subdivision (b): For efficiency and clarity of communication. For example, a submittal document solely in .pdf format is difficult to edit; transferring to MS Word can add artifacts and at the least, the transfer takes time. It is essential that Commission staff be able to edit quickly and precisely so that edits can be discussed internally and with the local staff. The clarification of the standard of review for implementation plans removes any uncertainty about what is required for contents of amendments to implementation plans.

Prescriptive Note: Subdivision (b) adds that documents in a submittal be editable. This provides a general term rather than specific types of documents. No other alternative is efficient; the idea is to save the back-and-forth conversations that take place when Commission staff ask for the document to be sent in an editable format, or where Commission staff converts documents, to save time and potential errors that result from conversion.

~~§ 13559. Submission of Final Environmental Documents for LRDPs.~~

Purpose: To repeal a regulation superseded by statute.

Necessity: Statutory changes to CEQA bar the Commission from requiring final CEQA documents for an LRDP submittal. Under Public Resources Code, Section 21080.9, the governing authority does not have to produce a CEQA document at all. Additionally, combining CEQA and Coastal Act documents is no longer practicable. As explained above for Section 13057, CEQA and the Coastal Act do not necessarily align in their requirements, and staff has different responsibilities for compliance with the different Acts. Assuming the governing authority produces any CEQA documents, it is more efficient for staff to receive them separately rather than discern how different parts of a combined document are supposed to apply.

§ 13569. Dispute Resolution for Local Permit Processing Procedures~~Determination of Applicable Notice and Hearing Procedures~~.

Purpose, Title: To provide an accurate title of the overall procedure.

Necessity, Title: One of many confusing aspects of existing Section 13569 is its title. The heart of the regulation is to enable a dispute resolution before the Commission when the local government and the Executive Director disagree about the proper approach for reviewing a particular development or claimed exemption. Thus, “Dispute Resolution for Local Permit Processing Procedures” is proposed to replace “Determination of Applicable Notice and Hearing Procedures” as a better expression of scope.

INITIAL STATEMENT OF REASONS

Coastal Commission Regulations, Title 14, § 13001 et seq.

Purpose, entire section: To explicitly include exemptions, a frequent source of disagreement between local governments and Commission staff; to expand the examples of potential impacts for consideration; to repeal formalities that are unnecessary and impracticable; to explicitly allow the Executive Director to independently investigate the local government's determination with or without an outside request, to allow reasonable time frames for execution of the requirements, and to explicitly allow respective staffs to work on solutions before scheduling a hearing in front of the Commission. A variety of clarifying edits and adjustments to syntax are made.

Necessity, entire section: Existing language is cumbersome, repetitive, under-inclusive as to the types of disputes explicitly listed, and dependent on the local government to make a request for the Executive Director to review its own determination. There is no motivation for a local government to make such a request, subverting the entire purpose of this regulation. Ordinarily, Commission staff learns of an objection to the local government determination from an interested person.

Purpose, subdivision (a): To add the subdivision marker, add "proposed" to "development," add exemptions as a source of dispute, add "whether a decision on the proposal" is appealable "to the Commission," delete "non appealable," delete "for the purposes of .. procedures," and establish a practical deadline for the local government to make its determination. Additionally, the standards for consideration are expanded to supply a robust picture of considerations, including Commission regulations regarding exemptions and coastal resources that are in place. "Which are adopted as part of the Local Coastal Program" is deleted as redundant; all categorical exclusions, land use designations, and zoning ordinances are part of the certified local coastal program. The last sentence regarding questions is replaced by provisions in subdivision (c) that allows an applicant or interested person to request the Executive Director review the local government determination. A local government can make such requests anytime without any particular context.

Necessity, subdivision (a): For clarity, accuracy, and transparency. The subdivision marker is added to establish the subdivision as an independent provision rather than a setup for what follows; the vast majority of the time, there is no conflict. "Exempt" is added because exemptions are the most common source of debate. While claims of an exemption are appealable (§ 30625(a)) and covered by the "appealable" in the existing language, it would be more transparent for the regulation to explicitly include exemptions.

"For purposes of notice, hearing and appeals procedures" is deleted because, while procedures are important, they are not usually the issue. The determination has substantive effects on the applicant, potentially on interested persons and the environment, and potentially on whether the Commission would file an appeal. "As soon as practicable after" replaces "at the time" of the application or request for exemption is made to the local government to allow time for processing, to resolve any issues with the application (such as missing information), etc. A local government may not always know the facts required to make this determination at the time that an application is filed. "Or a request for exemption" is added because no application may be necessary or desired; a written confirmation of exemption is usually faster and cheaper than

submitting an application. (*Cf.* § 13055(b)(3) [written confirmation of an exemption] to § 13055(a) [various filing fees].)

"According" to the various standards replaces "with reference" because a reference does not acknowledge that the policies form the standard of review. The standards are rounded out to clarify the universe of applicable policies that are required to be considered but were not explicitly included in this regulation in the past, including the Coastal Act, the certified local coastal program, and Commission regulations for exemptions. "Applicable" replaces "any" to ensure the determination includes all potential policies. "Coastal resources existing at the time of the application or request" is added to ensure associated resources such as public access, habitat, and wetlands are recognized as part of the determination and that the determination is based on "ground truth" of conditions today, regardless of whether the resources are designated in the local coastal program. "Ordinances" is added to "zoning" to complete the term used in the Coastal Act. (See § 30122.) "Which are adopted as part of the Local Coastal Program" is deleted as surplusage; as the program is mentioned in the first clause of the same sentence. "Where an applicant… or appealable" is deleted as the following provisions provide a procedure for interested persons who object to the local government determination. "Questions" alone do not need regulation; Commission staff is available to answer questions from the local government, applicant, or interested person.

Prescriptive Note: Subdivision (a) explicitly adds an exemption as a determination and a source of dispute. A claim of exemption is appealable (§ 30625(a)), and therefore included in the existing language, but the addition makes this common source of dispute transparent. There is no alternative to express the term exemption.

Purpose, subdivision (b): To adjust formatting, remove surplusage, ensure that the determination is made in writing, and that the Commission receives the determination.

Necessity, subdivision (b): For clarity and accuracy. "Shall make its determination… (i.e., categorically excluded… non appealable" is deleted as redundant. Inform "the Commission district office in writing" is added to ensure Commission staff is aware of the determination and that it is reproducible. The writing need not take any particular form; sending an e-mail is sufficient. "Its determination, as soon as practicable" ensures prompt information and setting other notices (as for a hearing) as the outside deadline. "With reference to any" notice and hearing requirements is added to include situations where no notice or hearing may be required, and a reference is sufficient given the local government likely can provide website links to the exact language rather than having to include the language or summaries. "For the particular development" is deleted as redundant; the determination would describe the exemption or scope of development. The final sentence is deleted as surplusage not needing regulation; local staff is already empowered to process applications or requests for exemption and has the expertise about geographic areas, interested persons, and applicable polices. The subdivision is changed to (b) as part of the reformatting.

Prescriptive Note: Subdivision (b) ensures the determination is made in writing so that it is documented and can be shared without any specific format (e.g. an e-mail is sufficient). There is no alternative as a phone call or meeting may not be memorialized or recalled in sufficient detail.

Purpose, subdivision (c): To allow the Executive Director to initiate review or interested persons or applicants to request review of a local government determination, and to enable staff to gather the basic evidence from the local government. A deadline of 30 working days is set for the Executive Director to complete review, unless a rationale (good cause) is supplied to take more time. The Executive Director is required to inform the local government, the applicant, and any interested persons of his or her determination. An older provision that required the local government to make a phone call to the Executive Director regarding the dispute is repealed.

Necessity, subdivision (c): For fairness, transparency, and efficiency; to ensure all concerns about a local government determination are addressed; and to encourage resolution at the staff level. The last clause of existing subdivision (b) expresses one narrow method, a local government phone call, for the Executive Director to begin review of a determination. In fact, most reviews begin with a concern raised by an interested person, including at times, the applicant, communicated to Commission staff through a variety of means. The beginning of the process should not be weighed down by waiting for the phone to ring, especially where the local government may not desire review. Thus, the first new sentence provides that the Executive Director can initiate review independently or on request of an interested person. The second sentence requires communication from the Executive Director to the local government regarding review and requires the local government to supply its key documentation so that the Executive Director has the pertinent facts. The provision ensures the local government is aware of Executive Director review and that the review is made on the same facts as the initial determination.

The second sentence replaces existing subdivision (c). The deadline is expressed as “within 30 working days” with good cause to support going beyond that time limit. Existing language is simultaneously onerous and vague. With present day workloads, it is not feasible for staff to conduct and finish review within two working days of a request. An exemption may be confirmed in a matter of days; but a complicated project with questions about whether it is appealable may take much longer to investigate. On the other hand, “upon completion of a site inspection where a site inspection is warranted” provides no deadline at all nor is it clear when an inspection is warranted, although presumably a site visit is necessary when habitat or wetlands may be impacted. The 30 working day time standard allows for site visits and other inquiries that may take time, as well as the applicant’s particular circumstances, the local government process, and other legal deadlines such as the Permit Streamlining Act.

Subdivision (b) is changed to (c) as part of the reformatting.

Prescriptive Note: Subdivision (c) adds that the local government provide the application and determination in question. There is no alternative as the Executive Director needs those facts to review, and they are best presented in the same form received and produced by the local government. The Executive Director is further required to send the results of any review to the

local government, the applicant, and where a request was made, to the interested person who made the request. The requirement replaces silence in the existing language about who receives the Executive Director's "determination." There is no alternative; sending to the local government, applicant, and the interested person at the same time ensures fairness, accuracy, and timely receipt.

Purpose, subdivision (d): To remove surplusage, clarify when there is no conflict no further procedures are available, to identify a clear conflict when there is one, allow for staff-level resolution, provide a flexible standard for scheduling a hearing, limit oral testimony to appropriate parties, allow for written comment, and require adequate findings.

Necessity, subdivision (d): For efficiency and clarity. "After the Executive Director's determination" is removed as surplusage; obviously, the determination (review) must be complete before the issues are elevated. Existing language requires a Commission hearing whenever the Executive Director's determination differs from the local government's determination without any qualifications. A difference does not allow for nuances, feasible compromise, or negotiations before the hearing. Thus, "If the executive director's determination conflicts" with the local government determination replaces "Where.. the executive director's determination is not in accordance" with the local government determination." The new language also clearly calls the difference a conflict, rather than the vague clause "not in accordance," so that the conflict is pinpointed and clear before resources are spent on a hearing. "And the respective staffs are not able to resolve the conflict and reach agreement… in a reasonable time" allows for informal resolution. The "Executive Director shall schedule a hearing" replaces the Commission "shall hold a hearing" as a more accurate way to describe the first step when staffs cannot resolve the conflict. It also replaces "The Commission shall schedule" the hearing in the existing language; which is imprecise as the Executive Director creates the agenda and in turn, the timing of the hearing. "As soon as practicable" allows for appropriate scheduling, such as to give sufficient notice for the agenda item, or to schedule the hearing in the same area as the dispute. It replaces "for the next Commission meeting (in the appropriate geographic region of the state)." The latter clause is vague as to whether "appropriate" means the same city, county, district office area, or Northern/ Southern California. Regardless, all matters of controversy are scheduled, to the extent feasible, nearest the locality where the development is to take place, in order to enable interested persons to testify. On the other hand, the particular conflict may merit expeditious resolution without concern for where the hearing is held. Thus, the Executive Director is required to schedule the hearing with dispatch while considering more than geography.

"To resolve the dispute" characterizes what the hearing does, and replaces "for purposes of determining the appropriate designation for the area." The latter existing language focuses on the development site rather than the development. There may be no issue with, for example, the zoning (which is certified in any case), but rather how the local government is interpreting the zoning.

New language is added to limit who may testify - the applicant, local government, and if any, the interested person who requested Executive Director review. (*Cf.*, § 13117, as amended [limited

testimony for the initial stage of an appeal].) Under most circumstances, other interested persons would have a chance to testify at the local hearing. In any case, they can send written comments, and to ensure this opportunity is known, "Any person may submit written comments" is added. Finally, "The Commission shall make findings to support its decision" is added to provide similar notice that the rationale will be made known for the final decision.

Prescriptive Note: Subdivision (d) prescribes the hearing requirements of limited testimony and making findings. Findings are always required (see *Topanga, supra*); the amendment calls them out as additional notice. Limiting testimony is the best alternative because it is appropriate to the scope. Similar to a first-stage appeal (§ 13117, as amended), the issues are procedural and the hearing should be focused. A Commission decision that a proposal is exempted, for example, requires no further action. A Commission decision that a proposal requires a coastal development permit likely means a local hearing would provide for testimony from any interested person on the merits.

Purpose, Reference Note: To add provisions regarding exemptions, appeals, and categorical exclusions.

Necessity, Reference Note: Add Sections 30602 and 30603 [appeals], Section 30610 [sub. (e), categorical exemptions], and 30625 [subd. (a), appeal of permit action or exemption].

§ 13573. Exhaustion of Local Appeals.

Purpose, subdivision (a): To add Section 30801 as a cross-reference, and an "or" and remove the parentheses from "(bodies)."

Necessity, subdivision (a): To provide additional notice to potential appellants of the complicated definition of "aggrieved person." The definition does not appear directly in Coastal Act provisions regarding appeals, but instead is found in the chapter on enforcement. The syntax adjustments to result in "body or bodies" is to clarify either scenario may be required by local procedures, and that the exceptions apply accordingly.

Purpose, subdivision (b): To repeal an unused and convoluted provision of doubtful legality.

Necessity, subdivision (b): The apparent intent of the existing provision was to allow local governments to provide, via ordinance, a means of exhaustion in the case of appeals by two Commissioners. Staff is unaware of a local government passing such an ordinance, and the motivation to pass one remains obscure since it would be disruptive to local processes. The historical note for the article (under § 13560) states it was filed in 1983, and there is some indication from the Commission minutes the language was adopted in 1977 (Exhibit XXX); regardless, the provision was adopted before the common law offered a wealth of principles on administrative exhaustion and finality. (See, e.g., *Dietary Supplemental Coal., Inc. v. Sullivan* (9th Cir. 1992) 978 F.2d 560, 562 [finality requirement insures judicial review will not interfere with an agency's decision-making process].)

Additionally, numerous provisions in the Coastal Act and the regulations describe a rigorous process for appeals that begins only when the local government has completed final action on a permit. The local government sends a notice of final action (also called final local action notice, or FLAN) (§ 13571), the Executive Director evaluates and files it (§§ 13110 and 13111, as amended), the ten working day appeal period opens, and the appeal period closes. The contents of appeals must meet certain requirements before they can be filed. (§ 13111). Except for the logical relief from local exhaustion in the subject provision, and immediate filing of their appeals, Commissioners are bound to the same requirements as other appellants. Their appeals must be supplied during the appeal period, and must be based on valid grounds (from the FLAN or in more detail by the local record) that the approved project is in conflict with the local coastal program or, as applicable, the public access policies of Chapter 3.

Purpose, Reference Note: Add Section 30801 [definition of aggrieved person].

Necessity, Reference Note: To guide the public to the statutory definition in the Coastal Act.

§ 13637. Minor Amendments.

Purpose, Authority Note: Section 30333 is proposed to be added [Commission's general rulemaking powers].

Purpose, Reference Note: Section 30716 is proposed to be added [Port may propose minor amendments.]

Necessity, Authority and Reference Note: An authority and reference note is required for each regulation. (Gov. Code, § 11349.1(a)(2), (a)(5).)

INITIAL STATEMENT OF REASONS

California Coastal Commission regulations, Title 14, § 13001 et seq.

EXHIBIT 1

Attorney General
A Handy Guide to the Bagley-Keene Open Meeting Act 2004, pp. 11-12.

CLOSED SESSIONS

Although, as a general rule, all items placed on an agenda must be addressed in open session, the Legislature has allowed closed sessions in very limited circumstances, which will be discussed in detail below. Closed sessions may be held legally only if the body complies with certain procedural requirements. (§ 11126.3)

As part of the required general procedures, the closed session must be listed on the meeting agenda and properly noticed. (§ 11125(b).) Prior to convening into closed session, the body must publically announce those issues that will be considered in closed session. (§ 11126.3.) This can be done by a reference to the item as properly listed on the agenda. In addition, the agenda should cite the statutory authority or provision of the Act which authorizes the particular closed session. (§11125(b).) After the closed session has been completed, the body is required to reconvene in public. (§ 11126.3(f).) However, the body is required to make a report only where the body makes a decision to hire or fire an individual. (§ 11125.2.) Bodies under the Bagley-Keene Act are required to keep minutes of their closed sessions. (§ 11126.1.) Under the Act, these minutes are confidential, and are disclosable only to the board itself or to a reviewing court.

Courts have narrowly construed the Act's closed-session exceptions. For example, voting by secret ballot at an open-meeting is considered to be an improper closed session. Furthermore, closed sessions may be improperly convened if they are attended by persons other than those directly involved in the closed session as part of their official duties.

■ Personnel Exception

The personnel exception generally applies only to employees. (§ 11126(a) and (b).) However, a body's appointment pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution (usually the body's executive director) has been designated an employee for purposes of the personnel exception. On the other hand, under the Act, members of the body are not to be considered employees, and there exists no personnel exception or other closed session vehicle for board members to deal with issues that may arise between them. Board elections, team building exercises, and efforts to address personality problems that may arise between members of the board, cannot be handled in closed session.

Only certain categories of subject matter may be considered at a closed session authorized under the personnel exception. (§ 11126(a)(1).) The purpose of the personnel exception is to protect the privacy of the employee, and to allow the board members to speak candidly. It can be used to consider appointments, employment, evaluation of performance, discipline or dismissal, as well as to hear charges or complaints about an employee's actions. Although the personnel exception is appropriate for discussion of an employee's competence or qualifications for appointment or employment, we do not think that discussion of employee compensation may be conducted in closed

session in light of an appellate court decision interpreting a similar exception in the Brown Act, (the counterpart to the Bagley-Keene Act which is applicable to local government bodies).[5]

The Act requires compliance with specific procedures when the body addresses a complaint leveled against an employee by a third person or initiates a disciplinary action against an employee. Under either circumstance, the Act requires 24-hour written notice to the employee. (§ 11126(a)(2).) Failure to provide such notice voids any action taken in closed session.

Upon receiving notice, the employee has the right to insist that the matter be heard in public session. (§ 11126(a)(2).) However, the opposite is not true. Under the Act, an employee has no right to have the matter heard in closed session. If the body decides to hold an open session, the Bagley-Keene Act does not provide any other option for the employee. Considerations, such as the employee's right to privacy, are not addressed under the Bagley-Keene Act.

If an employee asserts his or her right to have the personnel matter addressed in open session, the body must present the issues and information/evidence concerning the employee's performance or conduct in the open session. However, the body is still entitled to conduct its deliberations in closed session. (§ 11126(a)(4).)

- **Pending Litigation Exception**

The purpose of the pending litigation exception is to permit the agency to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the agency in the litigation. (§ 11126(e)(1).) The term "litigation" refers to an adjudicatory proceeding that is held in either a judicial or an administrative forum. (§11126(e)(2)(c)(iii).) For purposes of the Act, litigation is "pending" in three basic situations. (§11126(e)(2).) First, where the agency is a party to existing litigation. Secondly, where under existing facts and circumstances, the agency has substantial exposure to litigation. And thirdly, where the body is meeting for the purpose of determining whether to initiate litigation. All of these situations constitute pending litigation under the exception.

For purposes of the Bagley-Keene Act, the pending litigation exception constitutes the exclusive expression of the attorney-client privilege. (§ 11126(e)(2).) In general, this means that independent statutes and case law that deal with attorney-client privilege issues do not apply to interpretations of the pending litigation provision of the Bagley-Keene Act. Accordingly, the specific language of the Act must be consulted to determine what is authorized for discussion in closed session.

Because the purpose of the closed session exception is to confer with legal counsel, the attorney must be present during the entire closed session devoted to the pending litigation. The Act's pending litigation exception covers both the receipt of advice from counsel and the making of

[5] *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947.

INITIAL STATEMENT OF REASONS

California Coastal Commission regulations, Title 14, § 13001 et seq.

EXHIBIT 2

Office of Administrative Law,
Guide to Public Participation in the Regulatory Process (2016), pp. 6-7

First, is the policy or procedure either:

- a rule or standard of general application, *or*
- a modification or supplement to such a rule?

Second, has the policy or procedure been adopted by the agency to either:

- implement, interpret, or make specific the law enforced or administered by the agency, *or*
- govern the agency's procedure?

Third, has the policy or procedure been expressly exempted by statute from the requirement that it be adopted as a "regulation" pursuant to the APA?

If the policy or procedure satisfies steps one and two, then it is a "regulation" as defined in the APA and must be adopted pursuant to the APA unless it falls within an express statutory exemption from the requirements of the APA. Generally, all "regulations" issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute. (Government Code section 11346.) If the policy or procedure does not fall within an express statutory exemption, then it is subject to the rulemaking requirements of the APA.

EXPRESS STATUTORY EXEMPTIONS ARE FOUND IN THE APA AND IN OTHER STATUTES. THE FOLLOWING ARE SOME OF THE EXPRESS EXEMPTIONS SET OUT IN THE APA.

- **INTERNAL MANAGEMENT:** "A regulation that relates only to the internal management of the state agency." (Government Code Section 11340.9(d).)

  The internal management exception to the APA is narrow. A regulation is exempt as internal management if it:

(1) directly affects only the employees of the issuing agency, and

(2) does not address a matter of serious consequence involving an important public interest. (***Armistead, Stoneham, Poschman,*** and ***Grier***.)

- **FORMS:** "A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued." (Government Code Section 11340.9(c).)

  This legislative language creates a limited statutory exemption relating to forms. A regulation is *not* needed if the form's contents consist only of existing, specific legal requirements.

  By contrast, if an agency *adds any language which satisfies the definition of "regulation" to the existing legal requirements*, then, under Government Code section 11340.9(c), a formal regulation is "needed to implement the law under which the form is issued." Section 11340.9(c) cannot be interpreted as permitting state agencies to avoid mandatory APA rulemaking requirements by simply typing regulatory language into a form because this interpretation would allow state agencies to ignore the APA at will.

- **AUDIT GUIDELINES:** "A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

  "(1) Enable a law violator to avoid detection.

  "(2) Facilitate disregard of requirements imposed by law.