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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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

Th 5b



June 19, 1997

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel *DD*
Ann Cheddar, Staff Counsel *mc*

SUBJECT: Public Hearing on Proposed Revisions to Portion of
Chapters 1-3 of the Commission's Regulations

For Commission Discussion and Possible Action on July 10, 1997

SUMMARY

On April 8, 1997, the Commission authorized commencement of a rulemaking proceeding to amend portions of Chapters 1-3 of the Commission's regulations. (Exhibit 1.) The proposed revisions would amend various sections in Chapters 1 through 3 of the Commission's regulations. These chapters encompass, respectively, General Provisions, Meetings, and Officers and Staff. Specifically, staff proposes to:

- 1) amend sections 13007, 13023, and 13025 to remove direct or indirect references to the Commission structure that existed when the Commission had regional commissions, that are now obsolete and confusing;
- 2) amend section 13024(b) to more accurately reflect the Commission's desired practice in making changes in the order in which it hears items on its agenda; and
- 3) add a new section to Chapter 3, section 13034, to designate the Commission's Chief Counsel as its regulatory ombudsperson, pursuant to suggestion in Executive Order W-144-97.

A copy of the proposed amendments is attached. (Exhibit 2.) The Commission staff has taken the necessary procedural steps under the applicable sections of the Government Code (Govt. Code sections 11346.2-5.) to enable the Commission to consider whether to adopt the proposed changes at its July 10, 1997 meeting. See Notice of Intention to Amend (Exhibit 3.) and Initial Statement of Reasons (Exhibit 4.). Staff recommends that the Commission vote to adopt the revisions to sections 13007, 13023-13025, and 13034 as proposed in Exhibit 2. The motion to adopt the amendments as proposed by staff appears on page 4.

DISCUSSION

1. Removal of References to Regional Commissions

Staff proposes to amend sections 13007, 13023, and 13025 to remove direct or indirect references to a previously existing Commission structure made up of regional commissions in addition to the currently existing statewide Commission. When the Coastal Act was first enacted, the Commission structure included regional commissions that were intended to provide a local perspective on coastal protection until local governments adopted Local Coastal Programs. Although the Coastal Act was amended to remove regional commissions in 1982, references to the regional commissions remained. Those references are proposed to be removed because those entities no longer exist. In this way, the Commission regulations will accurately reflect a structure consisting solely of one statewide commission.

2. Order in Which Commission Hears Items on the Agenda

Staff also proposes to amend section 13024, the regulation governing the order in which the Commission hears items on the agenda, to allow an item on the agenda to be taken out of order in order to consolidate two factually or legally related items or provide for additional staff analysis. Currently, section 13024 provides that a particular item be taken out of order where such change is necessary to avoid the absence of an interested party who has been prevented from appearing by factors beyond the individual's control. The Commission has expressed an interest, however, in also allowing an item to be trailed to a later time in the meeting in order to consolidate two or more factually or legally related agenda items and to provide for additional staff analysis before the Commission vote. Currently, the Commission's regulations provide that the Commission may consolidate two or more applications which are legally or factually related for the purposes of public hearing. (Cal. Code Regs., tit. 14, sec. 13058.) The Commission's regulations also provide that the Commission shall not vote upon an application until it has received a staff recommendation. (Cal. Code of Regs., tit. 14, sec. 13090.) Including these two circumstances within section 13024 will expressly allow the Commission to trail a hearing item to a later time in the meeting consistent with the Commission's existing regulations.

3. Regulatory Ombudsperson

Finally, the staff also proposes to add a new regulation, section 13024, that designates the Commission's Chief Counsel as the Commission's regulatory ombudsperson. Currently, all questions concerning Commission regulations are referred to the Chief Counsel. Pursuant to Government Code section 11340.7, petitions for rulemaking may be submitted to the Commission. The Commission's practice has been to refer all rulemaking petitions to the Chief Counsel.

Executive Order W-144-97, regarding regulatory reform, requests that state agencies designate a regulatory ombudsperson in order to provide the public with an opportunity to raise questions about agency regulations. Staff proposes to designate the Chief Counsel as the regulatory ombudsperson because all questions concerning Commission regulations are already referred to the Chief Counsel in his capacity as the Commission's chief legal advisor. In this way any interested person reading the regulations will see that the Chief Counsel has been expressly designated as the Coastal Commission's regulatory ombudsperson and know that the Chief Counsel will respond to all petitions for rulemaking and other questions regarding the regulations.

MATERIALS PROVIDED FOR COMMISSION REVIEW

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

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

Exhibit 2 - Text of the Proposed Changes to Portions of Title 14, Chapters 1-3 of the California Code of Regulations

Exhibit 3 - Notice of Intention to Amend Portions of Chapters 1-3 of the California Coastal Commission's Regulations

Exhibit 4 - Initial Statement of Reasons for Proposed Amendments to Portions of Chapters 1-3 of the California Coastal Commission's Regulations

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

OPTIONS FOR COMMISSION ACTION

The Commission has the following major options for action on July 10, 1997:

1. Adopt Regulations as Proposed

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

2. Reject Regulations as Proposed

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

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

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

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

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

STAFF RECOMMENDATION

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

Resolution:

The Commission hereby adopts the proposed revisions to portions of Chapters 1-3 of the Commission's regulations. No alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to private persons than the proposed action.

MOTION

The appropriate motion for adoption is "I move that the Commission adopt the proposed revision to portions of Chapters 1-3 of the Commission's regulations."

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

CALIFORNIA COASTAL COMMISSION

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

MEMORANDUM*Tu 9d*

March 20, 1997

TO: Coastal Commissioners

FROM: *RF* Ralph Faust, Chief Counsel

SUBJECT: Commencement of Rule-making Process for Chapters 1-3 of
Commission Regulations

EXHIBIT NO. 1
APPLICATION NO. Commencement of
Rulemaking Process for Chapters 1-3 of
Comm'n Regulations
California Coastal Commission

Staff proposes to commence a rule-making process to amend various sections of the Commission's regulations in Chapters 1 through 3 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass, respectively, General Provisions, Meetings, and Officers and Staff. No major changes are proposed.

Staff proposes the following changes:

- to amend sections 13007, 13023 and 13025 to remove direct or indirect references to the Commission structure that existed when the Commission had regional commissions, that are now obsolete and confusing;
- to amend section 13024 (b) to more accurately reflect the Commission's desired practice in making changes in the order in which it hears items on its agenda;
- to add a new section to Chapter 3, tentatively 13034, to designate the Commission's Chief Counsel as its regulatory ombudsman, pursuant to a suggestion in Executive Order W-144-97.

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

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

Resolution:

The Commission hereby directs the staff to commence a process to amend Chapters 1 through 3 of the Commission's regulations.

CALIFORNIA COASTAL COMMISSION

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**TEXT OF PROPOSED CHANGE TO TITLE 14, CHAPTERS 1-3 OF
THE CALIFORNIA CODE OF REGULATIONS**

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

1) § 13007. Appointed Membership.

"Appointed membership" means all the persons who have been appointed or designated to serve and have been sworn in as voting members of the commission ~~or a regional commission~~; a vacancy on the commission ~~or a regional commission~~ shall not be computed in determining a majority or two-thirds of the appointed membership.

Note: Authority cited: Public Resources Code section 30333. Reference: Public Resources Code section 30315.

2) § 13023. Procedures - Robert's Rules of Order.

Except where the provision of the California Coastal Act of 1976 or of these regulations provide to the contrary, or when the commission determines otherwise, ~~each~~ the commission shall operate under the latest edition of Robert's Rules of Order.

Note: Authority cited: Public Resources Code section 30333. Reference: Public Resources Code section 30315.

3) § 13025. Voting - Prerequisite of Notice.

The commission shall not vote upon substantive or policy matters of general importance, including permit applications when adequate descriptive notice has not been given as part of the required notice of the meeting. This shall include actions to be taken on personnel matters such as appointment or removal of Chairperson, Vice Chairperson, ~~State Commission Representative~~, and Executive Director.

Note: Authority cited: Public Resources Code section 30333. Reference: Public Resources Code section 30333.

EXHIBIT NO. 2
APPLICATION NO.
Text of the Proposed
Changes to Portions of
Title 14, Ch. 1-3 of the
Commission's Regulations
California Coastal Commission

4) **§ 13024. Agenda.**

(b) Items on the agenda shall be heard in the order listed. The chairperson may with the concurrence of a majority of commissioners present, order that any particular item on the agenda be ~~taken out of order only~~ trailed to a later time in the meeting where, in the opinion of the chairperson and the commission, such change is necessary to: ~~avoid the absence of~~ (1) obtain the testimony of an interested party person, including a government agency staff person, who has been prevented from appearing or making a presentation by unexpected factors beyond the individual's control; (2) consolidate two or more factually or legally related agenda items for a single hearing where consolidation of the items will prevent duplication of testimony; or, (3) provide time for additional staff analysis of a newly raised issue or of new information which does not require continuance of the matter to a subsequent meeting.

Note: Authority cited: Public Resources Code section 30333. Reference: Public Resources Code section 30006 and 30315; Government Code section 11125.

5) **§ 13034. Ombudsperson.**

The Chief Counsel of the California Coastal Commission shall be the regulatory ombudsperson for the California Coastal Commission. In his or her capacity as the regulatory ombudsperson, the Chief Counsel shall review all petitions for rulemaking and shall make recommendations to the Commission on any proposed rulemaking.

Note: Authority cited: Public Resources Code section 30333. Reference: Government Code section 11340.7.

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**NOTICE OF INTENTION TO AMEND PORTIONS OF
CHAPTERS 1-3 OF THE
CALIFORNIA COASTAL COMMISSION'S REGULATIONS**

NOTICE IS HEREBY GIVEN that the **CALIFORNIA COASTAL COMMISSION** intends to amend portions of Chapters 1-3 of the Commission's regulations.

A written comment period has been established commencing on May 23, 1997 and terminating on July 10, 1997. A public hearing is scheduled as part of the Commission's regular meeting on July 10, 1997 at the Holiday Inn-Ventura 450 east Harbor Boulevard, Ventura, CA 93001. The meeting will commence at 9 a.m., however, the hearing on this matter may not be the first agenda item to be heard. Interested persons may comment orally about the proposed changes at the hearing or may submit written comments concerning the proposed code amendments to the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT STREET, SUITE 2000, SAN FRANCISCO, CA 94105-2219** before 4 p.m. on the day before the hearing. Written comments may also be submitted to the Commission on the day of the hearing at the meeting prior to the Commission's consideration of the matter. It is requested, but not required, that written comments be mailed so that they are received no later than three (3) working days prior to the date of the public hearing. It is requested, but not required, that persons who submit written comments to the Commission at the hearing provide twenty (20) copies of such comments. This will ensure that each commissioner will receive a copy.

INFORMATIVE DIGEST

The California Coastal Commission is proposing to amend various sections of the Commission's regulations in Chapters 1 through 3 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass, respectively, General Provisions, Meetings, and Officers and Staff.

EXHIBIT NO. 3
APPLICATION NO. Notice of Intention to Amend
Portions of Chapters 1-3 Coastal Commission's
Regulations
 California Coastal Commission

The Commission proposes to:

- o amend sections 13007, 13023 and 13025 to remove direct or indirect references to the Commission structure that existed when the Commission had regional commissions, that are now obsolete and confusing;
- o amend section 13024(b) to more accurately reflect the Commission's desired practice in making changes in the order in which it hears items on its agenda;
- o add a new section to Chapter 3, tentatively 13034, to designate the Commission's Chief Counsel as its regulatory ombudsperson, pursuant to a suggestion in Executive Order W-144-97.

The Commission proposes to amend sections 13007, 13023 and 13025 to remove direct or indirect references to a previously existing Commission structure made up of regional commissions in addition to the currently existing statewide Commission. When the Coastal Act was first enacted, the Commission structure included regional commissions that were intended to provide a local perspective on coastal protection until local governments adopted Local Coastal Programs. Although the Coastal Act was amended to remove regional commissions in 1982, references to the regional commission remained. Those references are proposed to be removed because those entities no longer exist. In this way, the Commission regulations will accurately reflect a structure consisting solely of one statewide commission.

The Commission also proposes to amend section 13024, the regulation governing the order in which the Commission hears items on the agenda, to allow an item on the agenda to be taken out of order in order to consolidate two factually or legally related items or provide for additional staff analysis. Currently, section 13024 provides that a particular item be taken out of order only where such change is necessary to avoid the absence of an interested party who has been prevented from appearing by factors beyond the individual's control. The Commission has expressed an interest, however, in also allowing an item to be taken out of order in order to consolidate two or more factually or legally related agenda items and to provide time for additional staff analysis before the Commission vote. Currently, the Commission's regulations provide that the Commission shall not vote upon an application until it has received a staff recommendation. The Commission's regulations also provide that the Commission may consolidate two or more applications which are legally or factually related for the purposes of public hearing. Including these two circumstances within section 13024 will expressly allow the Commission to alter the order of hearing items on the agenda consistent with the Commission's existing regulations.

Finally, the Commission also proposes to add a new regulation, section 13024, that designates the Commission's Chief Counsel as the Commission's regulatory ombudsperson. Currently, all questions concerning Commission regulations are referred to the Chief Counsel. Pursuant to Government Code section 11340.7, the issues referred to the Chief Counsel for analysis and advice include petitions for rulemaking. Executive Order W-144-97, regarding regulatory reform, requests that state agencies designate a regulatory ombudsperson in order to provide the public with an opportunity to raise questions about agency regulations. The Coastal Commission proposes to designate the Chief Counsel as the regulatory ombudsperson because all questions concerning Commission regulations are already referred to the Chief Counsel, in his capacity as the Commission's chief legal advisor. In this way any interested person reading the regulations will see that the Chief Counsel has been expressly designated as the Coastal Commission's ombudsperson and know that the Chief Counsel will respond to all petitions for rulemaking.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT

The **CALIFORNIA COASTAL COMMISSION** has prepared a written explanation of the proposed amendments to its regulations and has available all of the information upon which its proposal is based. Copies of the proposed amendments and all of the information upon which it is based may be obtained from the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT STREET, SUITE 2000, SAN FRANCISCO, CA 94105-2219**. Any inquiries concerning the proposed amendments should be directed to **ANN CHEDDAR** at (415) 904-5220.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

ALTERNATIVES

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

COST TO GOVERNMENTAL AGENCIES AND SCHOOL DISTRICTS

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

EFFECT ON HOUSING COSTS AND BUSINESSES

The adoption, amendment or repeal of the proposed regulation will have no significant effect on housing costs or on private persons or businesses directly affected. Amendment of the regulations will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

IMPACT ON SMALL BUSINESSES

The proposed regulation will not have any impact on small business because the regulations govern the conduct of Coastal Commission internal procedures consistent with current state law and do not impose any requirements on any businesses.

ASSESSMENT STATEMENT

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

AUTHORITY AND REFERENCE

The authority for the proposed regulatory changes is found in Public Resources Code section 30333 wherein the California Coastal Commission is authorized to adopt or amend regulations to carry out the purposes and provisions of the Coastal Act and to govern procedures of the Commission.

The proposed changes would implement, interpret and make specific Public Resources Code section 30315, 30333, 30006 and Government Code sections 11125 and 11340.7. Existing references are not proposed for revision except the references which implement new section 13034, currently proposed for adoption.

CALIFORNIA COASTAL COMMISSION

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**INITIAL STATEMENT OF REASONS FOR PROPOSED
AMENDMENTS TO CHAPTERS 1-3 OF THE
CALIFORNIA COASTAL COMMISSION'S REGULATIONS**

**(Prepared for comment period commencing
May 13, 1997 and ending July 10, 1997)**

The California Coastal Commission is proposing to amend various sections of the Commission's regulations in Chapters 1 through 3 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass, respectively, General Provisions, Meetings, and Officers and Staff.

The Commission proposes to:

- o amend sections 13007, 13023 and 13025 to remove direct or indirect references to the Commission structure that existed when the Commission had regional commissions, that are now obsolete and confusing;
- o amend section 13024(b) to more accurately reflect the Commission's desired practice in making changes in the order in which it hears items on its agenda;
- o add a new section to Chapter 3, tentatively 13034, to designate the Commission's Chief Counsel as its regulatory ombudsperson, pursuant to a suggestion in Executive Order W-144-97.

The Commission proposes to amend sections 13007, 13023 and 13025 to remove direct or indirect references to a previously existing Commission structure made up of regional commissions in addition to the currently existing statewide Commission. When the Coastal Act was first enacted, the Commission structure included regional commissions that were intended to provide a local perspective on coastal protection until local governments adopted Local Coastal Programs. Although the Coastal Act was amended to remove regional commissions in 1982, references to the regional commission remained. Those references are proposed to be removed because those entities no longer exist. In this way, the Commission regulations will accurately reflect a structure consisting solely of one statewide commission.

EXHIBIT NO. 4
APPLICATION NO. Initial Statement of Reasons for Proposed Amendments to Portions of Ch. 1-3 of the CCC's Regs.
California Coastal Commission

The Commission also proposes to amend section 13024, the regulation governing the order in which the Commission hears items on the agenda, to allow an item on the agenda to be taken out of order in order to consolidate two factually or legally related items or provide for additional staff analysis. Currently, section 13024 provides that a particular item be taken out of order only where such change is necessary to avoid the absence of an interested party who has been prevented from appearing by factors beyond the individual's control. The Commission has expressed an interest, however, in also allowing an item to be taken out of order in order to consolidate two or more factually or legally related agenda items and to provide time for additional staff analysis before the Commission vote. Currently, the Commission's regulations provide that the Commission shall not vote upon an application until it has received a staff recommendation. The Commission's regulations also provide that the Commission may consolidate two or more applications which are legally or factually related for the purposes of public hearing. Including these two circumstances within section 13024 will expressly allow the Commission to alter the order of hearing items on the agenda consistent with the Commission's existing regulations.

Finally, the Commission also proposes to add a new regulation, section 13024, that designates the Commission's Chief Counsel as the Commission's regulatory ombudsperson. Currently, all questions concerning Commission regulations are referred to the Chief Counsel. Pursuant to Government Code section 11340.7, the issues referred to the Chief Counsel for analysis and advice include petitions for rulemaking. Executive Order W-144-97, regarding regulatory reform, requests that state agencies designate a regulatory ombudsperson in order to provide the public with an opportunity to raise questions about agency regulations. The Coastal Commission proposes to designate the Chief Counsel as the regulatory ombudsperson because all questions concerning Commission regulations are already referred to the Chief Counsel, in his capacity as the Commission's chief legal advisor. In this way any interested person reading the regulations will see that the Chief Counsel has been expressly designated as the Coastal Commission's ombudsperson and know that the Chief Counsel will respond to all petitions for rulemaking.

USE OF SPECIFIC TECHNOLOGIES

Amendment of the regulations will not mandate the use of specific technologies or equipment.

IMPACT ON BUSINESS

Amendment of the regulations will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. The proposed regulation will not have any impact on small business because the regulations govern the conduct of Coastal Commission internal procedures consistent with current state law and do not impose any requirements on any businesses.

CONSIDERATION OF ALTERNATIVES

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

DOCUMENTS RELIED UPON

There are no documents relied upon. No studies or relevant data were available to assist in making the above determinations.

COMPARABLE FEDERAL REGULATIONS OR STATUTES

There are no existing comparable federal regulations or statutes.