

CALIFORNIA COASTAL COMMISSION

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



Tu 10d

June 5, 1998

ADDENDUM TO STAFF REPORT

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel
Ann Cheddar, Staff Counsel
Amy Roach, Staff Counsel *anc*

SUBJECT: Public Hearing on Proposed Revisions to Portions of
Chapters 5 and 6 of the Commission's Permit Regulations

For Commission Discussion and Possible Action on June 8, 1998

One of staff's suggested revisions to section 13063 of the Commission's regulations involves the ability of the executive director, in certain circumstances, to direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project. In order to further clarify the proposed revisions to this section, staff recommends the attached changes to the originally proposed revision. As further revised, proposed section 13063 would instruct that only property owners and occupants within 100 feet of the perimeter of the subject parcel may qualify for the above-identified substitute notice. The applicant, the affected local government, all persons who request notice, and those person who testify at the local level would always receive individually mailed notice.

Previously recommended revisions appear in underline and strikeout. Newly recommended revisions appear in bold underline and strikeout.

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§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a). The notice of shall contain the following elements:

(1) ~~the filing of the application pursuant to Section 13056;~~ (2) ~~the number assigned to the application;~~

(32) a description of the development and its proposed location;

(43) ~~the date, time and place at which the application will be heard by the commission;~~

(54) ~~the general procedure of the commission concerning hearings and action on applications and;~~

(65) ~~the direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.~~

(6) A statement that staff reports will be distributed as set forth in section 13059.

~~(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:~~

(b) In lieu of providing mailed notice to persons specified in section 13054(a)(1)-(2) as required by subsection (a) above, the executive director may direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written mailed notice if the executive director determines:

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

CALIFORNIA COASTAL COMMISSION

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TU-10d

MEMORANDUM

May 21, 1998

TO: Coastal Commissioners

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel
Ann Cheddar, Staff Counsel
Amy Roach, Staff Counsel *AR*

SUBJECT: **Adoption of Proposed Revisions to Portions of
Chapters 5 and 6 of the Commission's Permit Regulations**

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt proposed amendments to the coastal development permit regulations (Chapters 5 and 6 of Title 14 of the California Code of Regulations) as set forth in Exhibit 1 and as modified in this staff report. As instructed by the Commission at its January 13, 1998 hearing, staff has carried out various rulemaking procedures that must be satisfied prior to adoption of the amendments. Those steps included circulating the proposed amendments (as set forth in Exhibit 1) for public notice and comment. The remaining requirements are to hold a public hearing and respond to all comments received at the hearing. The Commission continued its previously scheduled April 9, 1998 adoption hearing prior to the receipt of public testimony or a presentation by its staff.

Staff has received only three comment letters since circulation of the proposed amendments. (See Exhibit 5.) All of these letters were received prior to April 9, 1998. In response to those comments, staff recommends that the Commission make several nonsubstantial and grammatical corrections to the proposed amendments prior to adoption. These corrections can be made without triggering a requirement to recirculate the proposed amendments for additional public comment prior to adoption. Under the Administrative Procedure Act (the "APA"), any changes to proposed amendments that have already been published for notice and comment require an additional public comment period prior to adoption unless they are

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nonsubstantial or solely grammatical. (Government Code § 11346.8(c).) Changes that are sufficiently related to the proposed amendments that the public would be on notice that they might occur trigger the need for an additional 15-day public notice and comment period prior to adoption. All other changes trigger the need for an additional 45-day public notice and comment period prior to adoption.

II. SUMMARY OF RESPONSES TO PUBLIC COMMENTS

As of the date of this staff report, staff has received three written comments concerning the proposed amendments. The most extensive of these were submitted by Mr. James Lichter of the Regulatory Review Unit, Trade and Commerce Agency. The following is a brief summary of the comments and staff's responses, which are set forth in greater detail in section VI of this staff report.

- (1) Permit application fees (section 13055) should be shown in tabular form. Staff recommends that the fee schedule be revised to be set forth in tabular form.
- (2) References to the "Coastal Act" should be consistent. Staff recommends that the references be revised to be consistent.
- (3) The Executive Director should not have authority to summarize written comments that are presented at a hearing too late to be copied and distributed to commissioners (§ 13060(c)). Staff recommends that this authority be retained.
- (4) A permit applicant should have the right to postpone a hearing after public testimony has been taken (§13073(a)). Staff recommends that the Commission maintain the current requirement that an applicant must exercise his or her one right to postpone before the public testimony portion of the hearing begins.
- (5) Applicants for permit extensions should be required to post a notice of a proposed administrative extension within three working days, rather than three calendar days, of the Executive Director's mailing of notice to interested persons (§ 13169(b)). Staff recommends that the notice be posted within three calendar days to ensure the public has adequate opportunity to comment within the 10 calendar day comment period.
- (6) There should be a deadline for Commission action on submittal of information updating the identity of a permittee. Staff recommends that there be no deadline because Commission staff's review and filing of the information does not affect a permittee's ability to amend, extend, or take other action concerning the permit.

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- (7) The regulations, and in particular subsections 13055(g), 13067(c), and 13158(e) are not drafted in plain English. Staff recommends corrections to these subsections to make them easier to understand.

III. MOTION

We recommend that the Commission vote to adopt the proposed amendments to its permit regulations as set forth in Exhibit 1 and as corrected in this staff report. The motion and resolution are:

Motion:

I move that the Commission adopt the proposed amendments to Chapters 5 and 6 of the Commission's regulations as set forth in Exhibit 1 and as further corrected by the staff report.

Staff recommends a YES vote. A majority of the Commissioners present is required to pass the motion. Approval of the motion results in adoption of the amendments as set forth in Exhibit 1 and as corrected by this staff report, and adoption of the resolution of approval.

Resolution:

The Commission hereby adopts amendments to Chapters 5 and 6 of the Commission's regulations as proposed in Exhibit 1 and as further corrected by this staff report. 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 affected private persons than the proposed action.

IV. RULEMAKING PROCEDURES

In a staff report dated December 23, 1997, staff presented draft proposed amendments to the Commission's coastal development permit regulations. On January 13, 1998, the Commission voted to commence the rulemaking process to amend its permit regulations. Since obtaining the Commission's authorization to proceed, staff has undertaken several of the procedures required by the Administrative Procedure Act (APA) (Government Code § 11340 *et. seq.*). Staff mailed notice of the Commission's intent to adopt the proposed amendments to interested persons as required by the Government Code, and published the notice of intent in the California Register. Staff also prepared the various other documents required to be made available concurrently with the proposed amendments. (See Notice of the Commission's Intent to Amend its Regulations, attached as Exhibit 2, and Initial Statement of Reasons, attached as

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Exhibit 3.) The notice of intent has been published since February 20, 1998. Accordingly, the Commission has complied with the requirement to publish notice and accept public comment for a minimum period of 45 days.

The remaining steps that the Commission must complete before adopting the proposed amendments are: (1) accept public testimony at a public hearing, and (2) ensure that the record contains the rationale for response to all comments. These steps can be completed at the Commission's June 8, 1998 hearing. Once these steps have been completed, the Commission can decide whether to adopt the proposed amendments.

The APA limits the Commission's ability to adopt proposed amendments that are different from those that have been made available for the 45-day notice and comment period. The Commission can adopt the proposed amendments with revisions that are "solely grammatical" or "nonsubstantial." (Government Code § 11346.8(c)). However, if the Commission wishes to make any other type of revisions to the amendments, it must make the text of the modified amendments available for an additional public comment period of either 15 days if the changes are minor (i.e., sufficiently related to the published amendments that the public is on notice that the change could occur), or 45 days if the changes are major. The potential rulemaking schedules attached as Exhibit 4 illustrate how the APA requirements affect the Commission's options for adopting amendments to the regulations. Prior to starting any additional public comment period, the Commission may need to hold additional public hearings to identify the specific changes it wishes to propose.

After Commission adoption of amendments, the amendments must be submitted to the Office of Administrative Law (OAL) for review and approval.¹ If the amendments are approved by OAL, they will become legally effective 30 days after they are filed with the Secretary of State.

V. SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments consist largely of limited modifications to existing coastal development permit regulations. The amendments would reorganize sections governing procedures for staff processing of permits and for Commission action on permits in order to provide more understandable, streamlined processes. For example, sections covering treatment of written public comments that are currently scattered throughout the regulations would be combined into one section. Similarly, various sections addressing Commission review of staff

¹ The Office of Administrative Law has 30-working days to review the amendments under the APA. If the Office of Administrative Law does not approve the amendments under the APA, it could return them for further Commission action, which could trigger additional public notice and comment periods.

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recommendations would be combined into one section governing the Commission's vote on staff recommendations. In addition, redundant procedures would be eliminated. For example, the regulations regarding staff preparation of application summaries would be incorporated into the regulations regarding staff preparation of staff reports.

The majority of the regulations governing applicant and permittee requirements and permit exclusions would be amended to clarify a number of ambiguities that have become apparent during implementation of the regulations. For example, the revisions would clarify that permit amendments are subject to the same information filing requirements as permit applications, and that approved permits can be extended even if they have not been issued. Clarification of the ambiguities would make the regulations easier for applicants to understand and would save staff time. Several of the proposed revisions introduce new streamlining measures that would save time for applicants. For example, currently, minor amendment and extension applications that qualify for administrative approval are required to be referred to the Commission for hearing if a member of the public objects to administrative approval of the application. The revisions would allow the Executive Director to approve such applications administratively despite receipt of an objection if the Executive Director concludes, subject to Commission review, that the objection does not raise valid Coastal Act issues.

At its hearing on January 13, 1998, the Commission made several minor changes to the draft proposed amendments presented by staff. These changes were incorporated into the proposed amendments before the amendments were circulated for public comment. The changes are described below.

- (1) The wording of amendments to section 13055(a)(8) was changed slightly. This section identifies when the fee for a nonresidential permit application is to be based upon project cost rather than project size. The proposed amendment was changed to clarify that a fee for nonresidential projects is to be based on project cost only in three instances: when the proposed development is a change in intensity of use, or when the proposed development does not have a quantifiable square footage, or when the proposed development does not qualify as office, commercial, convention, industrial, energy production, or fuel processing.
- (2) The proposed amendments to sections 13169 and 13166 were clarified. These sections allow the Executive Director to approve immaterial amendments and extensions of permits unless a letter of objection is received. The proposed amendments would allow the Executive Director to approve an immaterial amendment or extension despite receipt of an objection, provided the Commission is informed and has the opportunity to require a hearing. The proposed amendments were revised to clarify that the Executive Director shall provide the Commission with

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a copy of any letter of objection at the time the Commission is provided the opportunity to request a hearing on the immaterial amendment or extension.

The proposed amendments do not include changes to regulations governing: vested rights, urban land exclusions, administrative permits, de minimis waivers, categorical exclusions, minor adjustments to the coastal zone boundary, revocation of permits, and appeal of locally issued coastal development permits. The staff is in the process of developing proposed changes to regulations governing revocation and appeals. Such changes would be presented to the Commission at a future date for purposes of commencing a separate rulemaking proceeding.²

VI. Letters of Public Comment.

Commission staff has received three comment letters concerning the proposed amendments as set forth in Exhibit 1. The following describes the comments and staff's responses.

A. California Trade and Commerce Agency: Letter from James J. Lichter, Analyst, Regulation Review Unit, dated April 3, 1998.

1. **Section 13055.** Mr. Lichter suggests that the fees described in section 13055 be presented in tabular form.

Response: Staff agrees that drafting the fee schedule in tabular form would make this section easier to understand. Staff also concludes that revising the format of the fee schedule is not a change that would trigger the need to circulate the proposed amendments for another 15 days prior to adoption. Therefore, staff recommends that the Commission adopt the proposed amendments with direction to staff to revise the format of the fee schedule to a tabular form.

2. **Section 13057. Preparation of Staff Reports.** Mr. Lichter identifies several instances in which the regulation text refers to the "California Coastal Act of 1976", the "California Coastal Act" or the "Coastal Act." Mr. Lichter recommends that all such references be harmonized.

Response: Commission staff agrees with the suggestion provided by Mr. Lichter. An existing section of the regulations, section 13001, already provides that the Commission's regulations "are promulgated pursuant to the California Coastal Act of 1976, as it may be

² The Commission has already adopted amendments to portions of Chapter 5: Subchapter 8 (cease and desist orders) and Subchapter 9 (restoration orders); OAL has approved those changes effective February 1998. The Commission has also recently adopted amendments to portions of Chapters 1-3 (General Provisions, Meetings, and Officers and Staff) of the Commission's regulations. These amendments are being prepared for submittal to OAL for their review.

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amended from time to time." Therefore, staff recommends that the Commission adopt the proposed amendments with direction to staff to conform all subsequent references in the regulatory text by utilizing the term "Coastal Act." This proposed correction to the regulatory text is nonsubstantial and grammatical in nature and thus does not trigger the need for an additional public comment period.

3. **Section 13060(c). Public Comments on Applications.** Mr. Lichter expresses concern about the authority of the Executive Director to summarize lengthy and/or numerous written communications orally rather than distributing copies to the Commissioners. Mr. Lichter noted that this approach could cause information to be inadvertently distorted.

Response: The procedure about which Mr. Lichter has expressed concern is reflected in the current regulations and would be unchanged by the proposed amendments. Staff recommends that this practice be continued because of the potential for circumstances in which it is impossible for staff to copy written comments.

The proposed revision to section 13060 combines the provisions of existing sections 13060, 13061, 13074 and 13077. These sections authorize the Executive Director to provide the Commission with either a copy of the text or a "summary of all relevant communications." (Section 13060.) They also provide that the Executive Director may "inform" the Commission of "the substance of the communications" when a sizable number of similar communications are received. (Section 13061.) Thus, the Commission's existing regulations require the Executive Director to inform the Commission about all relevant communications but allow the Executive Director to summarize similar communications in oral or written form.

The proposed revisions to 13060 incorporate these existing provisions and clarify that the Executive Director may provide an oral summary when communications are received at the hearing too late for copies to be provided to the Commission by the Executive Director. Staff believes that it is necessary to inform the public that the Executive Director may orally summarize last minute written comments which cannot be copied in order to ensure that the public has the ability to comment up until the time of the vote. In this way, the public will be able to comment in writing before the vote without providing the Commission with multiple copies of their comments. Moreover, although the Commission cannot require the public to provide multiple copies of their comments, the public continues to have the option of providing multiple copies for the Commission if they would prefer not to have their comments summarized.

Therefore, staff does not propose to revise the proposed amendments in response to this comment. Staff continues to recommend that the Commission allow the Executive Director to summarize comments in the manner delineated in section 13060(c).

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4. **Section 13073(a). Applicant's Postponement.** Mr. Lichter expresses concern that the proposed regulatory text requires an applicant to exercise their one "right" to postpone a vote to a subsequent meeting prior to public testimony. Mr. Lichter proposes an alternative that would allow the applicant to request postponement either before or after the public testimony.

Response: An applicant's one right to postpone a vote on a coastal development permit application to a subsequent meeting is reflected in the current regulations. (Section 13085(a).) Staff recommends that this requirement be retained. The stated purpose of the existing provisions regarding the automatic right to the first postponement are to provide an applicant with additional time to respond to the staff recommendation.

The staff recommendation is circulated to the public in advance of the hearing and may also be supplemented at the hearing prior to the public testimony. (Sections 13059 and 13066.) In either case, the staff recommendation is provided prior to the public testimony portion of the hearing. Therefore, an applicant is always able to ascertain whether they need additional time to respond to the staff recommendation prior to the public testimony portion of the hearing. The proposed regulatory text which expressly states when an applicant must exercise their automatic right to postpone improves the clarity of the existing regulatory provisions. In addition, pursuant to subsection (b) of this regulation, an applicant may request postponement at any time prior to the vote.

Therefore, staff does not recommend revisions to the proposed amendments in response to this comment. Staff continues to recommend inclusion of the language clarifying that an applicant must exercise their automatic right to postpone the vote prior to the public testimony portion of the public hearing. Staff also continues to recommend that an applicant be able to request postponement at any time prior to the vote.

5. **Section 13169(b).** Mr. Lichter comments that the requirement for posting a notice (of a proposed administrative approval of a permit extension) at a project site within three days of the Executive Director's mailing of notice should be specified as three working days, rather than three calendar days.

Response: Staff recommends that the proposed amendments continue to require posting of the site within three calendar days of the mailing of notice. The public has 10 calendar days to submit written objections to a proposed administrative permit extension after the Executive Director has mailed notice of the proposed extension. If no objections are received, the extension is granted. Since the public has only 10 calendar days to object to the proposed extension, it is important that the site be posted as close to the time of mailing as possible in order to provide the public with notice of the action. If the regulations were to require posting

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within three working days, it would shorten the time period for notice to the public, which might preclude some people from learning about the proposed extension in sufficient time to submit an objection by the 10 calendar day deadline.

The requirement to post a site within three calendar days does not appear onerous. Many permittees live or work at the site of permitted project. Further, the requirement to post within three calendar days appears less burdensome for permittees than providing three working days and extending the 10 calendar day public comment period in order to provide the public with sufficient opportunity to respond to proposed administrative permit extensions. Therefore, staff recommends no change to the proposed amendments to this section.

6. Section 13170. Transfer of Permits. Mr. Lichter asserts that the proposed amendments concerning transfer of permits should include a deadline for Commission action.

Response: Staff recommends that the proposed amendments not be revised to include a deadline for Commission action because the amendments eliminate the need for a Commission action in order for the permittee to seek a permit amendment, extension or other action. Section 13170 currently requires that a permit be assigned if the underlying property is sold. The regulation establishes a procedure for obtaining Executive Director approval of an assignment. The proposed amendment would eliminate the requirement that permits be assigned. This amendment is necessary to avoid confusion since the law provides that permits bind successive property owners regardless of whether the permit is formally assigned. Rather than eliminate the regulation altogether, Commission staff concluded that the regulations should allow and encourage permittees to update the Commission records by informing the Commission of changes in the identity of the permittee. The amended regulation would specify what information permittees should submit in order to update the Commission's files.

Staff did not propose a deadline for Commission action since the only Commission action is for staff to (1) inform the permittee if the information submitted is insufficient to indicate the identity of the permittee and (2) to place the information in the files. Since neither of these actions affect a permittee's ability to obtain a permit, amendment, or other authorization, there is no need for a deadline. In addition, a deadline on staff to update file information could result in staff being forced to prioritize filing ahead of more significant work such as evaluation of a permit application. Therefore, staff recommends no change to the proposed amendments to this section.

7. Adverse Economic Impacts and the Plain English Requirement. Mr. Lichter comments that the regulations are not written in plain English, as defined in Government Code section 11342(e). "Plain English" is defined in the statute as language that can be interpreted by a person who has no more than an eighth grade proficiency in English. The Administrative

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Procedure Act requires regulations to be written in plain English if they will affect small businesses. (Government Code section 11346.2) Mr. Lichter evaluated three subsections of the proposed amendments using computer programs that measure the "grade level of written material." These are subsections 13055(g), 13067(c), and 13158(e). Based upon the results of the evaluation, he concluded that the regulations were not drafted in plain English.

Response: Staff recommends that the cited subsections be revised so that they are easier to understand. The proposed amendments are intended to clarify ambiguities that have become apparent through implementation of the regulations. However, staff agrees that the subsections identified by Mr. Lichter could be redrafted to make them less lengthy and complex. Accordingly, staff has redrafted these provisions to make them easier to understand. The revised versions are set forth in the Section IV of this staff report. The substance of these subsections has not changed. Rather they have been reworded to reduce sentence length and complexity.

B. City of El Segundo: Letter from Naima Greffon, Planning Technician, Dept. of Planning and Building Safety, dated March 23, 1998.

The City writes in support of the proposed changes.

C. Undated Letter from Kimberly Perez, La Mirada, CA

Ms. Perez writes that the law should not be revised to create loopholes or to allow developers to more easily attain permits. Staff responds that the proposed amendments clarify ambiguities and streamline the permit process. The amendments do not create any new permit exemptions or affect the Coastal Act standards for Commission approval of coastal development permits.

VII. Nonsubstantial/Grammatical Corrections to Proposed Amendments.

Staff has identified several nonsubstantial changes that should be made to the proposed amendments. These are based upon the comments from Mr. Lichter, of the Regulatory Review Unit that several subsections are not written in plain English. In addition, several citations to section 21080.5 of the California Environmental Quality Act (CEQA) need to be changed to reflect renumbering of that section. These changes do not affect the substance of the proposed amendments -- they do not change requirements applicable to the Commission or the regulated community. Therefore, they can be adopted by the Commission without triggering the need to recirculate the proposed amendments for additional public notice and comment. The corrections are set forth below. Additions to the originally proposed amendments are shown in double underline. Deletions of text that was originally proposed to be added are shown with both underline and strikeout.

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- 1) Revise proposed Section 13055(g) as follows so that it is easier to understand:

(g) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if an application is filed as an administrative calendar application but subsequently scheduled for another calendar by the executive director or removed from the administrative calendar by the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the applicant shall pay the difference between the administrative calendar fee and the regular fee. The regular fee is the fee determined pursuant to sections (a)(2)-(15), (b)-(f) above. The Such additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require that requires payment of the additional fee prior to issuance of the permit.

- 2) Add word "calendar" to proposed section 13056(d) as reflected below so that all such references are uniform:

(d) An applicant may appeal to the commission A a determination by the executive director that an application form is incomplete may be appealed to the commission for its determination as to whether the permit application may be filed. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination. The executive director shall cause a date of receipt stamp to be affixed to all applications for permits on the date they are so received and a stamp of the date of filing on the date they are so filed.

- 3) Revise proposed Section 13067(c) by separately numbering the requirements for ease of the reader as reflected below:

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or large materials may satisfy this requirement by (1) submitting accurate reproductions or photographs of the models or other large materials and by (2) agreeing in

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writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

- 4) Revise proposed Section 13158(e) as follows, so that it is easier to understand:

(e) A permit shall not be issued pursuant to section 13158(c) unless the applicant has satisfied all prior to issuance conditions. Prior to issuance conditions are those conditions that are identified in the permit as conditions that must be complied with prior to issuance of the permit. No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall notify send the permit applicant a notice of commission approval that identifies of those conditions that have been designated as prior to issuance conditions. must be satisfied before the permit can be issued for acknowledgment.

5) To reflect a legislative renumbering within section 21080.5 of the California Environmental Quality Act ("CEQA"), change the citation in proposed section 13162 so that it refers to CEQA section 21080.5(d)(2)(E) instead of 21080.5(d)(v) and change the citation in section 13057(c)(2) so that it refers to CEQA section 21080(c)(2)(A) instead of 21080.5(d)(2)(i).

6) Replace the phrases: "the Coastal Act of 1976," "the California Coastal Act," and "the California Coastal Act of 1976" with the phrase: "the Coastal Act" in all sections that are proposed to be amended.

7) Revise the format of proposed section 13055 (fees) to set forth permit application fees in a tabular form.

VIII. OPTIONS FOR COMMISSION REVIEW AND ACTION

The Commission has the following major options for action on June 8, 1998:

1. Adopt Regulations as Proposed

Take public testimony, consider the proposed regulatory action, and vote to adopt the proposed amendments as set forth in Exhibit 1 with the nonsubstantial, grammatical corrections set forth in this staff report and with any other nonsubstantial and/or grammatical changes that the Commission finds necessary. If the Commission adopts the proposed amendments, staff will submit them to the Office of Administrative Law for approval. If approved, the amendments

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would then be sent to the Secretary of State for filing. The amendments would become effective 30 days after that filing.

2. Decide Not to Take Action on the Regulations

Hold the public hearing, close the hearing, consider the proposed regulatory action and either take no action or vote not to adopt the proposed amended regulations.

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

Hold the public hearing, close the hearing, consider the regulatory action, and vote to direct staff to revise the proposed amendments in ways that are sufficiently related to the proposed amendments as published in Exhibit 1 and to circulate the revised proposed amendments for public comment. 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 the revised proposed amendments.

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

Hold the public hearing, close the hearing, consider the regulatory action and vote to direct staff to revise the proposed amendments in a substantial or major way and to circulate the revised proposed amendments for public comment. 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 the revised proposed amendments.

As is indicated above, if the Commission wishes to make any changes to the proposed amendments, other than nonsubstantial or solely grammatical changes, the APA requires that the Commission reopen the public comment period and may mandate that the Commission start the process again. (Exhibit 4 provides further information on these requirements.)

IX. MATERIALS PROVIDED FOR COMMISSION REVIEW

In order to assist your review of the proposed amendments, we have attached the following exhibits:

- 1) The text of proposed amendments to the Commission's permit regulations, showing proposed additions in underline and deletion in ~~strikeout~~, along with a revised table of contents reflecting the proposed amendments.

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- 2) Notice of the Commission's Intent to Amend Portions of Chapters 5 and 6 of the Commission's Regulations.
- 3) Initial Statement of Reasons for proposed revisions to portions of Chapters 5 and 6 of the Commission's regulations.
- 4) Chart of Possible Rulemaking Schedules.
- 5) Copy of written comments received to date.

EXHIBIT 1



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CALIFORNIA COASTAL COMMISSION

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**TEXT OF PROPOSED CHANGES TO THE
CALIFORNIA CODE OF REGULATIONS
TITLE 14, DIVISION 5.5, CALIFORNIA COASTAL COMMISSION
CHAPTERS 5 AND 6 COASTAL DEVELOPMENT PERMITS ISSUED BY
COASTAL COMMISSION**

(Note: Those subchapters within Chapters 5 and 6 that do not contain proposed amendments are omitted. Additions are shown in underline and deletions are shown in ~~strikeout~~.)

Chapter 5. Coastal Development Permits Issued by Coastal Commissions

§ 13050. Scope of Chapter.

Except as specifically provided by any subdivision hereof the provisions of this chapter shall govern all coastal development permit applications required under Public Resources Code, section 30601, and under Public Resources Code, section 30600 where a local government has not exercised its option to administer permits as provided in sections 13301-13327 of these regulations.

§ 13050.5. Permit Jurisdiction over Portions of a Development Not Within the Coastal Zone.

Except for the following circumstances a coastal development permit shall only be required for a development or those portions of a development actually located within the coastal zone:

(a) In the case of any division of land, a permit shall be required only for any lots or parcels created which require any new lot lines or portions of new lot lines in the coastal zone: in such instance, commission review shall be confined to only those lots or portions of lots located within the coastal zone.

(b) In the case of any development involving a structure or similar integrated physical construction, a permit shall be required for any such structure or construction which is partially in and partially out of the coastal zone.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Division 20, Public Resources Code.

§ 13051. Reference to Regional Commission.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

§ 13051.5. Reference to Executive Director.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

Subchapter 1. Regular Permits

Article 1. When Local Applications Must Be Made First

§ 13052. When Required.

When development for which a permit is required pursuant to Public Resources Code, section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in section 13053. An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

- (a) Tentative map approval;
- (b) Planned residential development approval;
- (c) Special or conditional use permit approval;
- (d) Zoning change approval;
- (e) All required variances, except minor variances for which a permit requirement could be established only upon a review of the detailed working drawings;
- (f) Approval of a general site plan including such matters as delineation of roads and public easement(s) for shoreline access;
- (g) A final Environmental Impact Report or a negative declaration, as required, including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency;
- (h) Approval of dredging and filling of any water areas;
- (i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances;
- (j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;
- (k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30333~~ and 30620, Public Resources Code; Section 65941, Government Code.

§ 13053. Where Preliminary Approvals Are Not Required.

(a) The executive director may waive the requirement for preliminary approval by other federal, state or local governmental agencies for good cause, including but not limited to:

(1) The project is for a public purpose;

(2) The impact upon coastal zone resources could be a major factor in the decision of that state or local agency to approve, disapprove, or modify the development;

(3) Further action would be required by other state or local agencies if the coastal commission requires any substantial changes in the location or design of the development;

(4) The state or local agency has specifically requested the coastal commission to consider the application before it makes a decision or, in a manner consistent with the applicable law, refuses to consider the development for approval until the coastal commission acts, or

(5) A draft Environmental Impact Report upon the development has been completed by another state or local governmental agency and the time for any comments thereon has passed, and it, along with any comments received, has been submitted to the commission at the time of the application.

(b) Where a joint development permit application and public hearing procedure system has been adopted by the commission and another agency pursuant to Public Resources Code section 30337, the requirements of section 13052 shall be modified accordingly by the commission at the time of its approval of the joint application and hearing system.

(c) The executive director may waive the requirements of section 13052 for developments governed by Public Resources Code, section 30606.

(d) The executive director of the commission may waive the requirement for preliminary approval based on the criteria of section 13053(a) for those developments involving uses of more than local importance as defined in section 13513.

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941.

Note: Authority cited: Section 30333, Public Resources Code. Reference: ~~Sections 30305 and 30620,~~ Public Resources Code; Section 65941, Government Code.

Article 2. Application for Permit

§ 13053.4. Single Permit Application.

(a) To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept for filing a second application for development which is the subject of a permit application already pending before the commission. This section shall not limit the right of an applicant to amend a pending application for a permit in accordance with the provisions of section 13072.

~~(b) The executive director shall not accept for filing an application for an amendment to a permit until such permit becomes final.~~

(eb) The executive director shall not accept for filing an application for development on a lot or parcel or portion thereof which is the subject of a pending proposal for an adjustment to the boundary of the coastal zone pursuant to Public Resources Code section 30103(b).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

§ 13053.5. Application Form and Information Requirements.

The permit application form shall require at least the following items:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the California Coastal Act of 1976, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

(d) ~~In addition to full size drawings, maps, photographs, and other exhibits drawn to scale~~The applicant shall furnish to the Commission, at the time of submission of the application, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to ~~distribute~~submit exhibits of a larger size, enough copies reasonably required for distribution to those persons on the Commission's mailing lists and for inspection by the public in the Commission office. A reasonable number of additional copies may, at the discretion of the Executive Director, be required.

(e) Any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas.

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601.5 and 30620, Public Resources Code.

§ 13053.6. Amendment of Application Form.

The executive director of the commission may, from time to time, as he or she deems necessary, amend the format of the application form, provided, however, that any significant change in the type of information requested must be approved by the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 3. Applicant's Notice Requirements

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site. Notification Requirements.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for notice to adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartments or condominium and each residence within a condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of and all parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s), the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited.

—This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above, parcels described above. Separate stamped envelopes shall be addressed to "owner," and to "occupant," or the name of the interested person, as applicable, except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel. The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this

requirement and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations, upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file.

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

~~(bd) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to ~~so post the completed notice form and~~ sign the declaration of posting, the executive director of the commission shall refuse to file the application, ~~or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.~~~~

~~(ee) Pursuant to sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 4. Schedule of Fees for Filing and Processing Permit Applications

§ 13055. Fees.

~~(a) Permit filing and processing fees, to be paid by check or money order at the time of the filing of the permit application, shall be as follows:~~

~~(1) Two hundred dollars (\$200) for any development qualifying for an administrative or emergency permit, except single family residences.~~

~~(2) Two hundred fifty dollars (\$250) for a single-family residence that is 1500 square feet or less, or for any development of a type or in a location such that it would ordinarily be scheduled for the consent calendar; provided, however, that the fee shall be five hundred dollars (\$500) for a single family residence that is between 1501 square feet and 5000 square feet, and provided further that the fee shall be one thousand dollars (\$1,000) for a single family residence over 5000 square feet. Any residential project which includes more than 75 cubic yards of grading shall also be subject to an additional two hundred dollars (\$200) fee, plus five dollars (\$5) per 1000 cubic yards for grading in excess of 75 cubic yards.~~

~~(3) Six hundred dollars (\$600) for lot line adjustments, or for divisions of land where there are single-family residences already built and only one new lot is created by the division or for multi-family units up to four (4) units, or for any other development not otherwise covered herein with a development cost of less than one hundred thousand dollars (\$100,000).~~

~~(4) Two thousand dollars (\$2,000) or one hundred twenty dollars (\$120) per unit, whichever is greater, but not to exceed twenty thousand dollars (\$20,000) for multi-unit residential development greater than four (4)~~

units, or for any other development not otherwise covered herein with a development cost of more than one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000).

(5) All residential projects (whether single or multi-unit) that include more than 75 cubic yards of grading shall be subject to an additional fee of two hundred dollars (\$200). This fee does not apply to residential projects that qualify for an administrative permits.

(6) For office, commercial, convention, or industrial development:

(i) Five hundred dollars (\$500) for development of 1000 gross square feet or less.

(ii) Two thousand dollars (\$2,000) for office, commercial, convention or industrial development of less than more than 1000 but less than 10,001 gross 10,000 gross square feet.

(iii) Four thousand dollars (\$4,000) for office, commercial, convention or industrial development of more than 10,000 but less than 25,000 gross square feet, or for any other development not otherwise covered herein with a development cost of more than five hundred thousand dollars (\$500,000) but less than one million two hundred fifty thousand dollars (\$1,250,000).

(iv) Eight thousand dollars (\$8,000) for office, commercial, convention or industrial development of more than 25,000 but less than 50,000 gross square feet, or for any other development not otherwise covered herein with a development cost of more than one million two hundred fifty thousand dollars (\$1,250,000) but less than two million five hundred thousand dollars (\$2,500,000).

(v) Twelve thousand dollars (\$12,000) for office, commercial, convention or industrial development of more than 50,000 but less than 100,000 gross square feet, or for any other development not covered otherwise herein with a development cost of more than two million five hundred thousand dollars (\$2,500,000) but less than five million dollars (\$5,000,000).

(vi) Twenty thousand dollars (\$20,000) for office, commercial, convention or industrial development of more than 100,000 gross square feet or more, for any other development cost of more than five million dollars (\$5,000,000) and for any

(7) Twenty thousand dollars (\$20,000) for major energy production and fuel processing facilities, including but not limited to, the construction or major modification of offshore petroleum production facilities, tanker terminals and mooring facilities, generating plants, petroleum refineries, LNG gassification facilities and the like.

(8) For changes in intensity of use; for office, commercial, convention or industrial development that does not have a quantifiable square footage; and for all other development not identified above, the fee shall be:

(i) Six hundred dollars (\$600) if the development cost is up to and including \$100,000.

(ii) Two thousand dollars (\$2,000) if the development cost is more than \$100,000 but less than \$500,001.

(iii) Four thousand dollars (\$4,000) if the development cost is more than \$500,000 but less than \$1,250,001.

(iv) Eight thousand dollars (\$8,000) if the development cost is more than \$1,250,000 but less than \$2,500,001.

(v) Twelve thousand dollars (\$12,000) if the development cost is more than \$2,500,000 but less than \$5,000,001, and

(vi) Twenty thousand dollars (\$20,000) if the development cost is \$5,000,001 or more.

(99) Two hundred dollars (\$200) for ~~immaterial~~~~minor~~ amendments to coastal development permits, and fifty percent (50%) of the ~~original~~ permit fee that would currently apply to the permitted development for development for material amendments to coastal development permits.

(10) Two hundred dollars (\$200) for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow-up coastal development permit.

(101) Two hundred dollars (\$200) for extensions and reconsiderations of coastal development permits for single family dwellings.

(142) Four hundred dollars (\$400) for extensions and reconsiderations of all other coastal development permits.

(123) Two hundred dollars (\$200) for a "de minimis" waiver of a coastal development permit application pursuant to section 30624.7 of the Coastal Act and for a "standard" waiver pursuant to sections 13250(c) and 13253(c) of these regulations.

~~(13) Two hundred (\$200) for assignments of coastal development permits.~~

(14) One hundred dollars (\$100) for a second continuance and any subsequent continuance requested by the applicant and approved by the Commission. There is no fee charged for the first continuance requested by the applicant.

(15) Five hundred dollars (\$500) for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be two hundred dollars (\$200).

(b) Fees for after-the-fact permits shall be doubled unless such added increases are waived by the Executive Director when it is determined that the permit could be processed by staff without significant additional review time resulting from the processing of the violation.

(c) Where a development consists of land division, each lot shall be considered as one single-family residence for the purpose of calculating the application fee. If an such application may includes both subdivision and the construction of a single-family residences, at no additional fee, if proposed together with the land division the fee shall be based upon the construction of the proposed residences with no additional fee for the subdivision. Conversion to condominiums shall be considered a division of the land.

(d) Except as provided in subsection (c) above, if different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for such application exceed twenty thousand dollars (\$20,000).

(d) ~~The application fee shall be determined from the type and size of the proposed development, except that where there is conflict over the applicable fee, the executive director may use the project cost to determine the fee.~~

(e) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in its consideration of the permit application, including the costs of providing public notice.

(f) The executive director shall waive the application fee where requested by resolution of the commission.

(g) The required fee shall be paid in full at the time an application is filed. However, if an application is filed as an administrative calendar application but subsequently scheduled for another calendar by the executive director or removed from the administrative calendar by the commission, the applicant shall pay the difference between the administrative calendar fee and the regular fee. Such additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit that requires payment of the fee prior to issuance of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 5. Determination Concerning Filing

§ 13056. Filing.

(a) A permit application shall be submitted on the form or format issued pursuant to Sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to Section 13055, shall be deemed 'filed' after having been received and found in proper order by the executive director of the commission. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:

(1) A date of receipt reflecting the date they are or were received; and

(2) A date of filing reflecting the date it is or was filed.

(b) Said review shall be completed within a reasonable time, but unless there are unusual circumstances, no later than five (5) The executive director shall make the filing determination in writing within ten working days, if feasible, but in no event later than thirty (30) calendar working days after the date it is received in the offices of the commission during the its normal working hours of said office. The executive director shall mail the filing determination to the applicant.

(c) If the executive director finds the application incomplete, he or she shall specify those parts of the application which are incomplete, and describe the specific materials needed to complete the application. Not later than 30 calendar days after receipt of the requested materials, the executive director shall determine whether the submittal of the requested materials is complete and transmit that determination in writing to the applicant.

(d) An applicant may appeal to the commission a determination by the executive director that an application form is incomplete may be appealed to the commission for its determination as to whether the permit application may be filed. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) days and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination. The executive director shall cause a date of receipt stamp to be affixed to all applications for permits on the date they are so received and a stamp of the date of filing on the date they are so filed.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30505~~ and 30620, Public Resources Code; Section 65943, Government Code.

§ 13109 13056.1. Reapplication

(a) Following a withdrawal of or a final decision upon an application for a coastal development permit, no applicant or the applicant's successor in interest to an applicant may reapply to the commission for a development permit for substantially the same development for a period of six (6) months from the date of the prior withdrawal or final decision. The executive director shall decide whether an application is for "substantially the same" development as that which was withdrawn or upon which a final determination has been rendered shall be decided by the executive director of the commission within (5) working days from receipt of such application the filing determination period set forth in section 13056. Where the executive director is unable to make such decision, the executive director may refer the re-application to the commission for its decision as to whether the application is substantially the same. Elimination of conditions required for a permit shall not be considered a substantial change for purposes of determining whether an application is substantially the same. Until such a determination is made, the reapplication shall not be deemed "filed" within the meaning of Public Resources Code, Section 30621. Any project which has been denied by a regional commission or the commission and which may be submitted as a new permit application under the guidelines set forth above, may be considered by the commission without requiring that the revised project has received preliminary approval under Section 13052 from the local government entity or entities which originally approved the project. The commission may require that the revised project be subjected to informal review by appropriate local government entities prior to commission review. The six month waiting period provided in this section may be waived by the commission for good cause.

(b) The executive director shall reject the application for filing when the executive director has determined that an application is for "substantially the same" development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months.

(c) Where the executive director has determined that the application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

(d) The applicant or the successor in interest to an applicant may appeal to the commission the determination of the executive director in the manner provided in section 13056. The commission may vote to overturn the determination of the executive director. Otherwise the executive director's determination shall stand.

(e) The commission or the executive director may waive the six-month waiting period provided in this section for good cause.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

§ 13057. Contents Preparation of Staff Reports

~~(a) The executive director shall prepare and reproduce a summary of each application officially filed except as provided for administrative permits in Section 13153. The summary shall be brief and understandable, and shall fairly present a description of the significant features of the proposed development, using the applicant's words wherever appropriate. The application summary shall be illustrated with the maps or drawings and shall contain either the Environmental Impact Report or the Environmental Impact Statement prepared for the development, if such a report was prepared, or a summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission. Staff comments shall also be included in the summary concerning (1) questions of fact, (2) the applicable policies of the California Coastal Act of 1976, (3) related previous application, (4) any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976, (5) public comment on the application, (6) written response to significant environmental points raised by members of the public or other public agencies, (7) prior decisions of the commission that, pursuant to the provisions of Public Resources Code Section 30625(e) may be a precedent(s) for the issues raised by the application and (8) other relevant matters. The staff comments shall be clearly labeled to distinguish them from the comments of the applicant and interested persons. The summary may include a tentative staff recommendation as to whether a permit should be granted or denied. If a tentative staff recommendation is included in the application summary, it shall conform to the requirements of Sections 13073-13077.~~

(a) The executive director shall prepare a staff report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the California Coastal Act of 1976;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the California Coastal Act of 1976;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976;

(6) Staff's recommendation, including specific written findings, prepared in accordance with subsection (c).

(b) The staff report shall also include as applicable:

(1) A copy or summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission, or if no such report was prepared, any negative declaration or finding of no significant impact;

(2) A discussion of related previous applications;

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific written findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976 including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific written findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(i) of the Public Resources Code.

(3) Written responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that development will be in accordance with the Coastal Act.

(d) Notwithstanding the requirement of subsection (a)(6) hereof, with respect to any application, the executive director may elect to prepare first a partial staff report that does not contain the recommendation required by subsection (c)(4) and (c)(5) where he or she determines that public comment and commission discussion would facilitate preparation of such recommendation. The executive director shall comply with all other procedures applicable to staff reports including procedures for the distribution of staff reports and for the noticing of hearings.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607, and 30620, Public Resources Code.

§ 13058. Consolidation of Staff Reports; Consolidation of Public Hearings.

Where two or more applications are legally or factually related, the executive director may prepare a consolidated staff report. Either the commission or the executive director may consolidate a public hearing where such consolidation would facilitate or enhance the commission's ability to review the developments for consistency with the requirements of the California Coastal Act of 1976. ~~two or more applications which are legally or factually related for purposes of preparation of staff documents and/or public hearing unless a party thereto makes a sufficient showing to the commission that the consolidation would restrict or otherwise inhibit the commission's ability to review the developments for consistency with the requirements of the California Coastal Act of 1976. Any such consolidation of permit applications shall conform to the requirements of~~

Public Resources Code, Section 30621. A separate vote shall be taken for each application if requested by the applicant.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620~~ 30621, Public Resources Code.

§ 13059. Distribution of Staff Reports.

~~The application summary, executive director shall distribute the staff report by mail to all members of the commission, to the applicants, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to the proposed development, and to all persons who specifically requested it. and With respect to all other persons known or thought by the executive director to have a particular interest in the application, including those specified in section 13054(a), the executive director shall provide notice pursuant to section 13063 or 13015 that the staff report shall be distributed only to those persons who request it. Staff reports shall be distributed within a reasonable time to assure adequate notification to all interested parties prior to the scheduled public hearing. The application summary staff report may either accompany the meeting notice required by Section 13015 or may be distributed separately. The commission may require any person who desires copies of application summaries staff reports to provide a self-addressed stamped envelope for each desired mailing, where extensive duplicating or mailing costs are involved, The commission may also require that interested persons provide reimbursement for such duplicating costs.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code; Section 6257, Government Code.

Article 7. Public Comments on Applications

§ 13060. Distribution of Written Comments on Applications and Staff Reports.

~~The executive director shall reproduce and distribute to all commission members, the text or summary of all relevant communications concerning applications that are received in the commission offices prior to the commission's public hearing and thereafter at any time prior to the vote. Such communications shall be available at the commission office for review by any person during normal working hours.~~

Written communications on applications and staff reports shall be distributed in accordance with the following procedures:

(a) Except as stated in subsection (c) below, the executive director shall distribute to all commission members the text or a summary of all relevant communications which are received prior to the close of the public testimony portion of the public hearing.

(b) Written communications must be received by the executive director in the appropriate district office prior to the day of the hearing or in the hearing room on the day of the public hearing. The executive director does not accept responsibility for the cost or delivery of written communications to the hearing room.

(c) The executive director may summarize communications orally rather than distribute the communications to each commission member if the executive director receives lengthy communications, a sizable number of similar communications, or communications received too late to provide copies to the commission.

(d) Written communications shall be available at the commission office for review by any person during normal working hours.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code, Section 6257, Government Code.

§ 13061. ~~Treatment of Similar Communications.~~

~~When a sizable number of similar communications is received, the texts need not be reproduced but the commission shall be informed of the substance of the communications; such communications shall be made available at the commission office for inspection by any person during normal working hours.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

Article 8. Hearing Dates

§ 13062. Scheduling.

The executive director of the commission shall set each application filed for public hearing no later than the 49th day following the date on which the application is filed. All dates for public hearing shall be set with a view toward allowing adequate public dissemination of the information contained in the application prior to the time of the hearing, and toward allowing public participation and attendance at the hearing while affording applicants expeditious consideration of their permit applications.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, and to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a). The notice of shall contain the following elements:

- ~~(1) the filing of the application pursuant to Section 13056;~~ (2) ~~the~~ number assigned to the application;
- (3) ~~a~~ description of the development and its proposed location;
- (4) ~~the~~ date, time and place at which the application will be heard by the commission;
- (5) ~~the~~ general procedure of the commission concerning hearings and action on applications ~~and;~~

(6) ~~the~~ direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and ~~that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.~~

(6) A statement that staff reports will be distributed as set forth in section 13059.

(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

Article 9. Oral Hearing Procedures

§ 13064. Conduct of Hearing.

The commission's public hearing on a permit matter shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13065. Evidence Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the chairperson of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13066. Order of Proceedings.

The commission's public hearing on a permit application shall ordinarily, unless the chairperson directs otherwise, proceed in the following order:

~~(1) Identification of the application; a summary of the application, its accompanying documents and other documents and materials submitted at the request of the applicant, interested persons or the staff, and staff comments thereon, and a summary of the correspondence received by the executive director, relating to the application;~~

~~(2) Presentation by or on behalf of the applicant, if the applicant wishes to expand upon material contained in the application summary;~~

~~(3) Other speakers for the application;~~

~~(4) Speakers against the application;~~

~~(5) Other speakers concerning the application;~~

~~(6) Rebuttal by applicant and appellant subject to the discretion of the commission pursuant to Section 30333.1 or if the vote is not to be scheduled for a subsequent meeting permitting time for rebuttal in writing;~~

~~(7) Motion to close the public hearing (or to continue it to a subsequent meeting);~~

~~(b) Questions by commissioners will be in order at any time following any party's presentation, subject to time limitation.~~

~~(c) All proceedings with regard to permits shall be recorded as provided in Sections 13026 and 13027.~~

(a) The executive director shall make a presentation to the commission identifying the application, describing the project, and summarizing the staff recommendation, including the proposed findings, proposed conditions, and written correspondence received prior to the public hearing.

(b) The public testimony portion of the public hearing shall proceed in the following order:

(1) Persons or their representatives desiring to state their views on the application shall have the opportunity to do so as follows:

(A) The applicant;

(B) Other persons supporting the application;

(C) Persons opposing the application;

(D) Other persons.

(2) The chairperson may allow rebuttal testimony by the applicant in accordance with Public Resources Code section 30333.1(a).

(3) The executive director may respond to and comment, as appropriate, on the testimony presented by any previous speaker.

(4) The chairperson may close the public testimony portion of the public hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(c) Questions by commissioners will be in order at any time following any person's presentation.

(d) At the conclusion of the public testimony portion of the public hearing, the executive director may propose to change the staff recommendation or the commission may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the executive director shall have an opportunity to comment briefly and specifically on any proposed change.

(e) The commission shall vote on a permit application in accordance with section 13090.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and 30333.1, Public Resources Code.

§ 13067. Speaker's Presentations.

~~Speakers' presentations shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate. The commission may establish reasonable time limits for presentation(s); such time limits shall be made known to all affected parties prior to any hearing. Where speakers use or submit to the commission visual or other materials, such materials shall become part of the application file and identified and maintained as such. Speakers may substitute reproductions of models or other large materials but shall agree to make the originals available upon request of the executive director.~~

(a) Speakers' presentations shall be to the point and shall be as brief as possible. The commission may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The chairperson may require individuals to consolidate their comments to avoid repetition.

(b) In order for audio, visual or audio-visual materials to be considered by the commission, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or other large materials may satisfy this requirement by submitting accurate reproductions or photographs of the models or other large materials and by agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13068. Other Speakers.

~~(a) Subject to paragraph (b) of this section, and to the chairperson's right to accept a motion to conclude the taking of oral testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak on an application shall be heard.~~

~~(b) Remarks shall be brief and to the point, and shall not duplicate those of previous speakers.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.~~

Article 10. Field Trips

§ 13069. Field Trips--Procedures.

Whenever the commission is to take a field trip to the site of any proposed project, the chairperson shall decide, and the executive director shall provide public notice of the time, location and intended scope of the field trip.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 11. Additional Hearings, Withdrawal and Off-Calendar Items, Amended Applications

§ 13070. Continued Hearings.

A public hearing on an application may be completed in one commission meeting. However, the commission may vote to continue the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed to the persons and in the manner provided for in section 13063.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

§ 13071. Withdrawal of Application.

(a) At any time before the commission commences calling the roll for a vote on an application, an applicant may withdraw the application.

(b) Withdrawal must be in writing or stated on the record and does not require commission concurrence. Withdrawal shall be permanent except that the applicant may file a new application for the same development subject to the requirements of ~~Sections 13056 and 13109~~ 13056.1.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and ~~30621~~30620, Public Resources Code.

§ 13072. Procedures for Amended Application.

~~(a) If an application for a permit for a proposed project is amended in any material manner, a public hearing must be held on the amended application, unless the executive director determines that the subject matter of the proposed amendment was reviewed adequately at a prior public hearing.~~

~~(b) If prior to a the public hearing at which on an application, is scheduled to be heard an applicant wishes to amend its permit the application in a manner which the executive director determines is material, the executive director shall prepare a staff report pursuant to section 13057 and the commission shall vote on the amended application only if:~~

~~(1) The applicant shall agree in writing to extend the final date for public hearing not more than 49 days from the date of such amendment or~~

~~(2) If the applicant does not agree to such an extension, the commission shall vote on the application as originally filed. The executive director determines that staff does not need additional time to prepare the staff report or provide notice to the public.~~

~~(b) If at a public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the commission may vote on the amended application at that public hearing where:~~

~~(1) Adequate public notice has already been provided and~~

~~(2) The proposed amended project was adequately reviewed during a public hearing.~~

~~(c) Conditions recommended by the executive director or imposed by previous commission action shall not be considered an amendment to the application.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

§ 13085 13073. Applicant's Postponement.

~~(a) In addition to the procedures set forth in Section 13071 the applicant may request the commission to postpone consideration of the application pursuant to this section. Where the an applicant for a coastal development permit determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. The applicant's right to postpone shall be exercised prior to commencement of the public testimony portion of the public hearing. Such a request shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application.~~

~~(b) An applicant's request for postponement, not made as a matter of right pursuant to Section 13085 13073(a), shall be granted at the commission's discretion. The request may be made in writing or in person at the commission meeting prior to the presentation provided for in Section 13084(b). The executive director shall establish procedures for notification, to the extent feasible, to notify all persons the executive director knows to be interested in the application of the postponement. The commission shall not grant a request for postponement under this subdivision unless it determines that sufficient time remains under applicable deadlines for its action on the application.~~

~~(c) Any request for postponement pursuant to subsections (a) or (b) shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application. Where a request for postponement is granted pursuant to subsections (a) or (b), the applicant shall provide another set of stamped, addressed envelopes consistent with the requirements of section 13054.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620 and 30621, Public Resources Code.

§ ~~13087~~ 13074. Rescheduling

Where consideration of an application is postponed ~~at the request of the applicant~~, the executive director shall, to the extent feasible, schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application. Notice of the rescheduled hearing shall be distributed to the persons and in the manner provided for in section 13063.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

~~Article 12. Preparation of Staff Recommendation~~

§ ~~13073.~~ Staff Analysis.

~~(a) If the vote on an application is scheduled for a later meeting that the oral hearing on the application, the executive director shall promptly perform whatever inquiries, investigations, research, conferences, and discussions are required to resolve issues presented by the application and to enable preparation of a staff recommendation for the vote. If further evidence is taken or received by the executive director, such evidences shall be made available in the administrative record of the application at the commission's office and all affected parties shall be given a reasonable opportunity to respond prior to the deadline for preparation and mailing of the staff recommendation.~~

~~(b) The executive director may request of the applicant any additional information necessary to perform the responsibilities set forth in subsection (a), and may report to the commission any failure to comply with such request, including the relationship of the requested information to the findings required by the California Coastal Act of 1976.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

§ ~~13074.~~ Submission of Additional Written Evidence.

~~At any point before or after the oral hearing on a permit application, up until the time the public hearing is closed by the commission, any interested party may submit written evidence including rebuttal arguments, to the commission. Rebuttal information shall ordinarily be submitted to the executive director prior to the deadline for preparing staff recommendations.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

§ ~~13075.~~ Final Staff Recommendation.

~~The executive director's final recommendation shall include specific written findings, including a statement of facts and legal conclusions, as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976, including, but not limited to, the requirements of Public Resources Code, Section 30604.~~

~~The staff recommendation shall include any questions that have not been answered by the applicant or by interested parties and may include a recommendation that the commission take a field trip to the site of any~~

~~proposed project when the executive director judges that this would materially assist in understanding and voting on the application. The staff recommendation shall be written except as provided in Section 13082.~~

~~The staff recommendation shall contain recommended written responses to significant environmental points raised during the evaluation in a manner consistent with the requirements of the California Environmental Quality Act. The staff recommendation shall also relate the proposed findings to prior decisions of the commission in order to assure consistency of the recommendation with decisions of the commission that, pursuant to the provisions of Public Resources Code Section 30625(c) are precedents for the issues raised by the application.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30604 & 30625, Public Resources Code.~~

~~§ 13076. Distribution of Final Staff Recommendation.~~

~~The staff recommendation shall be distributed to the persons and in the manner provided in Section 13059 for application summaries.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

~~§ 13077. Written Response to Staff Recommendation.~~

~~Any person may respond in writing to the staff recommendation subject to the requirements of Sections 13074 and 13084.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

Article 13 **Commission Review of Staff Recommendation**

~~§ 13080. Alternatives for Review of Staff Recommendation.~~

~~Any vote on an application may be taken only at a properly noticed public hearing and shall proceed under one of the three alternatives set forth in Sections 13081-13083.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

~~§ 13081. Staff Recommendation Included in Application Summary.~~

~~If the staff report and tentative recommendation described in Section 13057 is complete and has been distributed prior to the public hearing, and if adequate public notice has been given, the commission may vote upon an application at the same meeting during which the public hearing on the application is held. The parties shall be afforded the opportunity for rebuttal to any information presented at the public hearing in the manner set forth in Section 13084 before the commission proceeds to vote on the application.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.~~

~~§ 13082. Verbal Staff Recommendation upon Conclusion of Public Hearing.~~

~~(a) If the application summary does not include a staff recommendation, but the commission is prepared to vote immediately upon conclusion of the public hearing, the executive director shall provide a verbal recommendation and summary of proposed findings and the applicant and interested parties shall be afforded an opportunity to respond to the recommendation in the manner set forth in Section 13084 before the commission proceeds to vote on the application.~~

~~Note: Authority and reference cited: Sections 30331 & 30333, Public Resources Code.~~

~~§ 13083. Consideration of Staff Recommendation at a Meeting Subsequent to the Oral Hearing~~

~~Upon conclusion of the oral hearing, the commission may put the vote on the application over to a subsequent meeting, but no later than 21 days following the conclusion of the public hearing unless the applicant in writing waives any right to a decision within that time limit. Notice of such hearing shall be given in the manner and to the persons provided in Section 13059 except that those persons notified pursuant to Section 13054(a) need not be notified under this section unless they specifically request such notice.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

~~§ 13084. Procedures for Presentation of Staff Recommendation and Responses of Interested Parties.~~

~~(a) The executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner provided for application summaries in Section 13066.~~

~~(b) Immediately following the presentation of the executive director's recommendation, the parties who testified at the hearing conducted pursuant to Section 13066 or their representative(s) shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that provided for in Section 13066.~~

~~(c) At the discretion of the chairperson, the applicant or other parties may present rebuttal materials prior to the vote if the chairperson determines that the materials are primarily visual in nature, or, if the materials are in written form, that the written materials are merely rebuttal arguments and do not constitute new evidence.~~

~~(d) Where the commission moves to vote on an application with conditions different from those proposed by the applicant in the application or by the staff recommendation pursuant to subsection (a) above, the parties who responded to the staff recommendation under subsection (b) above, shall have an opportunity to state their views on the conditions briefly and specifically. The order of presentation shall be as provided in subsection (b).~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

Article 14. Voting Procedure

§ 13090. Voting--After Recommendation.

The commission shall not vote upon an application until it has received a staff recommendation under one of the three alternative procedures set forth in Section 13081-13083.

(a) A vote on an application may be taken only at a properly noticed public hearing after commission received the final staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

(1) If the commission is prepared to vote immediately upon conclusion of the public hearing, the executive director shall provide a verbal recommendation and summary of proposed findings.

(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a final staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) give due consideration to

(1) testimony and other evidence presented at the public hearing, and

(2) comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report. At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner provided for staff reports in section 13066.

(d) Under either of the two alternative procedures described in subsection (c), immediately following the presentation of the staff recommendation, the persons who testified at the hearing conducted pursuant to section 13066 or their representatives shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that provided for in section 13066.

(d)(e) Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1, and 30622, Public Resources Code.

§ 13091. ~~Voting Time and Manner.~~

~~The commission should normally vote on a permit application at the next regular commission meeting following the public hearing concerning the permit application unless the commission elects to follow one of the two procedures set forth in Sections 13081-13082.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.~~

§ 13092. Effect of Vote Under Various Conditions.

(a) Votes by ~~the~~ commission shall only be on the affirmative question of whether the permit should be granted; i.e., a "yes" vote shall be to grant a permit ~~(with or without conditions)~~ and a "no" vote to deny. Unless a motion is adopted pursuant to subsection (b), a motion to grant the permit shall be deemed to include the terms proposed in the project description as modified by the applicant at the hearing and the conditions and findings proposed in the staff report as modified by staff at the hearing.

(b) ~~Any condition to a permit proposed by a commissioner may move to add, delete or modify proposed terms, conditions or findings. Such a motion shall be voted upon only by made in the affirmative vote.~~

(c) ~~A majority of members present is sufficient to carry a motion to require or delete proposed terms, conditions or findings.~~

(d) ~~Unless otherwise specified at the time of the vote, the action taken shall be deemed to have been taken on the basis of the reasons set forth in the staff recommendation. In other words, if consistent with the staff recommendation and not otherwise modified, the vote of the commission shall be deemed to adopt the findings and conclusions recommended by the staff.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13093. Straw Votes.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13094. Voting Procedures.

(a) Voting upon permit applications shall be by roll call, with the chairperson being polled last.

(b) Members may vote "yes" or "no" or may abstain from voting, but an abstention shall not be deemed a "yes" vote.

(c) Any member may change his or her vote prior to the tally having been announced by the chairperson, but not thereafter.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13095. Voting by Members Absent from Hearing.

A member, or ~~his or her~~ alternate, who has been absent from all or part of the hearing may vote on any application; provided ~~he or she~~ the member or alternate has familiarized himself or herself with the presentation evidence presented at the hearing where on the application was considered, ~~and with pertinent materials relating to the application submitted to the commission~~ and has so declared prior to the vote. In the absence of a challenge raised by an interested party, inadvertent failure to make such a declaration prior to the vote shall not invalidate the vote of a member, or ~~his or her~~ alternate.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13096. Commission Findings.

(a) All decisions of the commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code, ~~§~~section 30604, and Public Resources Code ~~§~~section 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315.1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30006, 30315.1, and 30333, 30604, and 30621, Public Resources Code.

Article 15. Consent Calendar Procedures

§ 13100. Consent Calendar.

~~New p~~Permit applications which, as submitted or as recommended to be conditioned, in the opinion of the executive director ~~of a commission, are de minimis do not raise significant issues~~ with respect to the purposes and objectives of the California Coastal Act of 1976, may be scheduled for one public hearing during which all such items will be taken up as a single matter. This procedure shall be known as the Consent Calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620~~ 30621, Public Resources Code.

§ 13101. Procedures for Consent Calendar.

Unless otherwise provided in this Article, the procedures prescribed set forth in Chapter 5 of these regulations pertaining to permit applications, including application summaries staff reports, staff recommendations, resolutions, and voting, etc., shall apply to the Consent Calendar procedure, except that ~~a~~All included items shall be considered by the commission as if they constituted a single permit application. The public shall have the right to present testimony and evidence concerning any item on the Consent Calendar. Application summaries and tentative staff recommendations for applications placed on the consent calendar may be comprised of a brief but fair and accurate description of the proposed development and its location and a description of any proposed conditions. A factual finding may be made for similar projects located in the same geographic area and may be incorporated by reference in each application summary governed by the findings.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620-30621~~, Public Resources Code.

§ 13102. Conditions to of Consent Calendar Items.

The executive director may include recommended conditions in ~~agenda descriptions of staff reports for~~ consent calendar items which shall then be deemed approved by the commission if the item is not removed by the commission from the consent calendar. No condition of approval of any consent calendar item may be added, deleted or substantially modified after the staff report has been mailed to the public unless the commission removes the item to the regular calendar or schedules the revised item for a subsequent consent calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30607 and 30621~~ 30620, Public Resources Code.

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners ~~object to any item on the consent calendar and~~ request that such ~~an~~ item be processed individually as a separate application, scheduled for public hearing on the regular permit calendar, such the item shall be removed from the consent calendar and shall ~~thenceforth be processed as a single application.~~ If any item is removed from the consent calendar, the public hearing ~~on said item shall ordinarily be deemed~~ continued until it can be scheduled for ~~an individual~~ public hearing on the regular permit calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620-30621~~, Public Resources Code.

Article 18. Reconsideration

§ 13109.1. Scope of Article.

The provisions of this article shall govern proceedings for reconsideration of terms or conditions of a coastal development permit granted or of a denial of a coastal development permit by the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30305 & 30627, Public Resources Code.

§ 13109.2. Initiation of Proceedings.

(a) Any time within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the ~~regional~~ commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the ~~executive director of the commission~~ appropriate district office within 30 days of the final vote.

(b) The executive director shall prepare a staff report with a recommendation on the merits of the request for reconsideration. The staff report shall analyze whether the request satisfies the grounds for reconsideration provided in Public Resources Code section 30627. The staff report shall be distributed to the persons in the manner provided for in section 13059.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

§ 13109.3. Suspension of Appeal.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

Repealed

§ 13109.4. Grounds for Reconsideration.

Grounds for reconsideration of a permit action shall be as provided in Public Resources Code Section 30627.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

§ 13109.5. Hearing on Reconsideration.

(a) The executive director shall schedule a hearing on the reconsideration request Aat the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. to the applicant and all persons the executive director has reason to know would be interested in the permit reconsideration. ~~t~~The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original ~~regional commission or~~ commission decision shall be afforded a reasonable time to address the merits of the request.

(c) ~~The commission shall vote on the request at the same meeting.~~

(d) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, ~~it shall be considered a new permit application and the application shall be processed as a new application~~ in accordance with Sections 13050-13120 and Sections ~~13156~~13145-13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 30621 and 30627, Public Resources Code.

§ 13109.6. Finality of Regional Commission Decision.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

Repealed

Subchapter 4. Permits for an Approval of Emergency Work

Article 1. General

§ 13136. Scope of Subchapter.

This Subchapter governs procedures for processing applications for permits to perform work to resolve problems resulting from a situation falling within the definition of "emergency" in section 13009 and pursuant to the provisions of Public Resources Code section 30624 for which the Commission has jurisdiction pursuant to section 30519(b).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13137. Immediate Action Required.

It is recognized that in some instances a person or public agency performing a public service may need to undertake work to protect life and public property, or to maintain public services before the provisions of the Subchapter can be fully complied with. Where such persons or agencies are authorized to proceed without a permit pursuant to Public Resources Code, section 30611, they shall comply with the requirements of Public Resources Code section 30611 and to the maximum extent feasible, with the provisions of this Subchapter.

Article 2. Applications

§ 13138. Method of Application.

Applications in cases of emergencies shall be made to the executive director of the commission by letter or facsimile during business hours if time allows, and by telephone or in person if times does not allow.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13139. Necessary Information.

The information to be reported during the emergency, if it is possible to do so, or to be reported fully in any case after the emergency as required in Public Resources Code section 30611, shall include the following:

- (a) The nature of the emergency;
- (b) The cause of the emergency, insofar as this can be established;
- (c) The location of the emergency;
- (d) The remedial, protective, or preventive work required to deal with the emergency; and
- (e) The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 3. Procedures

§ 13140. Verification of Emergency.

The executive director of the commission shall verify the facts, including the existence and nature of the emergency, insofar as time allows.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13141. Consultation with Executive Director of the Commission.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

§ 13142. Criteria for Granting Permit.

The executive director shall provide public notice of the proposed emergency action required by Public Resources Code section 30624, with the extent and type of notice determined on the basis of the nature of the

emergency itself. The executive director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the executive director finds that:

- (a) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits, or for ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13143. Report to the Commission.

(a) The executive director shall report in writing to the local government having jurisdiction over the project site and to the commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.

(b) All emergency permits issued after the mailing for the meeting shall be briefly described by the executive director at the meeting and the written report required by subparagraph (a) shall be distributed prior to the next succeeding meeting.

(c) The report of the executive director shall be informational only; the decision to issue an emergency permit is solely at the discretion of the executive director of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 4. Emergency Actions Without a Permit

§ 13144. Waiver of Emergency Permit Requirements.

Any person wishing to take an emergency action pursuant to the requirements of Public Resources Code section 30611 shall notify the executive director of the commission by facsimile or telephone during business hours ~~telegram~~ of the type and location of the emergency action taken within three (3) days of the disaster or the discovery of the danger. Within seven (7) days of taking such action, the person who notified the executive director shall send a written statement of the reasons why the action was taken and verification that the action complied with the expenditure limits set forth in Public Resources Code section 30611. At the next commission meeting following the receipt of the written report, the executive director shall summarize all emergency actions taken and shall report to the commission any emergency action that, in his or her opinion, does not comply with the requirements of Public Resources Code section 30611 and shall recommend appropriate action. For the purposes of this section, any immediate, temporary actions taken by the California Department of Fish and Game which are required to protect the nesting areas of the California least tern, an endangered species under the California Fish and Game Code, sections 2050-2055 and Title 14 of the

California Administrative Code, section 670.5, and the Federal Endangered Species Act of 1973, shall be deemed to be in compliance with Public Resources Code section 30611.

Note: Authority cited: Sections ~~30331~~ and 30333, Public Resources Code. Reference: ~~Division 20, Section 30611~~, Public Resources Code.

Subchapter 5. Procedures for Administrative Permits

Article 1. General

§ 13145. Scope of Subchapter.

This subchapter governs special procedures for processing applications for permits pursuant to the requirements of Public Resources Code section 30624.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 2. Application for Administrative Permits

§ 13146. Applicant's Statement.

The permit application form provided for in section 13053.5 shall allow the applicant an opportunity to state that in his or her opinion the work applied for falls within the criteria established by Public Resources Code, section 30624.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 306240 and 30624, Public Resources Code.

§ 13147. Applications Not Thought to Be Administrative.

If the commission receives an application that is asserted to be for improvements or other development within the criteria established pursuant to Public Resources Code section 30624 and by this subchapter and if the executive director finds that the application does not qualify as such, he or she shall notify the applicant that a regular permit application is required as provided in Subchapter 1 of this chapter. The executive director, with the concurrence of the applicant, may accept the application for filing as a regular permit pursuant to section 13056 and shall adjust the application fees accordingly.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13148. Copies of Application.

An application asserted to be within the criteria established by Public Resources Code section 30624 shall be furnished to the commission initially in one (1) copy, together with one copy of whatever maps and drawings are reasonably required to describe the proposal. A reasonable number of additional copies may, at the discretion of the executive director, be required.

Note: Authority cited: Section 30333, Public Resources Code §. Reference: Section 30624, Public Resources Code.

§ 13149. Notice.

The applicant shall post notice at the project site as required by section 13054(b) and provide any additional notice to the public that the executive director deems appropriate. The executive director shall notify any persons known to be interested in the proposed development.

Article 3. Criteria for Granting Administrative Permits

§ 13150. Criteria and Content of Permits.

(a) The executive director may approve or modify an application for improvements or other development governed by this subchapter on the same grounds that the commission may approve an ordinary application and may include reasonable terms and conditions required for the development to conform with the policies of the California Coastal Act of 1976.

(b) Permits issued for such developments shall be governed by the provisions of sections 13156 and 13158 concerning the format, receipt, and acknowledgment of permits, except that references to "Commission Resolution" shall be deemed to refer to the executive director's determination. A permit issued pursuant to Public Resources Code section 30624 shall contain a statement that it will not become effective until completion of the commission review of the permit pursuant to section 13153.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13150.5. Criteria for Single Family Dwellings.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Repealed

§ 13151. Refusal to Grant - Notice to Applicant.

If the executive director determines not to grant an administrative permit based on a properly filed application under this Subchapter, the executive director shall promptly mail written notice to this effect to the applicant with an explanation of the reasons for this determination.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13152. Application to Commission.

In situations described in sections 13147 and 13151 the applicant may proceed to file an application as provided in section 13056.

Note: Authority cited: Section 30333, Public Resources Code §. Reference: Sections 30305 and 30624, Public Resources Code.

Article 4. Reports on Administrative Permits

§ 13153. Reports on Administrative Permits.

The executive director shall report in writing to the commission at each meeting the permits approved under this Subchapter up until the time of the mailing for the meeting, with sufficient description of the work authorized to allow the commission to understand the development proposed to be undertaken. Copies of this report shall be available at the meeting and shall have been mailed to the commission and to all those persons wishing to receive such notification at the time of the regular mailing for the meeting. Any such permits approved following the deadline for the mailing shall be included in the report for the next succeeding meeting. If 1/3 of the appointed membership of the commission so request, the issuance of an administrative permit governed by Public Resources Code section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a permit application under Subchapter 1 of this chapter, subject to the provisions for hearing and appeal set forth in Subchapters 1 and 2 of the chapter.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 5. Appeals

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

Subchapter 6. Permits

Article 1. Format of Permits

§ 13155. Reference to Regional Commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Repealed

§ 13156. Contents of Permits.

Permits shall be issued in a form signed by the executive director, and shall include:

- (a) A statement setting out the reasons for the commission approval of the permit;
- (b) Any other language or drawings, in full or incorporated by reference, that are consistent with the decision, and required to clarify or facilitate carrying out the intent of the commission;
- (c) Any conditions approved by the commission;
- (d) Such standard provisions as shall have been approved by resolution of the commission;
- (e) A statement that the permit runs with the land and binds all future owners of the property ~~may not be assigned except as provided in Section 13170;~~

(f) A statement that the permit shall not become effective until the commission receipt of acknowledgment as provided in Section 13158;

(g) The time for commencement of the approved development project except that where the commission on original hearing or on appeal has not imposed any specific time for commencement of ~~development construction~~ pursuant to a permit, the time for commencement shall be two years from the date of the commission vote upon the application. Each permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 306200, Public Resources Code.

Article 2. Notice of Receipt and Acknowledgment

§ 13158. Notice of Receipt and Acknowledgment.

(a) Development shall not commence until an approved permit becomes effective.

(ab) No approved permit shall become effective until a copy of the permit has been returned to the commission, upon which copy all permittees or agent(s) authorized pursuant to Section 13053(c) have acknowledged that they have received a copy of the permit and have accepted its contents.

(bc) Each permit approved by the commission shall be issued to the applicant with ~~contain~~ a blank acknowledgment to be signed by each permittee.

(ed) The acknowledgment should be returned within ten (10) working days following issuance of the permit, ~~but in any case prior to commencement of construction. If the acknowledgment has not been returned within the time for commencement of construction under Section 13156(g), the executive director shall not accept any application for extension of the permit.~~

(e) No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall send the permit applicant a notice of commission approval that identifies those conditions that must be satisfied before the permit can be issued for acknowledgment.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 306200 and 30607, Public Resources Code.

Article 3. Time for Issuing Permits and Distribution

§ 13160. Issuance of Permits.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Repealed

§ 13161. Distribution of Permit Copies.

Copies of permits shall be sent to the permittee(s), to the local government with jurisdiction over the area in which the proposed development is to be located and to any person who requires or would be interested in such a copy in the opinion of the executive director. Copies of relevant project plans shall be transmitted to the local government where feasible.

Note: Authority cited: Section 30333, Public Resources Code.

§ 13162. Notice of Permits.

Notice of the ~~commission approval~~issuance of a permit shall ~~also~~ be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code section 21080.5(b)(v).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

Article 4. Disputes over Contents of Permits

§ 13163. Disputes over Contents of Permits.

(a) Any permittee who feels that the permit issued does not correctly embody the action of the commission shall immediately so inform the executive director. Any such questions that cannot be resolved by consultation between the permittee and the executive director shall promptly be referred by the executive director to the commission for decision.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 5. Amendments to Permits

§ 13164. Applications for Amendments.

Applications for amendments to permits shall be made in writing. ~~Such applications are subject to the requirements for filing and processing permit applications set forth in Subchapter 1 of these regulations, and shall include an adequate description of the proposed amendment, including maps or drawings where appropriate.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600 and 30620, Public Resources Code.

§ 13165. Amendments to Administrative Permits.

(a) Amendments to administrative permits may be approved by the executive director upon the same criteria and subject to the same reporting requirement and procedures, including public notice and appeals to the commission, as provided for the original issuance of such administrative permits in sections 13145-13153.

(b) If any proposed amendment would, in the opinion of the executive director, increase the cost of the proposed development to an amount over the amounts specified by Public Resources Code, section 30624 the application shall thereafter be treated in the manner prescribed by section 13166.

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) ~~Applications for amendments to previously approved developments shall be filed with the commission.~~ (1) ~~The executive director shall reject a~~ An application for an amendment to an approved permit shall be rejected if he or she determines that in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of an ~~partially~~ approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

(2b) For those applications accepted, if the executive director shall determines that whether or not a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources and public access to and along the shoreline, the amendment shall be deemed is a material amendment to change to the permit permit. Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all persons parties the executive director has reason to know may be interested in the application.

(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing publishing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of object to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

~~(3c) If the executive director determines that the proposed amendment is a material change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission in accordance with the procedures of Subchapter 1, after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.~~

~~(4) Unless the proposed amendment has been found to be immaterial, t~~The commission shall determine by a majority vote of the membership present whether the proposed development with the proposed amendment is consistent with the requirements policies of Chapter 3 of the California Coastal Act or a certified local coastal program if applicable. ~~of 1976. The commission shall approve the amendment if it finds that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject to reasonable conditions. The decision shall be accompanied by findings in accordance with section 13096.~~

~~(bd) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.~~

~~(ee) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code section 30609.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609, and 30620, Public Resources Code.

§ 13168. Application Fee.

All applications for amendments to permits shall be accompanied by the fee specified in section 13055 of these regulations ~~subject to a twenty five (\$25) dollar fee. If the amendment is determined to be material, fees shall be charged in accord with Section 13055 as for a new application except that the executive director of the regional commission may reduce the fees in accord with the staff work involved.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 6. Extension of Permits

§ 13169. Extension of Permits.

(a) Prior to the time that commencement of ~~development~~ construction under a permit granted by either the regional commission or the commission must occur under the terms of the permit or Section 13156, the applicant may, ~~upon payment of a fifty dollar (\$50) fee (or a twenty five dollar (\$25) fee in the case of extension of permits for single family residences)~~ apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The executive director shall not accept the application unless it is shall be accompanied by all of the following:

(1) evidence of an approved, valid, unexpired permit, acknowledged pursuant to Section 13158 and

(2) evidence of the applicant's continued legal interest in the property involved in the permit,

(3) the fee specified in section 13055 of these regulations, and

(4) stamped envelopes addressed to each person specified in section 13054 of these regulations and each person who testified, orally or in writing at prior permit hearing(s).

(4b) For those applications accepted, the executive director shall determine whether or not there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the California Coastal Act or with a certified local coastal program, if applicable, of 1976. If the executive director determines that there are no changed circumstances that may affect consistency of the proposed development, he or she shall mail notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all parties the executive director has reason to know may be interested in the application including all persons identified in section 13054 of these regulations and all persons parties who participated in the initial previous permit hearings. The applicant shall post such notice at the project site within three (3) days of the executive director's mailing of the notice to interested parties. The executive director shall also report the determination to the commission to provide the commission with an opportunity to object to the executive director's determination. If no written objection is received at the commission office within ten (10) working days of publishing notice, the time for commencement of development determination of consistency shall be extended for one year from the expiration date of the permit if both of the following occur:

(1) no written objection to the executive director's determination is received within 10 working days after mailing notice, and

(2) three commissioners do not object to the executive director's determination, conclusive.

(c) If the executive director receives a written objection to his or her determination but concludes that the objection does not identify changed circumstances that may affect the consistency of the development with the Coastal Act or a certified local coastal program, if applicable, the executive director shall report this conclusion to the commission at the same time that the executive director reports the determination to the commission in accordance with subsection (b) above. The executive director shall provide a copy of the letter(s) of objection to the commission with the report. If three commissioners object to the extension on grounds that there may be changed circumstances that affect consistency, the executive director shall schedule the extension for hearing(s) in accordance with subsection (d) below. If three commissioners do not object to the extension, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(2d) If the executive director receives an objection to his or her determination and concludes that the objection identifies changed circumstances that may affect the consistency of the development or if the executive director determines that due to changed circumstances the proposed development may not be consistent or if objection is made to the executive director's determination of consistency, the application shall be scheduled for a hearing on whether there are changed circumstances that affect consistency, reported to the commission. The executive director shall provide notice of such hearing after notice to any person(s) the executive director has reason to know would be interested in the matter. The executive director shall prepare a include in such report for the hearing that describes a description of any pertinent changes in conditions or circumstances relating to each requested permit extension.

(1) If three (3) commissioners determine that there are changed circumstances that affect consistency of the development object to an extension on the grounds that the proposed development may not be consistent with Chapter 3 policies of the California Coastal Act or with a certified local coastal program if applicable, of 1976, the extension shall be denied and the development application shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations, as though it were a new application. However, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances.

(2) If no such determination is made by three commissioner objection is raised, the time for commencement of development shall be extended for one year from the expiration date of the permit. executive director shall issue the extension authorized by this section.

(e) Any extensions applied for prior to the expiration of the permit shall automatically extend the time for commencement of development expiration date of the permit until such time as the commission has acted upon the extension request; provided, however, that the applicant shall not undertake development during if construction has not commenced at the time the application for extension is made, construction may not commence during the period of automatic extension provided in this section.

(bf) The procedures specified in this section shall apply to extensions of all permits which were previously approved by the commission, including those approved on appeal, on the consent calendar and or as administrative permits, unless the commission adopts expedited procedures for extensions to such permits.

Note: Authority cited: Section 30333, Public Utilities Resources Code. Reference: Sections 30620.6, and 3062400; and 30604, Public Resources Code.

Article 7. Transfer Assignment of Permits

§ 13170. Transfer Assignment of Permits.

(a) Any person may request that the commission records be revised to reflect that he or she has assumed the rights and obligations of a coastal development permit by acquiring property on which development has been approved, initiated, or completed pursuant to a permit by submission of who has obtained, pursuant to the California Coastal Act of 1976 and these regulations, a permit to perform a development may assign such permit to another person subject to the following requirements:

(1) submission of a \$25 application fee;

(2) an affidavit executed by the landowner assignee attesting to the landowner's assignee's acknowledgment of agreement to comply with the terms and conditions of the permit;

(3) evidence of the landowner's assignee's legal interest in the real property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit; and

(4) the original permittee's request to assign all rights to undertake the development to the assignee, and

(5) a copy of the original permit showing that it has not expired.

(b) The applicant for assignment shall submit the above documents to the executive director of the commission together with a completed application form provided by the executive director. The assignment

~~shall be effective u~~ Upon the executive director's written approval of the documentation submitted, ~~the~~ The executive director's review shall ordinarily be completed within ten (10) working days of the receipt of a completed application for assignment. The completed application form and supporting documentation shall become part of the project file maintained by the applicable commission.

~~(c) No person other than the permittee may perform or undertake development under the permit without assignment of the permit under this section.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code. Authority cited: Section 30333, Public Resources Code. Reference: Section 30600, Public Resources Code.~~

Chapter 6. Exclusions from Permit Requirements

Subchapter 6. Existing Single-Family Residences

§ 13250. ~~Improvements~~ Additions to Existing Single-Family Residences.

(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to a residence;

(2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and

(3) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

(1) ~~Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, or seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or in an area designated for protection as a small scale neighborhood by resolution of the commission or a regional commission after public hearing; where the residence or proposed improvement would encroach within 50 feet of the edge of a coastal bluff.~~

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas; ~~of natural vegetation designated by resolution of the commission or regional commission after public hearing as significant natural habitat;~~

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an

improvement to the structure had previously been undertaken pursuant to Public Resources Code section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

(5) In areas which the commission or a regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

(6) Any improvement addition to a single-family residence where the development permit issued for the original structure by the commission, ~~or regional commission, or local government~~ indicated that any future improvements additions would require a development permit.

(c) In any particular case, even though an ~~repair or~~ improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of ~~a permit filing an application~~; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, ~~the proposed no repair or~~ improvement shall not ~~may~~ be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(a), Public Resources Code.

Subchapter 7. Repair and Maintenance Activities That Require a Permit

§ 13252. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, ~~or bluff, or environmentally sensitive habitat area,~~ or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the California Coastal Act of 1976, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structures similar protective work under one ownership is not repair and maintenance under section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(c) Notwithstanding the above provisions, the executive director of the commission shall have the discretion to exempt from this section ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation road ways.

(d) Pursuant to this section, the commission may issue a permit for on-going maintenance activities for a term in excess of the two year term provided by these regulations.

(e) In any particular case, even though a method of repair and maintenance is identified in subsection (a) above, the executive director may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three

(3) commissioners object to the waiver, the proposed repair and maintenance shall not be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(d), Public Resources Code.

Subchapter 7.5. Improvements to Structures, Other than Single-Family Residences and Public Works Facilities That Require Permits

§ 13253. Improvements That Require Permits.

(a) For purposes of Public Resources Code section 30610(b) where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

- (1) All fixtures and other structures directly attached to the structure.
- (2) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvements to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or where the structure or proposed improvement would encroach within 50 feet of the edge of a coastal bluff;

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland, wetland or stream; sand dune, or within 100 feet of the edge of a coastal bluff; in a highly scenic area, or in an environmentally sensitive habitat area; or stream or in areas of natural vegetation designated by resolution of the commission or regional commission as significant natural habitat;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

(5) In areas which the commission or regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

(6) Any improvement to a structure where the coastal development permit issued for the original structure by the commission, ~~or regional commission, or local government~~ indicated that any future improvements would require a development permit;

(7) Any improvement to a structure which changes the intensity of use of the structure;

(8) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

(c) In any particular case, even though ~~the proposed a repair or improvement~~ falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of ~~a permit filing an application~~; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, ~~the proposed no repair or improvement shall not~~ may be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(b), Public Resources Code.

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EXHIBIT 2



CALIFORNIA COASTAL COMMISSION

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



NOTICE OF INTENTION TO AMEND AND REPEAL PORTIONS OF THE CALIFORNIA COASTAL COMMISSION'S PERMIT REGULATIONS

NOTICE IS HEREBY GIVEN that the **CALIFORNIA COASTAL COMMISSION** is proposing to amend and repeal various sections of the Commission's regulations in Chapters 5 and 6 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass coastal development permit regulations and coastal development permit exclusions respectively.

A written comment period has been established commencing on **February 20, 1998** and terminating at the close of the public hearing concerning this matter at the Commission's meeting on **April 9, 1998**. A public hearing is scheduled as part of the Commission's regular meeting on **April 9, 1998** at the **Hyatt Regency, 200 South Pine Avenue, Long Beach**. The meeting will commence at **9:00 AM**, however, the hearing on this matter may not be the first agenda item to be heard. Interested persons may comment orally about the proposed changes at the hearing or may submit written comments concerning the proposed changes to the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT ST., STE. 2000, SAN FRANCISCO, CA 94105-2219** before 12 p.m. on the day before the hearing. Written comments may also be submitted to the Commission on the day of the hearing at the meeting prior to the Commission's consideration of the matter. It is requested, but not required, that written comments be mailed so that they are received no later than three (3) working days prior to the date of the public hearing. It is requested, but not required, that persons who submit written comments to the Commission at the hearing provide twenty (20) copies of such comments. This will ensure that each commissioner will receive a copy.

AUTHORITY AND REFERENCE

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

The proposed regulatory action would implement, interpret, and make specific Public Resources and Government Code sections as follows:

EXHIBIT NO.	2
APPLICATION NO.	Notice of CCC's
	Intent to Amend
	Portions of Ch. 5&6
	of CCC's Regulations

**AUTHORITY AND REFERENCE CITATIONS FOR REGULATORY ACTION TO
TITLE 14, CHAPTERS 5 AND 6 TO COASTAL COMMISSION REGULATIONS**

Section	Authority	Reference
13052	Public Resources Code § 30333	Public Resources Code § 30620; Govt. Code § 65941
13053	Public Resources Code § 30333	Public Resources Code § 30620; Govt. Code § 65941
13053.4	Public Resources Code § 30333	Public Resources Code § 30620
13053.5	Public Resources Code § 30333	Public Resources Code §§ 30601.5 & 30620
13054	Public Resources Code § 30333	Public Resources Code §§ 30620
13055	Public Resources Code § 30333	Public Resources Code § 30620
13056	Public Resources Code § 30333	Public Resources Code §§ 30620; Govt. Code § 65943
13056.1*	Public Resources Code § 30333	Public Resources Code § 30620
13057	Public Resources Code § 30333	Public Resources Code §§ 21080.5, 30604, 30607, & 30620
13058	Public Resources Code § 30333	Public Resources Code § 30621
13059	Public Resources Code § 30333	Public Resources Code §§ 30006, 30620, & 30621; Govt. Code, § 6257
13060	Public Resources Code § 30333	Public Resources Code §§ 30006, 30620, & 30621; Govt. Code, § 6257
13063	Public Resources Code § 30333	Public Resources Code §§ 30006, 30620 & 30621
13066	Public Resources Code § 30333	Public Resources Code §§ 30333 & 30333.1
13067	Public Resources Code § 30333	Public Resources Code § 30333
13070	Public Resources Code § 30333	Public Resources Code §§ 30006 & 30621
13071	Public Resources Code § 30333	Public Resources Code §§ 30333 & 30620
13072	Public Resources Code § 30333	Public Resources Code § 30621
13073 **	Public Resources Code § 30333	Public Resources Code §§ 30620 & 30621
13074 ***	Public Resources Code § 30333	Public Resources Code §§ 30006 & 30621
13090	Public Resources Code § 30333	Public Resources Code §§ 30315, 30333, 30333.1, & 30622
13092	Public Resources Code § 30333	Public Resources Code § 30315
13095	Public Resources Code § 30333	Public Resources Code § 30315
13096	Public Resources Code § 30333	Public Resources Code §§ 21080.5, 30006, 30315.1, & 30333, 30604 & 30621
13100	Public Resources Code § 30333	Public Resources Code § 30621
13101	Public Resources Code § 30333	Public Resources Code § 30621
13102	Public Resources Code § 30333	Public Resources Code §§ 30607 & 30621
13103	Public Resources Code § 30333	Public Resources Code § 30621
13109.2	Public Resources Code § 30333	Public Resources Code § 30627
13109.5	Public Resources Code § 30333	Public Resources Code §§ 30006, 30621 & 30627
13138	Public Resources Code § 30333	Public Resources Code § 30624
13144	Public Resources Code § 30333	Public Resources Code § 30611
13156	Public Resources Code § 30333	Public Resources Code § 30600
13158	Public Resources Code § 30333	Public Resources Code § 30600 & 30607
13162	Public Resources Code § 30333	Public Resources Code § 21080.5
13164	Public Resources Code § 30333	Public Resources Code §§ 30600 & 30620
13166	Public Resources Code § 30333	Public Resources Code §§ 30600, 30604, 30609, & 30620
13168	Public Resources Code § 30333	Public Resources Code § 30620
13169	Public Resources Code § 30333	Public Resources Code §§ 30600, 30604, & 30620.6
13170	Public Resources Code § 30333	Public Resources Code § 30600
13250	Public Resources Code § 30333	Public Resources Code § 30610(a)
13252	Public Resources Code § 30333	Public Resources Code § 30610(d)
13253	Public Resources Code § 30333	Public Resources Code § 30610(b)

* § 13056.1 is proposed to be renumbered from § 13109 with no change in authority or reference citations.

** § 13073 is proposed to be renumbered from § 13085 with the addition of one reference citation.

*** § 13074 is proposed to be renumbered from § 13087 with the addition of one reference citation.

Existing authority and reference citations are proposed for revision in the following sections: 13052, 13053, 13056, 13057, 13058, 13059, 13060, 13061, 13063, 13166, 13068, 13070, 13071, 13073, 13074, 13075, 13076, 13077, 13080, 13081, 13082, 13083, 13084, 13090, 13091, 13096, 13100, 13101, 13102, 13103, 13109.5, 13144, 13156, 13158, 13162, 13164, 13166, 13168, 13169, and 13170.

Public Resources Code section 30333 is being added as the authority for these sections: 13162, 13164, 13168, and 13169. The proposed changes to above-listed sections would implement, interpret and make specific Public Resources and Government Code sections as follows:

AUTHORITY & REFERENCE CITATIONS PROPOSED FOR REVISION

REGULATIONS PROPOSED FOR AMENDMENT

SECTION:	AUTHORITY:	REFERENCE:
13052	No change	Add: Government Code § 65941 Delete: Public Resources Code § 30333
13053	No change	Add: Government Code § 65941 Delete: Public Resources Code § 30305
13056	No change	Add: Government Code § 65943; Delete: Public Resources Code § 30505
13057	No change	Add: Public Resources Code §§ 21080.5, 30604, & 30607
13058	No change	Add: Public Resources Code § 30621 Delete: Public Resources Code § 30620
13059	No change	Add: Government Code § 6257; Public Resources Code §§ 30006 & 30621
13060	No change	Add: Government Code § 6257; Public Resources Code §§ 30006 & 30621
13063	No change	Add: Public Resources Code §§ 30006 & 30620
13066	No change	Add: Public Resources Code § 30333.1
13070	No change	Add: Public Resources Code § 30006
13071	No change	Add: Public Resources Code § 30620 Delete: Public Resources Code § 30621
13073*	No change	Add: Public Resources Code § 30620
13074**	No change	Add: Public Resource Code § 30621
13090	No change	Add: Public Resources Code §§ 30333, 30333.1, & 30622
13096	No change	Add: Public Resources Code §§ 21080.5, 30006, 30604, & 30621
13100	No change	Add: Public Resources Code § 30621 Delete: Public Resources Code § 30620
13101	No change	Add: Public Resources Code § 30621 Delete: Public Resources Code § 30620
13102	No change	Add: Public Resources Code §§ 30607 & 30621 Delete: Public Resources Code § 30620
13103	No change	Add: Public Resources Code § 30621 Delete: Public Resources Code § 30620
13109.5	No change	Add: Public Resources Code §§ 30006 & 30621
13144	Delete: Public Resources Code § 30331	Add: Public Resources Code § 30611 Delete: Public Resources Code Division 20
13156	No change	Add: Public Resources Code § 30600 Delete: Public Resources Code § 30620

* § 13073 is proposed to be renumbered from § 13085 with the addition of one reference citation.

** § 13074 is proposed to be renumbered from § 13087 with the addition of one reference citation.

REGULATIONS PROPOSED FOR AMENDMENT

13158	No change	Add: Public Resources Code §§ 30600 & 30607 Delete: Public Resources Code § 30620
13162	Add: Public Resources Code § 30333	Add: Public Resources Code § 21080.5
13164	Add: Public Resources Code § 30333	Add: Public Resources Code §§ 30600 & 30620
13166	No change	Add: Public Resources Code §§ 30600, 30604, 30620
13168	Add: Public Resources Code § 30333	Add: Public Resources Code § 30620
13169	Add: Public Resources Code § 30333 Delete: Public Utilities Code § 30333	Add: Public Resources Code §§ 30600 & 30604 Delete: Public Resources Code § 30624
13170	No change	Add: Public Resources Code § 30600 Delete: Public Resources Code § 30333

REGULATIONS PROPOSED FOR REPEAL

SECTION:	AUTHORITY TO BE DELETED:	REFERENCE TO BE DELETED:
13061	Public Resources Code § 30333	Public Resources Code § 30620
13068	Public Resources Code § 30333	Public Resources Code § 30333
13073	Public Resources Code § 30333	Public Resources Code § 30620
13074	Public Resources Code § 30333	Public Resources Code § 30620
13075	Public Resources Code § 30333	Public Resources Code §§ 30604 & 30625
13076	Public Resources Code § 30333	Public Resources Code § 30333
13077	Public Resources Code § 30333	Public Resources Code § 30333
13080	Public Resources Code § 30333	Public Resources Code § 30333
13081	Public Resources Code § 30333	Public Resources Code § 30333
13082	Public Resources Code §§ 30331 & 30333	Public Resources Code §§ 30331 & 30333
13083	Public Resources Code § 30333	Public Resources Code § 30333
13084	Public Resources Code § 30333	Public Resources Code § 30333
13091	Public Resources Code § 30333	Public Resources Code § 30333

**INFORMATIVE DIGEST AND SUMMARY OF PROPOSED
AMENDMENTS IN PLAIN ENGLISH**

The California Coastal Commission is proposing to amend and repeal various sections of the Commission's regulations in Chapters 5 and 6 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass coastal development permit regulations and coastal development permit exclusions respectively.

The proposed regulatory action would affect staff processing of permit applications, Commission hearing and voting procedures, applicant and permittee requirements, and permit exclusions. The proposed regulatory action consists largely of limited modifications to existing coastal development permit regulations. The amendments would reorganize sections governing procedures for staff processing of permits and for Commission action on permits in order to provide more understandable, streamlined processes. For example, sections covering treatment of written public comments that are currently scattered throughout the regulations would be combined into one section. Similarly, various sections addressing Commission review of staff recommendations would be combined into one section governing the Commission's vote on staff recommendations. In addition, redundant procedures would be eliminated. For example, the regulations regarding staff preparation of application summaries would be incorporated into the regulations regarding staff preparation of staff reports.

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When Local Applications Must Be Made First - Ch. 5, Subch. 1, Art. 1

AMEND 13052	This section prohibits the executive director from accepting a permit application unless all local and state agencies that are also required to approve the project have granted preliminary approval. This section also lists those documents that can be accepted as evidence of preliminary approval.	The proposed revision would indicate that there are exceptions to the preliminary approval requirement.	1
AMEND 13053	This section allows the executive director to waive the requirement for preliminary state and local government approvals under four circumstances.	The proposed revision would require that the executive director accept an application without preliminary approvals when required to do so pursuant to Govt. Code § 65941.	2

Application for Permit - Ch. 5, Subch. 1, Art. 2

AMEND 13053.4	This section requires applicants to combine functionally related development in a single permit application. This section also prevents the commission from considering a permit amendment before a permit is "final."	The proposed revision would clarify the commission's authority to consider permit amendments by eliminating the language that prohibits the executive director from accepting a permit amendment before the permit is "final."	2
AMEND 13053.5	This section lists the information that applicants must submit in a permit application.	The proposed revision would clarify that 8 x 11 inch copies of full size maps, photographs, and other exhibits are required in addition to full-size versions.	2

Applicant's Notice Requirements - Ch. 5, Subch. 1, Art. 3

AMEND 13054	This section requires applicants to submit stamped, addressed envelopes for use by the executive director to provide notice of the permit application to people who live or own property within 100 feet of the parcel on which development is proposed. This section also requires applicants to post notice of their permit application at the site of the proposed	1) The proposed revision would clarify the subject of this section by changing the heading from "Notification Requirements" to "Identification of Interested Persons/Submission of Envelopes/Posting of Site."	3-4
		2) The proposed revision would require that applicants provide stamped, addressed envelopes for those persons who testified at local hearings on the proposed development.	3-4

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	development.	<p>3) The proposed revision would clarify that the term “parcel”, in the requirement to identify persons residing and owning property within 100 feet of the parcel on which development will occur, means a parcel of real property of record (i.e., a legally subdivided lot).</p> <p>4) The proposed revision would require that roads be excluded when identifying property within 100 feet of the parcel on which development will occur.</p> <p>5) The proposed revision would require applicants to use the most recent equalized assessment roll to identify persons who own land within 100 feet of the parcel on which development is proposed.</p> <p>6) The proposed revision would require applicants to provide an additional set of addressed, stamped envelopes if a hearing is postponed at an applicant’s request after the executive director has mailed notice of the hearing to interested persons.</p> <p>7) The proposed revision would require that of the three factors to be considered in choosing a location for posting notice, the first two factors, conspicuousness and easily read by the public be given greater emphasis than the third factor, proximity to the site of the proposed development.</p>	<p>3-4</p> <p>3-4</p> <p>3-4</p> <p>3-4</p> <p>3-4</p>
Schedule of Fees for Filing and Processing Permit Applications - Ch. 5, Subch. 1, Art. 4			
AMEND 13055	This section requires permit applicants to pay an application fee at the time of filing a permit application. The application fees for residential development are based upon size of homes, number of homes, and amount of grading involved. The fees for office, commercial, convention, and industrial development vary depending upon the square footage or project cost of the proposed development. This section also establishes flat fees for permit applications	<p>1) The proposed revision would subject consent calendar permit applications to the same fee as regular calendar permit applications.</p> <p>2) The proposed revision would clarify that the grading fee that applies to applications for residential development applies to all such applications (i.e., multi-family, etc.), not just those for single family residences.</p> <p>3) The proposed revision would eliminate the requirement that the grading fee be increased by \$5 for each 1000 cubic yards of grading above 75 cubic yards.</p>	<p>4-7</p> <p>4-7</p> <p>4-7</p>

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	<p>that qualify for the administrative and consent calendars.</p>	<p>4) The proposed revision would separate the identification of those fees for office, commercial, convention, and industrial projects that are based on square footage of the proposed project from those fees for office, commercial, etc. that are based on the cost of the proposed project.</p> <p>5) The proposed revision would clarify the fees that would apply to projects that have a project cost or square footage that does not fall within the dollar ranges currently specified.</p> <p>6) The proposed revision would require the fee for a project that consists of a change in intensity of use to be based upon project cost, not square footage.</p> <p>7) The proposed revision would require applicants for nonresidential projects that involve construction of 1000 square feet or less to pay a \$500 fee rather than the current \$1000 fee.</p> <p>8) The proposed revision would subject material amendments to a fee of 50% of the fee that would apply if the underlying permit were applied for today (rather than the current fee of 50% of the original fee paid).</p> <p>9) The proposed revision would establish a \$500 fee for temporary events that qualify for the consent or regular calendar and a \$200 fee for those that qualify for the administrative calendar.</p> <p>10) The proposed revision would clarify that the fee for an application that includes both subdivision and construction of homes is based upon the fee that would apply if the application consisted solely of an application for construction of homes, with no extra fee for subdivision.</p>	<p>4-7</p> <p>4-7</p> <p>4-7</p> <p>4-7</p> <p>4-7</p> <p>4-7</p> <p>4-7</p>

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		<p>11) The proposed revision would require that the fee for applications that propose different types of development (i.e., residential/ commercial or residential/office, etc.) be based upon the sum of fees that would be imposed if each development were applied for separately, with a total cap of \$20,000.</p> <p>12) The proposed revision would clarify that applications that are filed as administrative permits but are subsequently heard on the regular calendar are subject to regular, not administrative fees. The proposed revision would authorize the commission to collect the additional fee owed in such cases before scheduling the application for hearing or through a condition of approval of the permit.</p>	<p>4-7</p> <p>4-7</p>
Determinations Concerning Filing - Ch. 5, Subch. 1, Art. 5			
<p>AMEND 13056</p>	<p>This section governs executive director time limits and action on filing decisions and requires that such decisions are made no later than five working days after the date filing information is received.</p>	<p>1) The proposed revision would extend the time limit on filing decisions from 5 working days to 10 working days, if feasible, but in no event later than 30 calendar days after the date the filing information is received.</p> <p>2) The proposed revision would specify the actions that will be taken by the executive director when the executive director determines that an application is either complete or incomplete.</p> <p>3) The proposed revision would provide applicants with the ability to appeal the executive director's filing decisions to the commission.</p>	<p>8</p> <p>8</p> <p>8</p>
Reapplication - Ch. 5, Subch. 1, Art. 17			
<p>AMEND & RENUM. 13109 to 13056.1</p>	<p>This section limits an applicant from reapplying for substantially the same development for a period of six months from the date of the prior final decision.</p>	<p>1) The proposed revision would renumber this section to § 13056.1 so that this section, governing reapplication, would immediately follow the section governing processing of applications.</p> <p>2) The proposed revision would add a six-month limitation on reapplication following a withdrawal as well as a final decision.</p> <p>3) The proposed revision would extend the time period in which the executive director</p>	<p>9</p> <p>9</p> <p>9</p>

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		<p>determines whether the application is “for substantially the same development” from 5 working days to 10 working days, if feasible, but in no event later than 30 calendar days and would specify how that determination affects the filing of the application.</p> <p>4) The proposed revision would specify the applicant’s ability to appeal the executive director’s determination on reapplication to the commission in the same manner provided in § 13056.</p> <p>5) The proposed revision would remove the reference allowing the executive director to waive preliminary local approval, a provision that is also reflected in § 13053.</p> <p>6) The proposed revision would delete the reference to Public Resources Code § 30621 within the text of the regulation.</p> <p>7) The proposed revision would provide the executive director with the ability to waive limitations on reapplication for good cause.</p>	<p>9</p> <p>9</p> <p>9</p> <p>10</p>
Staff Reports - Ch. 5, Subch. 1, Art. 6			
<p>AMEND 13057</p>	<p>This section details the content of application summaries required to be prepared by the executive director as part of the application review process.</p>	<p>1) The proposed revision would incorporate into this section requirements currently found in §§ 13073 and 13075, which would be repealed. The proposed revision would combine the contents of application summaries specified in this section with the analysis and contents of final staff recommendations contained in §§ 13073 and 13075. The proposed revision would retain the ability of the executive director to first prepare a partial staff report rather than a final staff recommendation.</p> <p>2) The proposed revision would retitle the combined application summary and final staff recommendation as a “staff report”.</p>	<p>10-11</p> <p>10-11</p>
<p>AMEND 13058</p>	<p>This section governs consolidation of two or more legally or factually related applications by the executive director.</p>	<p>1) The proposed revision would allow the commission as well as the executive director to consolidate a public hearing.</p> <p>2) The proposed revision would eliminate the need for the applicant to demonstrate that consolidation would inhibit the commission’s review.</p>	<p>12</p> <p>12</p>

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		3) The proposed revision would delete the reference to Public Resources Code § 30621 within the text of the regulation.	12
AMEND 13059	This section requires that the application summary (which is, effectively, contained within the staff report) be distributed to interested persons within a reasonable period of time.	<p>1) The proposed revision would clarify that unlike the notice of application sent to all known interested parties, the staff report itself would be automatically mailed only to persons who specifically requested it.</p> <p>2) The proposed revision would provide a procedure to notify known interested persons of the need to request staff reports.</p> <p>3) The proposed revision would incorporate into this section requirements currently found in § 13076, which would be repealed. The proposed revision would combine the procedure for distribution of application summaries in § 13059 with the procedure for distribution of final staff recommendations in § 13076.</p> <p>4) The proposed revision would retitle the combined application summary and final staff recommendation as a “staff report”.</p> <p>5) The proposed revision would eliminate the reference to “extensive duplicating costs.” The proposed revision would allow the commission to recover from interested persons direct copying costs, regardless whether extensive duplicating costs are involved.</p> <p>6) The proposed revision would eliminate the reference to “extensive mailing costs.” The proposed revision would no longer allow reimbursement of extensive mailing costs, instead relying on the existing ability to require self-addressed stamped envelopes.</p>	<p>12</p> <p>12</p> <p>12</p> <p>12</p> <p>12</p>

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Public Comments on Applications - Ch. 5, Subch. 1, Art. 7

AMEND 13060	This section governs reproduction & distribution of relevant communications concerning applications which are received before the hearing and any time prior to the vote.	1) The proposed revision would incorporate the provisions of §§ 13074 and 13077, also governing treatment of written public comments, into this section. Sections 13074 and 13077 would then be proposed for repeal. 2) The proposed revision would clarify the procedure applicable to the receipt of written communications on the day of the hearing.	13 13
REPEAL 13061	This section governs reproduction of sizable number of similar communications received.	The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.	13

Hearing Dates - Ch. 5, Subch. 1, Art. 8

AMEND 13063	This section relates to the notice of hearing to be provided by the executive director to applicants or interested persons.	1) The proposed revision would require that hearing notice be mailed by first class mail no later than 10 calendar days prior to the date of the hearing. 2) The proposed revision would specify all types of known interested persons who shall receive notice. 3) The proposed revision would clarify that distribution of staff reports are governed by § 13059. 4) The proposed revision would provide the executive director with the ability, on a case by cases basis, to direct the applicant to substitute newspaper notice for written notice to each interested person other than those who have specifically requested notice. 5) The proposed revision would specify the two factors that the executive director shall consider in determining whether to substitute newspaper notice: (1) adequate or better notice to interested person through publication and (2) written notice to individuals would be unreasonably burdensome given the project type and cost.	14 14 14 14-15 14-15
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		6) The proposed revision would clarify that more than one hearing notice need not be provided.	15
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Oral Hearing Procedures - Ch. 5, Subch. 1, Art. 9

AMEND 13066	This section governs the order of proceedings on a permit application.	<p>1) The proposed revision would incorporate the provisions of § 13084, governing the procedures for presentations, into § 13066, governing the order of proceedings. Section 13084 would then be proposed for repeal.</p> <p>2) The proposed revision would clarify that public testimony is only one part of the public hearing and provide an order for all parts of the public hearing, including the public testimony portion.</p> <p>3) The proposed revision would delete references to sections of the regulations which have been repealed.</p>	15-16 15-16 15-16
AMEND 13067	This section addresses speaker's presentations.	The proposed revision would incorporate the provisions of § 13068 into this section. Section 13068 would then be proposed for repeal.	17
REPEAL 13068	This section also addresses speaker's presentations.	The proposed revision would incorporate the provisions of this section into § 13067. This section would then be proposed for repeal.	17

Additional Hearings, Withdrawal and Off-Calendar Items, Amended Applications - Ch. 5, Subch. 1, Art. 11

AMEND 13070	This section addresses the commission's ability to continue public hearings to a subsequent meeting.	The proposed revision would add a provision which specifies that the executive director shall provide notice of a meeting that has been continued to a subsequent time consistent with the provisions of § 13063.	18
AMEND 13071	This section provides for the withdrawal of applications before commission action on the application.	The proposed revision would revise a cross-reference from § 13109 to § 13056.1, the section number it is proposed to be revised to.	18
AMEND 13072	This section provides hearing procedures for applications that are proposed to be amended in a material manner before commission action.	1) The proposed revision would clarify and distinguish procedures for commission consideration of proposed material amendments to a pending application made prior to and at a public hearing.	18-19

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		2) The proposed revision would eliminate the requirement that an applicant agree to extend the final date for public hearing "not more than 49 days from the date of such amendment."	18-19
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Preparation of Staff Recommendation - Ch. 5, Subch. 1, Art. 12

REPEAL 13073	This section governs staff analysis contained in staff recommendations.	The proposed revision would incorporate the provisions of this section into § 13057. This section would then be proposed for repeal.	19; 10-11
REPEAL 13074	This section governs the submission of additional written evidence at the public hearing.	The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.	20; 13
REPEAL 13075	This section details the required content, pursuant to the Coastal Act and CEQA, of the executive director's final staff recommendation to the commission on a permit application.	The proposed revision would incorporate the provisions of this section into § 13057. This section would then be proposed for repeal.	20; 10-11
REPEAL 13076	This section requires distribution of the final staff recommendation in accordance with § 13059.	The proposed revision would incorporate the provisions of this section into § 13059. This section would then be proposed for repeal.	20; 12
REPEAL 13077	This section provides that any person may respond to the staff recommendation in writing to the commission, subject to certain procedural limitations.	The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.	21; 13

Commission Review of Staff Recommendations - Ch. 5, Subch. 1, Art. 13

REPEAL 13080	This section specifies alternatives for commission consideration of the staff recommendation.	The proposed revision would combine the alternatives for commission consideration of staff reports contained in §§ 13080-13082, and incorporate those provisions into § 13090, governing commission vote on staff reports. This section would then be proposed for repeal.	21; 24-25
REPEAL 13081	This section specifies applicable procedures if the staff recommendation is included in the application summary.	The proposed revision would combine the alternatives for commission consideration of staff reports contained in §§ 13080-13082, and then incorporate those provisions into § 13090, governing commission vote on staff reports.	21; 24-25

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REPEAL 13082	This section specifies applicable procedures if a verbal staff recommendation is provided by the executive director upon conclusion of public hearing.	The proposed revision would combine the alternatives for commission consideration of staff reports contained in §§ 13080-13082, and incorporate those provisions into § 13090, governing commission vote on staff reports. This section would then be proposed for repeal.	21; 24-25
REPEAL 13083	This section addresses the ability of the commission to consider staff recommendations at a meeting subsequent to the oral hearing.	The proposed revision would incorporate the provisions of this section into § 13090, governing the commission's vote on staff reports, or § 13070 governing the commission's ability to continue hearings. This section would then be proposed for repeal.	22; 18, 24-25
REPEAL 13084	This section addresses procedures for presentation of staff recommendation & responses of interested persons.	The proposed revision would incorporate the provisions of this section, governing the procedures for presentation, into § 13066, governing the order of proceedings. This section would then be proposed for repeal.	22; 15-16
AMEND & RENUM. 13085 to 13073	This section addresses an applicant's automatic right to the first postponement of the hearing on the coastal development permit and subsequent requests for postponements which are granted at the commission's discretion.	<p>1) The proposed revision would identify that an applicant for a coastal development permit must exercise their automatic right for postponement prior to the public testimony portion of the public hearing but would eliminate this requirement for subsequent requests for postponements which are granted at the commission's discretion.</p> <p>2) The proposed revision would eliminate the requirement that communications regarding postponement be made in writing, instead allowing for the postponement request to be stated on the record in a commission meeting.</p> <p>3) The proposed revision would require an applicant who requests a postponement to include a waiver of any applicable time limits not only if the postponement is requested as a matter of right but also if the postponement is granted at the commission's discretion.</p> <p>4) The proposed revision would require an applicant who requests postponement to provide another set of stamped envelopes.</p>	<p>23</p> <p>23</p> <p>23</p> <p>23</p>

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		5) The proposed revision would eliminate a reference to § 13071 governing withdrawals.	23
		6) The proposed revision would renumber the regulation from § 13085 to 13073 so that it is contained in article 11, governing additional hearings, rather than article 13, governing commission review of staff reports.	23
AMEND & RENUM. 13087 to 13074	This section addresses rescheduling of a hearing that has been postponed at the request of the applicant.	<p>1) The proposed revision would extend the applicability of the rescheduling provision to all postponements, whether requested by the applicant as a matter of right or granted at the commission's discretion.</p> <p>2) The proposed revision would add a provision which specifies the manner in which the executive director shall provide notice of the rescheduled hearing.</p> <p>3) The proposed revision would renumber the regulation from § 13087 to 13074, so that the regulation would be contained in article 11, addressing additional hearings rather than in article 13, addressing the commission's review of staff reports.</p>	23 23 23
Voting Procedure - Ch. 5, Subch. 1, Art. 14			
AMEND 13090	This section addresses the commission's vote.	The proposed revision would incorporate the provisions of §§ 13080-13082, governing the commission's consideration of staff reports, and the provisions of §§ 13090-13091, governing the commission's vote on staff reports, into one § 13090.	24-25
REPEAL 13091	This section addresses voting time and manner.	The proposed revision would incorporate the provisions of this section into § 13090. This section would then be postponed for repeal.	25
AMEND 13092	This section addresses the effect of the commission's vote under various conditions.	<p>1) The proposed revision would make explicit that unless the commission modifies proposed conditions, a motion to grant the permit will include the conditions proposed in the staff report as modified by staff at the hearing.</p> <p>2) The proposed revision would delete subsection (c) regarding the number of commissioners needed to carry a motion.</p>	25 25

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		3) The proposed revision would relocate a portion of subsection (d) to § 13096 addressing the commission's adoption of findings.	25
AMEND 13095	This section addresses voting by members absent from a hearing.	The proposed revision would clarify that a member who has been absent from all or part of a hearing may vote on the application if they have familiarized themselves with the evidence presented rather than with the hearing presentation itself.	26
AMEND 13096	This section addresses the commission's findings in support of their action on permit applications.	1) The proposed revision would cross reference, without reiterating, the mandatory elements of the commission's findings identified in § 13057(c) governing preparation of the staff report. 2) The proposed revision would identify a procedure for the adoption of revised findings. 3) The proposed revision would add a provision which specifies the manner in which the executive director shall provide notice of the public hearing for the adoption of the revised findings.	26 26 26
Consent Calendar Procedures - Ch. 5, Subch. 1, Art. 15			
AMEND 13100	This section addresses applications processed on the consent calendar.	1) The proposed revision would replace the term "de minimis" with the term "significant". 2) The proposed revision would allow the consent calendar to be utilized for those applications which, as recommended to be conditioned, do not raise significant issues in addition to those applications which do not raise significant issues as submitted.	27 27
AMEND 13101	This section addresses procedures for consent calendar.	The proposed revision would remove duplicative references to procedures set forth in other sections.	27
AMEND 13102	This section addresses conditions in staff reports for consent calendar items.	The proposed revision would allow conditions in staff reports for consent calendar items to be modified after the staff report has been mailed if those changes are not substantial.	27-28
AMEND	This section addresses public hearings on consent calendar items.	The proposed revision would make explicit that items removed from the consent calendar will be scheduled for public hearing on the regular permit calendar.	28

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13103			
Reconsideration - Ch. 5, Subch. 1, Art. 18			
AMEND 13109.2	This section addresses how reconsideration proceedings are initiated.	1) The proposed revision would specify that the request should be provided to the appropriate area office rather than to the executive director. 2) The proposed revision would add a provision which directs the executive director to prepare a staff report on the merits of the reconsideration request. 3) The proposed revision would add a provision which prescribes the manner in which the executive director shall distribute the staff report addressing the merits of the reconsideration request.	28 28 28
AMEND 13109.5	This section addresses the hearing on reconsiderations.	1) The proposed revision would add a provision that specifies the manner in which the executive director shall provide notice of the hearing on the reconsideration. 2) The proposed revision would eliminate the requirement for the commission to vote on the reconsideration at the same hearing. 3) The proposed revision would delete a reference to the regional commission. 4) The proposed revision would correct a cross-reference to the regulations governing the processing of new applications.	29 29 29 29
Applications for Emergency Permits - Ch. 5, Subch. 4, Art. 2			
AMEND 13138	This section specifies how to apply for a permit in an emergency situation. It allows for application by letter or by telephone.	The proposed revision would allow permit applications in an emergency to be submitted by fax during business hours in addition to letter and telephone.	29
Emergency Actions Without a Permit - Ch. 5, Subch. 4, Art. 4			
AMEND 13144	This section requires the executive director to be notified by telegram of those emergency actions that are authorized to occur without a permit pursuant to Coastal Act § 30611.	The proposed revision would require notice of emergency actions without a permit by fax or telephone rather than by telegram.	29-30

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Contents of Permits - Ch. 5, Subch. 6, Art. 1

AMEND 13156	This section identifies several standard permits terms. This section provides that permits expire within 2 years unless construction has commenced. It also provides that permits must be assigned in accordance with procedures in § 13170 and that permits do not become effective until the commission has received a signed acknowledgment in accordance with § 13158.	<p>1) The proposed revision would clarify that permits are not required to be assigned because they run with the land, binding all future land owners.</p> <p>2) The proposed revision would delete the word “construction”, which is not defined in the Coastal Act and replace it with the word “development”, which is defined. The change would clarify that a permit expires within 2 years of commission approval unless development (not construction) has commenced.</p>	30 30
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Notice of Receipt and Acknowledgment - Ch. 5, Subch. 6, Art. 2

AMEND 13158	This section provides that an approved permit becomes effective only after the applicant has signed and returned the permit with a statement acknowledging and accepting the permit and its contents.	<p>1) The proposed revision would clarify that an approved permit cannot be issued to an applicant for purposes of acknowledgment until all “prior to issuance” conditions have been satisfied.</p> <p>2) The proposed revision would clarify that an approved permit must be issued and acknowledged in order to become effective and that development cannot commence until the permit is effective.</p> <p>3) The proposed revision would confirm the commission’s authority to consider extending permits that have been approved but not yet issued.</p>	30-31 30-31 30-31
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Time for Issuing Permits and Distribution - Ch. 5, Subch. 6, Art. 5

AMEND 13162	This section requires the commission to send copies of issued permits to the Secretary of the Resources Agency for posting and inspection as required by CEQA.	<p>1) The proposed revision would update the citation to the CEQA section that requires the filing of an agency decision with the Secretary of Resources Agency. (The accurate citation is CEQA § 21080.5(d)(v).)</p> <p>2) The proposed revision would insure that the required notice of an agency decision is provided to the Secretary of Resources following approval, not issuance, of the permit by the commission.</p>	31 31
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Amendments to Permits - Ch. 5, Subch. 6, Art. 5			
AMEND 13164	This section requires permit amendment applications to be submitted in writing and to include an adequate description of the proposed amendment.	The proposed revision would clarify that amendment applications must be accompanied by the same type of information as an amendment application, i.e., information concerning the proposed change, the impacts, and the alternatives.	31
AMEND 13166	This section governs commission action on amendment applications. It provides for: executive director rejection of amendments that lessen or avoid the intended effect of a conditioned permit, designation of immaterial amendments that can be approved by the executive director without a hearing, and approval of material amendments by the commission. This section requires public notice that a proposed amendment has been designated immaterial. Any written objections to the designation automatically trigger treatment of the amendment as material (i.e., and therefore subject to hearing requirements).	<p>1) The proposed revision would clarify the executive director's authority to reject amendments that lessen or avoid the intended effect of an approved permit by eliminating the reference to "partially approved" permits.</p> <p>2) The proposed revision would clarify that the commission has authority to overrule the executive director's decision to reject a permit amendment application.</p> <p>3) The proposed revision would define "material" amendments as those amendments that have the potential for adverse impacts on coastal resources or public access.</p> <p>4) The proposed revision would allow an amendment to be designated immaterial even if it would change a permit condition.</p> <p>5) The proposed revision would allow the executive director to designate objections to immaterial amendments as invalid (i.e., not raising an issue of conforming with the Coastal Act) and to approve an immaterial amendment without a hearing, even if an objection has been received, if the objection is invalid. The amendment would not be effective until reported to the commission.</p> <p>6) The proposed revision would clarify that the standard for approval of amendments is whether the development as amended is consistent with Chapter 3 policies of the Coastal Act, or a certified Local Coastal Program if applicable.</p>	<p>32-33</p> <p>32-33</p> <p>32-33</p> <p>32-33</p> <p>32-33</p> <p>32-33</p>
AMEND 13168	This section establishes an application fee for permit amendments.	The proposed revision would clarify that the fee for amendment applications is no longer \$25 and that the fee is identified in § 13055.	33-34

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Extension of Permits - Ch. 5, Subch. 6, Art. 6

<p>AMEND 13169</p>	<p>This section authorizes the commission to extend the expiration date of permits. It specifies what must be included in an application for an extension and provides for: automatic approval of extensions by the executive director when there are no changed circumstances, commission hearings on whether there are changed circumstances, and commission hearings on permits that are not extended because of changed circumstances. This section establishes a process for public notice of extension applications that the executive director proposes to approve administratively. If a written objection is received, the extension is referred to the commission for a hearing on whether there are changed circumstances that may affect consistency of the development with the Coastal Act.</p>	<p>1) The proposed revision would clarify that it is development, not construction, that must commence within 2 years of commission approval in order to avoid expiration of the permit.</p>	<p>34-36</p>
		<p>2) The proposed revision would clarify that the fee for extension applications is no longer \$50 and that the fee is identified in § 13055.</p>	<p>34-36</p>
		<p>3) The proposed revision would clarify that a permit can be extended even if the permittee has not yet satisfied "prior to issuance" conditions.</p>	<p>34-36</p>
		<p>4) The proposed revision would require permittees to provide the commission with stamped envelopes addressed to persons known to be interested in an extension application, including those identified in § 13054 (i.e., people who live/own property within 100 feet of the property on which the development is proposed).</p>	<p>34-36</p>
		<p>5) The proposed revision would clarify that the applicant, not the executive director, has the obligation to post a notice of the proposed extension at the site of the development.</p>	<p>34-36</p>
		<p>6) The proposed revision would require the executive director to report immaterial extensions (i.e., those extensions that can be approved administratively because there are no changed circumstances) to the commission so that the commissioners have an opportunity to object to the executive director's determination that there are no changed circumstances.</p>	<p>34-36</p>
		<p>7) The proposed revision would establish a process for the executive director to designate an objection to an immaterial extension as invalid, to report such designation to the commission (at the time of reporting the extension) and to approve the extension administratively if the commission does not object.</p>	<p>34-36</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Page No. In the Text
		<p>8) The proposed revision would clarify that the standard for review of an extension application is whether there are changed circumstances that affect consistency of the proposed development with Chapter 3 policies of the Coastal Act or with a certified local coastal program if applicable.</p> <p>9) The proposed revision would clarify that when the commission denies an extension and schedules the proposed development for a hearing, the applicant must submit information regarding how the changed circumstances affect the proposed development if such information is necessary for the commission to evaluate the proposed development.</p> <p>10) The proposed revision would clarify that the prohibition on vesting a permit (by commencing development) after filing an extension request, applies only during the time that the permit would be expired but for the submission of an extension application (which stays the expiration until commission action).</p>	<p>34-36</p> <p>34-36</p> <p>34-36</p>
Assignment of Permits - Ch. 5, Subch. 6, Art. 7			
<p>AMEND 13170</p>	<p>This section requires that a landowner who is not the original permittee obtain assignment of a permit before undertaking any development pursuant to the permit.</p>	<p>1) The proposed revision would allow new landowners to complete development approved under a permit obtained by the prior landowner without having to obtain an assignment of the permit from the prior permittee.</p> <p>2) The proposed revision would allow landowners to reflect changes in ownership, and hence changes in permittees, by reporting a transfer of the permit to the commission.</p> <p>3) The proposed revision would allow permittees to reflect changes in ownership without payment of a fee.</p>	<p>36-37</p> <p>36-37</p> <p>36-37</p>
Existing Single-Family Residences - Ch. 5, Subch. 6			
<p>AMEND 13250</p>	<p>This section lists those types of improvements to single family residences that involve a risk of adverse environmental effect and therefore are not exempt from permit requirements under</p>	<p>1) The proposed revision would clarify that a permit is required for improvements that are either in one of the sensitive areas identified in § 13250(b)(1) or to a structure located in one of these sensitive areas.</p>	<p>37-38</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Page No. In the Text
	Coastal Act § 30610(a).	<p>2) The proposed revision would require a permit for improvements to residences where the improvement or residence is located in an ESHA or in an area designated as highly scenic in a certified land use plan.</p> <p>3) The proposed revision would clarify the distinction between § 13250(b)(1) and (b)(4) by specifying that the improvements identified in subsection (b)(4) are those that are not covered by subsection (b)(1).</p> <p>4) The proposed revision would require a permit for improvements that involve significant alteration of land forms in ESHAs.</p> <p>5) The proposed revision would give local governments the same authority as the commission to approve development on condition that all future improvements are subject to permit requirements even if they would otherwise be exempt.</p>	<p>37-38</p> <p>37-38</p> <p>37-38</p> <p>37-38</p>
Repair and Maintenance Activities that Require a Permit - Ch. 6, Subch. 7			
AMEND 13252	This section lists those methods of repair and maintenance that are extraordinary and therefore not exempt from permit requirements under Coastal Act § 30610(d).	<p>1) The proposed revision would clarify that the activities of public agencies and utilities listed in the commission's 1978 guidelines are subject to the provisions of § 13252 if the proposed repair and maintenance involves one of the identified extraordinary methods and will have a substantial adverse impact on public access, ESHA, wetlands, or public views to the ocean.</p> <p>2) The proposed revision would clarify that replacement of 50% or more of a single family residence or any other structure is new development, not repair and maintenance of an existing structure.</p> <p>3) The proposed revision would authorize the executive director to waive the permit requirement for a repair and maintenance activity that involves one of the identified extraordinary methods.</p>	<p>38-39</p> <p>38-39</p> <p>38-39</p>

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Improvements to Structures, other than Single-Family Residences and Public Work Facilities that Require Permits - Ch. 6, Subch. 7.5

AMEND 13253	This section lists those types of improvements to structures other than single family residences that involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policies of the Coastal Act and therefore are not exempt from permit requirements under Coastal Act § 30610(b).	<p>1) The proposed revision would clarify that a permit is required for improvements that are either in one of the sensitive areas identified in § 13253(b)(1) or to a structure located in one of these sensitive areas.</p> <p>2) The proposed revision would require a permit for improvements that involve significant alteration of land forms in ESHAs or areas that are designated as highly scenic in a certified land use plan.</p> <p>3) The proposed revision would clarify the distinction between § 13253(b)(1) and (b)(4) by specifying that the improvements identified in subsection (b)(4) are those that are not covered by subsection (b)(1).</p> <p>4) The proposed revision would give local governments the same authority as the commission to approve development on condition that all future improvements are subject to permit requirements even if they would otherwise be exempt.</p>	<p>39-40</p> <p>39-40</p> <p>39-40</p> <p>39-40</p>
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COST OR SAVINGS TO GOVERNMENTAL AGENCIES AND SCHOOL DISTRICTS

The proposed amendment and repeal of the regulations will not result in any cost or savings to any State agency, result in any cost to any 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, result in any other non-discretionary cost or savings to local agencies, result in any cost or savings in federal funding to the state, or impose a mandate on local agencies or school districts.

SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed amendment and repeal of the regulations will not have a significant adverse impact on business. The regulatory action will not adversely impact the ability of California businesses to compete with businesses in other states. It will not create or eliminate jobs within California, create new businesses, eliminate existing businesses, or affect the expansion of businesses currently doing business within California. The proposed amendment and repeal of the regulations will not have a significant adverse impact on business because it will not impose new compliance obligations, rather, it will clarify and streamline the current procedures whereby coastal development permits applications are processed and reviewed by the Coastal Commission consistent with state law.

As described in detail in the following section of this notice, there are several amendments that could potentially increase costs for some businesses in the coastal zone. However, as discussed below, the potential increases in cost may be offset by several other amendments that clarify and streamline the permit process. Even if the potential cost increases are not directly offset, the increases would be minor and would not have a significant adverse economic impact on business in California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED.

As a whole, the proposed amendment and repeal of regulations is not expected to increase costs for the majority of individuals and businesses affected. The action contains some amendments that could result in minor cost increases for a few of the individuals and businesses affected. However, it also contains amendments that could decrease costs for those affected.

The private individuals and businesses directly affected by this action are those persons and businesses who are required to obtain a coastal development permit from the Coastal Commission or who may seek to amend or extend an existing Commission-issued permit. These include individual homeowners, commercial and retail businesses, developers of hotels, resorts, residential communities, and any other business that may undertake development in the coastal zone in an area subject to the permit jurisdiction of the Coastal Commission.

The primary objective of the regulatory action is to clarify and streamline the regulations governing the process for obtaining, amending, and extending coastal development permits. The clarification of ambiguities in the regulations would reduce the amount of time that some individuals and businesses spend on understanding the process and the amount of time Commission staff spends on explaining the process. Some of the streamlining measures would enable faster Commission processing of some applications, which would save time for some applicants, while other streamlining measures would reduce direct costs for some applicants. For example, the amendments to sections 13169 and 13166 would reduce delays associated with administrative approval of certain immaterial amendments and extensions. The amendments to section 13063 would provide the Executive Director with the ability, in situations where mailing individual notice would be unreasonably burdensome, to direct the applicant to substitute newspaper notice for individual written notice to interested persons other than those who specifically request individual notice. This could result in reduced direct costs for some applicants who, in situations in which newspaper notice is substituted, would no longer need to pay for mailed notice. These streamlining measures along with the clarification of ambiguities have the potential to decrease costs associated with compliance with the coastal development permit requirements.

There are a few revisions that could potentially increase costs although these increases may be generally offset by the time and cost savings described above. These potential cost increases are associated with permit application fees (section 13055) and with requirements for notifying the public of Commission hearings on proposed development (sections 13054, 13073, and 13059). The potential increases are minor compared to both the cost of most development proposals and to the Commission's costs, and they affect relatively few applicants.

The amendments to section 13055 are intended to clarify how to determine which fee applies in any given situation. Public Resources Code section 30620 authorizes the Commission to require a reasonable filing fee and the reimbursement of expenses for the processing of any coastal development permit application. However, ambiguities in the current regulations create the potential for different interpretations among the Commission's district offices. As a result, fees can be calculated inconsistently. Clarification of the ambiguities would ensure that applicants are treated uniformly. The amendments to section 13055 would increase specific application fees in only two instances. First, the \$250 "consent calendar" fee would be eliminated so that all applicants pay the same fee, regardless of which calendar the application is heard on, with the exception of applications that qualify for the administrative calendar. Second, the amendment application fee would be revised so that all applicants pay 50% of the fee that would apply to the underlying permit if it were applied for today.

Elimination of the "consent calendar" fee will not affect the majority of permit applicants. The \$250 consent calendar fee currently applies only to those permit applications that appear to Commission staff at the time of filing to be de minimis with respect to the purposes and objectives of the Coastal Act. All other permit applications (with the exception of those qualifying for the administrative calendar) are subject to a fee range that varies depending upon

square footage or project cost. Since it is difficult for the Commission staff to determine at the time of filing whether a project is de minimis, few applicants generally qualify for the \$250 fee. Further, the perception that elimination of the consent calendar fee is a fee increase will in some cases be due to the practice in some offices of accepting applications for the consent calendar and subsequently rescheduling them for the regular calendar process (due to Coastal Act issues that arise during permit review) without seeking the increased fee amount that would otherwise apply to regular calendar permits.

The cost increase associated with elimination of the consent calendar fee is low. First, the amendments to section 13055 include establishment of a new lower fee for small commercial projects. This is intended to reduce the potential cost impact of eliminating the consent calendar fee for small commercial projects (those of 1,000 square feet or less). Second, most projects that are currently found by Commission staff at the time of filing to be de minimis are likely to be subject to the lower fees in the current regular calendar fee ranges because of their size. Thus, the potential increase in costs resulting from elimination of the consent calendar fee (with establishment of the new lower fee for small commercial projects) ranges from \$250 to \$350 for both small commercial projects and residential projects. This increase is minor compared to the costs of most development proposals and to the Commission's overall costs for processing permit applications.

The proposed amendments to section 13055 could also potentially increase costs for those private individuals and businesses that seek to amend a Commission-issued permit. However, the potential increases would affect only a few applicants. Currently, section 13055 requires all applicants for permit amendments to pay a fee equal to 50% of their original application fee. In 1991, the Commission revised the application fees, which had not been increased since 1973. However, at that time, the Commission failed to change the fee for amendment applications -- it remained 50% of the original application fee. As a result, those amendment applicants who obtained permits prior to 1991 pay 50% of the application fee paid under the 1973 fee amounts while amendment applicants who obtained permits after 1991 pay 50% of the application fee paid under the 1991 amounts. The revisions to section 13055 would eliminate this inequity by subjecting all permit amendments to a fee of 50% of the fee that would apply to the underlying permit today. This revision would reflect that significant Commission staff time and effort is spent on many permit amendment applications. The fee of 50% of the original permit fee is so low for those permits obtained under the 1973 fee schedules that the fee is insignificant compared to Commission costs.

The potential costs increases associated with public notice of development proposals relate to amendments to section 13054, 13073, and 13059. As stated above, Public Resources Code section 30620 authorizes the Commission to require the reimbursement of expenses for the processing of any coastal development permit application. Currently, section 13054 requires applicants to pay for the costs of notifying those neighboring landowners and residents who are

within 100 feet of the parcel on which development is proposed of an upcoming hearing on the proposed development. One amendment would clarify that roads are not included when identifying those neighbors within 100 feet. This amendment is consistent with current interpretation of ambiguities in the regulation and therefore would not increase costs for applicants.

Sections 13054 and 13073 are also proposed to be revised to require applicants to pay for the costs of renoticing those certain interested persons of a hearing that was postponed at the applicant's request. This amendment affects only those applicants who choose to seek postponement of a hearing after the Executive Director has already mailed notice of the hearing. Thus, the cost increase associated with these revisions is not mandatory and is justified because permit applicants should bear renoticing costs when they delay a hearing.

The proposed revisions to section 13059 would allow the Commission to recover direct copying costs incurred when providing copies of staff reports to interested persons. Existing section 13059 allows the Commission to recover such costs only when extensive duplicating costs are involved. However, existing Government Code section 6257 and Public Resources Code section 30620 authorize the Commission to recover all duplicating costs. The proposed revision to section 13059 would conform the regulation to existing statutory references. Although the revision would allow the Commission to recover direct duplicating costs, even when those costs are not extensive, recovery of such costs would be minimal by definition, and would only be incurred at the request of interested persons. Finally, as revised, section 13059 would eliminate the ability of the Commission to require reimbursement of extensive mailing costs, instead relying on the existing ability of the Commission to require self-addressed stamped envelopes.

Overall, the proposed amendments have the potential to result in minor cost increases for a few types of permit applicants. On the whole, however, the amendments will clarify and streamline the permit procedures, which may result in some time and cost savings for many permit applicants.

ASSESSMENT STATEMENT

The proposed amendment and repeal of regulations 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. The purpose and effect of the proposed regulatory action is to 1) expand the range of options for the Commission to fulfill its responsibilities under the Coastal Act and its implementing regulations, 2) provide needed clarifications to existing regulatory provisions, and 3) conform to existing statutes.

EFFECT ON HOUSING COSTS

The proposed amendment and repeal of regulations will have no significant effect on housing costs.

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.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Commission pursuant to Government Code sections 11342(c) and 11346(a)(1) and the informative digest for this proposal constitutes a plain English summary.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT

The **CALIFORNIA COASTAL COMMISSION** has prepared the proposed revisions to its regulations and has available all of the information upon which its proposal is based. A copy of the proposed revisions, together with the Initial Statement of Reasons, which includes all of the information upon which the proposed regulatory action is based, may be obtained from the **CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT ST., STE. 2000, SAN FRANCISCO, CA 94105-2219** or by telephoning Jeff Staben or Rita Babaran at (415) 904-5220. Copies of this notice, the initial statement of reasons and the text of the proposed change may also be obtained from the Coastal Commission's website at <http://ceres.ca.gov/coastalcomm/index.html>. Any inquiries concerning the proposed amendments should be directed to **Ann Cheddar or Amy Roach**, by mail at the same address or by telephone at (415) 904-5220.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the **CALIFORNIA COASTAL COMMISSION** may adopt the proposed revisions to the 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 or Amy Roach** 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.

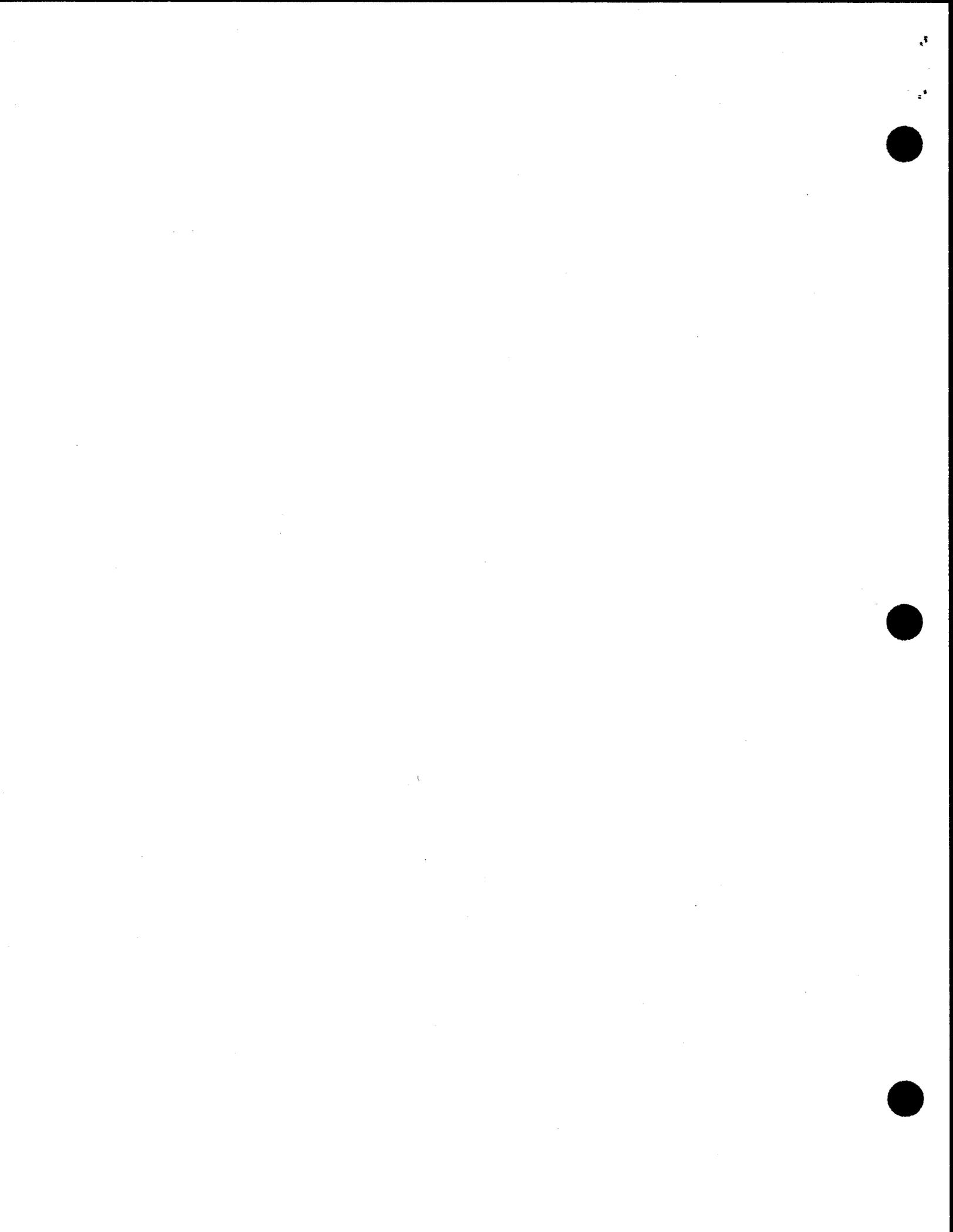
If the proposed text is not significantly modified, the **CALIFORNIA COASTAL COMMISSION** may adopt the proposed revisions to its regulations substantially as described herein.

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EXHIBIT 3



CALIFORNIA COASTAL COMMISSION45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200**EXHIBIT NO. 3****APPLICATION NO.**
Initial Statement of
Reasons for Proposed
Revisions to Portions
of Ch. 5&6 CCC's Regs**INITIAL STATEMENT OF REASONS FOR PROPOSED
AMENDMENT AND REPEAL OF PORTIONS OF THE
CALIFORNIA COASTAL COMMISSION'S PERMIT REGULATIONS****(Prepared for comment period commencing
February 20, 1998 and ending April 9, 1998)**

The California Coastal Commission is proposing to amend and repeal various sections of the Commission's regulations in Chapters 5 and 6 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters encompass coastal development permit regulations and coastal development permit exclusions respectively.

The proposed regulatory action would affect staff processing of permit applications, Commission hearing and voting procedures, applicant and permittee requirements, and permit exclusions. The proposed regulatory action consists largely of limited modifications to existing coastal development permit regulations. The primary objectives of the proposed action are to clarify ambiguities, eliminate repetitive and outdated provisions, reorganize for clarity, streamline certain processes, and implement requirements of other statutes, such as the Permit Streamlining Act. The amendments would reorganize sections governing procedures for staff processing of permits and for Commission action on permits in order to provide more understandable, streamlined processes. For example, sections covering treatment of written public comments that are currently scattered throughout the regulations would be combined into one section. Similarly, various sections addressing Commission review of staff recommendations would be combined into one section governing the Commission's vote on staff recommendations. In addition, redundant procedures would be eliminated. For example, the regulations regarding staff preparation of application summaries would be incorporated into the regulations regarding staff preparation of staff reports.

The majority of the regulations governing applicant and permittee requirements and permit exclusions would be amended to clarify a number of ambiguities that have become apparent during implementation of the regulations. For example, the revisions would clarify that permit amendments are subject to the same information filing requirements as permit applications, and that approved permits can be extended even if they have not been issued. Clarification of the ambiguities would make the regulations easier for applicants to understand and would save staff time. Several of the proposed revisions introduce new streamlining measures that would save time for applicants. For example, currently minor amendment and extension applications that qualify for administrative approval are required to be referred to the Commission for hearing if a member of the public objects to administrative approval of the application. The revisions would allow such applications to be approved administratively despite

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When Local Applications Must Be Made First - Ch. 5, Subch. 1, Art. 1

AMEND 13052	This section prohibits the executive director from accepting a permit application unless all local and state agencies that are also required to approve the project have granted preliminary approval. This section also lists those documents that can be accepted as evidence of preliminary approval.	The proposed revision would indicate that there are exceptions to the preliminary approval requirement.	The purpose of the proposed revision is to indicate that the requirement for preliminary approval is not absolute because Govt. Code § 65941 (the Permit Streamlining Act) requires agencies to begin processing permit applications without approval of other agencies under certain narrow circumstances.	1
AMEND 13053	This section allows the executive director to waive the requirement for preliminary state and local government approvals under four circumstances.	The proposed revision would require that the executive director accept an application without preliminary approvals when required to do so pursuant to Govt. Code § 65941.	The purpose of the proposed revision is to implement Govt. Code § 65941 (the Permit Streamlining Act), which requires agencies to begin processing permit applications without approval of other agencies under certain narrow circumstances.	2

Application for Permit - Ch. 5, Subch. 1, Art. 2

AMEND 13053.4	This section requires applicants to combine functionally related development in a single permit application. This section also prevents the commission from considering a permit amendment before a permit is "final."	The proposed revision would clarify the commission's authority to consider permit amendments by eliminating the language that prohibits the executive director from accepting a permit amendment before the permit is "final."	The purpose of the proposed revision is to eliminate confusion over whether a permit becomes "final" at the time that it is approved or the time that it is issued. The revision would also eliminate redundancy in the regulations, since §§ 13164-13166 address permit amendments (they allow consideration of permit amendments after a permit has been approved, regardless of whether the permit has been issued).	2
AMEND 13053.5	This section lists the information that applicants must submit in a permit application.	The proposed revision would clarify that 8 x 11 inch copies of full size maps, photographs, and other exhibits are required in addition to full-size versions.	The purpose of the proposed revision is to insure applicants understand that the requirement for 8 x 11 inch versions is in addition to, not instead of, the requirement for full size (or scaled) versions (full size is needed for analysis, small versions are needed for distribution with staff	2

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reports).				
Applicant's Notice Requirements - Ch. 5, Subch. 1, Art. 3				
<p>AMEND 13054</p>	<p>This section requires applicants to submit stamped, addressed envelopes for use by the executive director to provide notice of the permit application to people who live or own property within 100 feet of the parcel on which development is proposed. This section also requires applicants to post notice of their permit application at the site of the proposed development.</p>	<p>1) The proposed revision would clarify the subject of this section by changing the heading from "Notification Requirements" to "Identification of Interested Persons/Submission of Envelopes/Posting of Site."</p>	<p>1) The purpose of the proposed revision is to clarify the distinction between this section and § 13063. This section identifies the applicant's obligations with respect to noticing interested persons of a permit application. Section 13063 identifies the executive director's obligations. The applicant must identify interested persons, provide envelopes for those persons, and post the site, while the executive director must mail the notice to persons identified by the applicant as well as others known by the executive director to have an interest in the application.</p>	<p>3-4</p>
		<p>2) The proposed revision would require that applicants provide stamped, addressed envelopes for those persons who testified at local hearings on the proposed development.</p>	<p>2) The purpose of the proposed revision is to require that the applicant, not the executive director, identify those persons who testified at local hearings. The executive director is required to provide notice of a hearing on a permit application to interested persons pursuant to § 13063. Interested persons include those who testified at local government hearings. The applicant is in a better position to identify people who testified at the local hearing and should bear the cost of notifying those people of the permit application.</p>	<p>3-4</p>
		<p>3) The proposed revision would clarify that the term "parcel", in the requirement to identify persons residing and owning property within 100 feet of</p>	<p>3) The purpose of the proposed revision is to eliminate ambiguity over whether the 100 feet is measured from the boundary of the subdivided lot on which development is proposed or from</p>	<p>3-4</p>

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		<p>the parcel on which development will occur, means a parcel of real property of record (i.e., a legally subdivided lot).</p> <p>4) The proposed revision would require that roads be excluded when identifying property within 100 feet of the parcel on which development will occur.</p> <p>5) The proposed revision would require applicants to use the most recent equalized assessment roll to identify persons who own land within 100 feet of the parcel on which development is proposed.</p> <p>6) The proposed revision would require applicants to provide an additional set of addressed, stamped envelopes if a hearing is postponed at an applicant's request after the executive director has mailed notice of the hearing to interested persons.</p>	<p>the boundary of the tax assessor's parcel on which development is proposed. The 100 feet should be measured from the boundary of the subdivided lot because this would be consistent with other references to parcels of real property of record in § 13054.</p> <p>4) The purpose of the proposed revision is to eliminate the reduction in notice that occurs when a wide road separates the project from the nearby residences.</p> <p>5) The purpose of the proposed revision is to reduce the possibility for inadequate notice by insuring that applicants use the most recent and most reliable data to develop the list of nearby land owners.</p> <p>6) The purpose of the proposed revision is to reduce the burden to the commission that results when an applicant requests and obtains postponement of a hearing. The executive director is required to mail notice of a hearing to interested persons, which include those residing or owning property within 100 feet of the parcel on which development is proposed. If the applicant requests postponement, the applicant should assume the cost of mailing another set of notices.</p>	<p>3-4</p> <p>3-4</p> <p>3-4</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		7) The proposed revision would require that of the three factors to be considered in choosing a location for posting notice, the first two factors, conspicuousness and easily read by the public be given greater emphasis than the third factor, proximity to the site of the proposed development.	7) The purpose of the proposed revision is to reflect that the first two factors have a greater impact on the public's ability to read the posted notice than the third factor.	3-4

Schedule of Fees for Filing and Processing Permit Applications - Ch. 5, Subch. 1, Art. 4

AMEND 13055	This section requires permit applicants to pay an application fee at the time of filing a permit application. The application fees for residential development are based upon size of homes, number of homes, and amount of grading involved. The fees for office, commercial, convention, and industrial development vary depending upon the square footage or project cost of the proposed development. This section also establishes flat fees for permit applications that qualify for the administrative and consent calendars.	<p>1) The proposed revision would subject consent calendar permit applications to the same fee as regular calendar permit applications.</p> <p>2) The proposed revision would clarify that the grading fee that applies to applications for residential development applies to all such applications (i.e., multi-family, etc.), not just those for single family residences.</p>	<p>1) The purpose of the proposed revision is to reflect that the permit applications heard on the consent calendar frequently involve a level of staff effort and time that is similar to that of regular calendar applications. The consent calendar provides a useful streamlining measure for complex, significant applications as well as applications for minor development. Therefore, instead of restricting the consent calendar to minor applications, the fee for consent calendar items should be raised to regular calendar levels. (The regular calendar fee for small office/commercial projects is proposed to be reduced, see below.)</p> <p>2) The purpose of the proposed revision is to eliminate ambiguity in the current regulations over whether the grading fee applies only to single family residences. The regulations have been interpreted as requiring the grading fee for all residential projects. Grading increases the project impacts that must be evaluated and therefore requires additional staff time for</p>	<p>4-7</p> <p>4-7</p>
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		<p>3) The proposed revision would eliminate the requirement that the grading fee be increased by \$5 for each 1000 cubic yards of grading above 75 cubic yards.</p>	<p>analysis.</p> <p>3) The purpose of the proposed revision is to eliminate confusion as to whether the \$5 fee is imposed for grading increments of less than 1000 cubic yards. Because the additional \$5 is nominal, the confusion is best eliminated by deletion of the requirement.</p>	4-7
		<p>4) The proposed revision would separate the identification of those fees for office, commercial, convention, and industrial projects that are based on square footage of the proposed project from those fees for office, commercial, etc. that are based on the cost of the proposed project.</p>	<p>4) The purpose of the proposed revision is to make the regulation easier for applicants to read and understand.</p>	4-7
		<p>5) The proposed revision would clarify the fees that would apply to projects that have a project cost or square footage that does not fall within the dollar ranges currently specified.</p>	<p>5) The purpose of the proposed revision is to avoid ambiguity as to which fee applies to a project that has a square footage or project cost that does not fall within the dollar ranges currently specified.</p>	4-7
		<p>6) The proposed revision would require the fee for a project that consists of a change in intensity of use to be based upon project cost, not square footage.</p>	<p>6) The purpose of the proposed revision is to eliminate ambiguity over whether the fee for a development consisting of a change in intensity of use (such as installing volleyball nets on the beach or converting retail space to restaurant) should be charged a fee based upon square footage or project cost. The fee is more appropriately based upon project cost because</p>	4-7

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>7) The proposed revision would require applicants for nonresidential projects that involve construction of 1000 square feet or less to pay a \$500 fee rather than the current \$1000 fee.</p> <p>8) The proposed revision would subject material amendments to a fee of 50% of the fee that would apply if the underlying permit were applied for today (rather than the current fee of 50% of the original fee paid).</p> <p>9) The proposed revision would establish a \$500 fee for temporary events that qualify for the consent or regular calendar and a \$200 fee for those that qualify for the administrative calendar.</p>	<p>there may be no <u>new</u> square footage and/or the actual square footage may be difficult to quantify.</p> <p>7) The purpose of the proposed revision is to account for elimination of the reduced fee for consent calendar permits. Non-residential projects involving construction of 1000 square feet or less are likely to require less staff time and effort than larger projects.</p> <p>8) The purpose of the proposed revision is to eliminate the inequity that results from the current requirement that material amendments be subject to a fee of 50% of their original permit fee. Fees were increased in 1991, and thus permittees who obtained permits prior to 1991 pay much lower amendment fees than those who obtained permits after 1991. Further, charging a fee for processing an amendment scaled to the fee schedules in use up to 21 years ago results in some fees that do not reflect the level of staff time involved in reviewing a material amendment.</p> <p>9) The purpose of the proposed revision is to insure that fees for temporary events are calculated consistently. The fee for a temporary event can be difficult to determine since such events tend to lack an identifiable square footage yet the scope of costs to be considered in identifying the project costs is unclear.</p>	<p>4-7</p> <p>4-7</p> <p>4-7</p>

REASONS FOR PROPOSED REVISIONS TO TITLE 14 OF THE CALIFORNIA CODE OF REGULATIONS

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>10) The proposed revision would clarify that the fee for an application that includes both subdivision and construction of homes is based upon the fee that would apply if the application consisted solely of an application for construction of homes, with no extra fee for subdivision.</p>	<p>10) The purpose of the proposed revision is to eliminate the current ambiguity over whether the fee for a joint subdivision/construction project is based on construction of just one home, and whether the fee includes the grading fee that applies to applications for residential development. The fee would be based solely upon the residential fee because impacts of subdivision are likely to be closely related to impacts of residential development.</p>	<p>4-7</p>
		<p>11) The proposed revision would require that the fee for applications that propose different types of development (i.e., residential/ commercial or residential/office, etc.) be based upon the sum of fees that would be imposed if each development were applied for separately, with a total cap of \$20,000.</p>	<p>11) The purpose of the proposed revision is to eliminate the current ambiguity over how the application fee is calculated for those applications that propose both commercial and residential development. The fee should be based upon the sum of fees for each development because of the additional staff time and effort involved in processing the application. However, given that the maximum fee based upon project cost is \$20,000, the total maximum fee for these types of applications should also be \$20,000.</p>	<p>4-7</p>
		<p>12) The proposed revision would clarify that applications that are filed as administrative permits but are subsequently heard on the regular calendar are subject to regular, not administrative fees. The proposed revision would authorize the</p>	<p>12) The purpose of the proposed revision is to conform the fee regulation to the administrative permit regulations, which provide that applications filed as administrative but subsequently heard on the regular calendar are subject to a fee increase. The revision provides the commission with means to collect the</p>	<p>4-7</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		commission to collect the additional fee owed in such cases before scheduling the application for hearing or through a condition of approval of the permit.	additional fee.	
Determinations Concerning Filing - Ch. 5, Subch. 1, Art. 5				
AMEND 13056	This section governs executive director time limits and action on filing decisions and requires that such decisions are made no later than five working days after the date filing information is received.	1) The proposed revision would extend the time limit on filing decisions from 5 working days to 10 working days, if feasible, but in no event later than 30 calendar days after the date the filing information is received.	1) The purpose of the proposed revision is to require the executive director to determine whether an application is complete consistent with Permit Streamlining Act requirements but allow the executive director to make that determination earlier if feasible.	8
		2) The proposed revision would specify the actions that will be taken by the executive director when the executive director determines that an application is either complete or incomplete.	2) The purpose of the proposed revision is to clarify how filing determinations will proceed consistent with the provisions of the Permit Streamlining Act.	8
		3) The proposed revision would provide applicants with the ability to appeal the executive director's filing decisions to the commission.	3) The purpose of the proposed revision is to provide a procedure for applicants to appeal the executive director's filing decision consistent with the Permit Streamlining Act.	8
Reapplication - Ch. 5, Subch. 1, Art. 17				
AMEND & RENUM. 13109 to 13056.1	This section limits an applicant from reapplying for substantially the same development for a period of six months from the date of the prior final decision.	1) The proposed revision would renumber this section to § 13056.1 so that this section, governing reapplication, would immediately follow the section governing processing of applications.	1) The purpose of the proposed revision is to improve the clarity of the regulations by providing the procedures for application and reapplication in the same article. Section 13109 is proposed to be renumbered to follow § 13056 because like § 13056, this section addresses the filing of applications	9

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>2) The proposed revision would add a six-month limitation on reapplication following a withdrawal as well as a final decision.</p> <p>3) The proposed revision would extend the time period in which the executive director determines whether the application is "for substantially the same development" from 5 working days to 10 working days, if feasible, but in no event later than 30 calendar days and would specify how that determination affects the filing of the application.</p> <p>4) The proposed revision would specify the applicant's ability to appeal the executive director's determination on reapplication to the commission in the same manner provided in § 13056.</p> <p>5) The proposed revision would remove the reference allowing the executive director to waive preliminary local approval, a provision that is also reflected in § 13053.</p>	<p>2) The purpose of the proposed revision is to eliminate the potential for repeated attempts to receive approval for substantially the same development, thereby increasing the processing efficiency of the commission and the commission staff.</p> <p>3) The purpose of the proposed revision is to ensure that the decision on reapplication is made within the same filing determination period set forth in revised § 13056 and consistent with the requirements of the Permit Streamlining Act.</p> <p>4) The purpose of the proposed revision is to provide a procedure for applicants to appeal the executive director's determination on reapplication consistent with the filing determination procedures provided in revised § 13056.</p> <p>5) The purpose of the proposed revision is to eliminate unnecessary duplicative references.</p>	<p>9</p> <p>9</p> <p>9</p> <p>9</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>6) The proposed revision would delete the reference to Public Resources Code § 30621 within the text of the regulation.</p> <p>7) The proposed revision would provide the executive director with the ability to waive limitations on reapplication for good cause.</p>	<p>6) The purpose of the proposed revision is to eliminate unnecessary statutory references and instead incorporate procedures which consistently implement the statutory reference.</p> <p>7) The purpose of the proposed revision is to allow a waiver by the executive director of the reapplication limitation for good cause. Allowing the executive director to waive the limitation would eliminate the need for an applicant to wait for such a determination by the commission at a monthly commission hearing.</p>	<p>9</p> <p>10</p>
Staff Reports - Ch. 5, Subch. 1, Art. 6				
<p>AMEND 13057</p>	<p>This section details the content of application summaries required to be prepared by the executive director as part of the application review process.</p>	<p>1) The proposed revision would incorporate into this section requirements currently found in §§ 13073 and 13075, which would be repealed. The proposed revision would combine the contents of application summaries specified in this section with the analysis and contents of final staff recommendations contained in §§ 13073 and 13075. The proposed revision would retain the ability of the executive director to first prepare a partial staff report rather than a final staff recommendation.</p>	<p>1) The purpose of the proposed revision is to eliminate outdated procedures designed to implement a two-step hearing structure that previously existed when the commission met twice a month; the proposed revision combining the contents of application summaries and final staff recommendations would more accurately reflect a hearing process in which the commission meets once rather than twice a month. The consolidation of the hearing process into 1 meeting has eliminated the need for applicants and other interested persons to attend two public hearings, thereby reducing the public costs of participating in commission permit proceedings. The proposed revision would retain the ability of the executive director to provide a staff recommendation after public comment and commission discussion where such discussion would facilitate preparation of the</p>	<p>10-11</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>2) The proposed revision would retitle the combined application summary and final staff recommendation as a "staff report".</p>	<p>staff recommendation.</p> <p>2) The purpose of the proposed revision is to utilize the term used by the commission, the staff and the public to describe the combined application summary and final recommendation.</p>	<p>10-11</p>
<p>AMEND 13058</p>	<p>This section governs consolidation of two or more legally or factually related applications by the executive director.</p>	<p>1) The proposed revision would allow the commission as well as the executive director to consolidate a public hearing.</p> <p>2) The proposed revision would eliminate the need for the applicant to demonstrate that consolidation would inhibit the commission's review.</p> <p>3) The proposed revision would delete the reference to Public Resources Code § 30621 within the text of the regulation.</p>	<p>1) The purpose of the proposed revision is to increase administrative efficiency by providing the commission with the express ability to consolidate hearings on its own rather than rule on whether consolidation of public hearings by the executive director is appropriate.</p> <p>2) The purpose of the proposed revision is to increase administrative efficiency by allowing a public hearing to be consolidated where consolidation would enhance the commission's review, rather than unless the applicant demonstrates consolidation would inhibit the commission's review.</p> <p>3) The purpose of the proposed revision is to eliminate unnecessary statutory references and instead incorporate procedures which consistently implement the statutory reference.</p>	<p>12</p> <p>12</p> <p>12</p>
<p>AMEND 13059</p>	<p>This section requires that the application summary (which is, effectively, contained within the staff report) be distributed to interested persons within a reasonable period of time.</p>	<p>1) The proposed revision would clarify that unlike the notice of application sent to all known interested parties, the staff report itself would be automatically mailed only to persons who specifically requested it.</p>	<p>1) The purpose of the proposed revision is to increase administrative efficiency by eliminating the need to distribute staff reports to persons who are not interested in receiving them.</p>	<p>12</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>2) The proposed revision would provide a procedure to notify known interested persons of the need to request staff reports.</p>	<p>2) The purpose of the proposed revision is to ensure that staff reports are distributed to those who are interested in receiving them.</p>	<p>12</p>
		<p>3) The proposed revision would incorporate into this section requirements currently found in § 13076, which would be repealed. The proposed revision would combine the procedure for distribution of application summaries in § 13059 with the procedure for distribution of final staff recommendations in § 13076.</p>	<p>3) The purpose of the proposed revision is to eliminate outdated procedures that were designed to implement a two-step hearing structure that previously existed when the commission met twice a month; the proposed revision combining the distribution of application summaries and final staff recommendations would more accurately reflect a hearing process in which the commission meets once rather than twice a month. The consolidation of the hearing process into 1 meeting has eliminated the need for applicants and other interested persons to attend two public hearings, thereby reducing the public costs of participating in commission permit proceedings. The proposed revision would retain the ability of the executive director to provide a staff recommendation after public comment and commission discussion where such discussion would facilitate preparation of the staff recommendation.</p>	<p>12</p>
		<p>4) The proposed revision would retitle the combined application summary and final staff recommendation as a "staff report".</p>	<p>4) The purpose of the proposed revision is to utilize the term used by the commission, the staff and the public to describe the combined application summary and staff recommendation.</p>	<p>12</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>5) The proposed revision would eliminate the reference to “extensive duplicating costs.” The proposed revision would allow the commission to recover from interested persons direct copying costs, regardless whether extensive duplicating costs are involved.</p> <p>6) The proposed revision would eliminate the reference to “extensive mailing costs.” The proposed revision would no longer allow reimbursement of extensive mailing costs, instead relying on the existing ability to require self-addressed stamped envelopes.</p>	<p>5) The purpose of the proposed revision allowing for reimbursement from interested persons of direct costs of duplication is to conform the regulation to the Coastal Act and the Public Records Act.</p> <p>6) The proposed revision would improve clarity by eliminating duplicative and ambiguous references regarding recovery of mailing costs.</p>	<p>12</p> <p>12</p>
Public Comments on Applications - Ch. 5, Subch. 1, Art. 7				
<p>AMEND 13060</p>	<p>This section governs reproduction & distribution of relevant communications concerning applications which are received before the hearing and any time prior to the vote.</p>	<p>1) The proposed revision would incorporate the provisions of §§ 13074 and 13077, also governing treatment of written public comments, into this section. Sections 13074 and 13077 would then be proposed for repeal.</p> <p>2) The proposed revision would clarify the procedure applicable to the receipt of written communications on the day of the hearing.</p>	<p>1) The purpose of the proposed revision is to improve the clarity of the regulations addressing the treatment of written communications by providing for the treatment of such communications in one regulation. The proposed revision would also eliminate duplication and ambiguity.</p> <p>2) The purpose of the proposed revision is to increase administrative efficiency and eliminate potential confusion.</p>	<p>13</p> <p>13</p>
<p>REPEAL 13061</p>	<p>This section governs reproduction of sizable number of similar communications received.</p>	<p>The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.</p>	<p>The purpose of the proposed revision is to eliminate confusion and redundancy by providing for the treatment of written communications in one regulation.</p>	<p>13</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
Hearing Dates - Ch. 5, Subch. 1, Art. 8				
<p>AMEND 13063</p>	<p>This section relates to the notice of hearing to be provided by the executive director to applicants or interested persons.</p>	<p>1) The proposed revision would require that hearing notice be mailed by first class mail no later than 10 calendar days prior to the date of the hearing.</p> <p>2) The proposed revision would specify all types of known interested persons who shall receive notice.</p> <p>3) The proposed revision would clarify that distribution of staff reports are governed by § 13059.</p> <p>4) The proposed revision would provide the executive director with the ability, on a case by cases basis, to direct the applicant to substitute newspaper notice for written notice to each interested person other than those who have specifically requested notice.</p> <p>5) The proposed revision would specify the two factors that the executive</p>	<p>1) The purpose of the proposed revision is to conform the regulation to Open Meetings Act requirements.</p> <p>2) The purpose of the proposed revision is to clarify who are considered known interested persons under the regulation.</p> <p>3) The purpose of the proposed revision is to assist the public in understanding the difference between the distribution of staff reports and the distribution of hearing notices.</p> <p>4) The purpose of the proposed revision is to provide a means to notify interested members of the public about commission hearings on projects by newspaper when the administrative burdens of mailing individual notice are unreasonably burdensome. The purpose of the proposed revision is to increase administrative efficiency without affecting the notice to be provided to persons who specifically request notice and consistent with § 13054(a). The proposed revision would also benefit applicants who, in situations in which newspaper notice is substituted, would no longer need to provide self-addressed stamped envelopes.</p> <p>5) The purpose of the proposed revision is to limit the substitution of newspaper notice to</p>	<p>14</p> <p>14</p> <p>14</p> <p>14-15</p> <p>14-15</p>

REASONS FOR PROPOSED REVISIONS TO TITLE 14 OF THE CALIFORNIA CODE OF REGULATIONS

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>director shall consider in determining whether to substitute newspaper notice:</p> <p>(1) adequate or better notice to interested person through publication and (2) written notice to individuals would be unreasonably burdensome given the project type and cost.</p> <p>6) The proposed revision would clarify that more than one hearing notice need not be provided.</p>	<p>those circumstances in which adequate or better notice will be provided to interested persons <u>and</u> individual written notice would be costly. Limiting the substitution to these identified circumstances will increase administrative efficiency while ensuring that adequate or better notice will be provided to interested parties.</p> <p>6) The purpose of the proposed revision is to eliminate duplicative hearing notice requirements.</p>	<p>15</p>
Oral Hearing Procedures - Ch. 5, Subch. 1, Art. 9				
<p>AMEND 13066</p>	<p>This section governs the order of proceedings on a permit application.</p>	<p>1) The proposed revision would incorporate the provisions of § 13084, governing the procedures for presentations, into § 13066, governing the order of proceedings. Section 13084 would then be proposed for repeal.</p> <p>2) The proposed revision would clarify that public testimony is only one part of the public hearing and provide an order for all parts of the public hearing, including the public testimony portion.</p> <p>3) The proposed revision would delete references to sections of the regulations which have been repealed.</p>	<p>1) The purpose of the proposed revision is to improve the clarity of the regulations governing proceedings by providing for the treatment of all aspects of a proceeding in one regulation. The proposed revision would also eliminate duplication and ambiguity.</p> <p>2) The purpose of the proposed revision is to more clearly identify how each portion of the hearing relates to the other, thereby increasing the ability of members of the public to participate effectively.</p> <p>3) The purpose of the proposed revision is to eliminate confusion caused by references to sections that no longer exist.</p>	<p>15-16</p> <p>15-16</p> <p>15-16</p>
<p>AMEND 13067</p>	<p>This section addresses speaker's presentations.</p>	<p>The proposed revision would incorporate the provisions of § 13068 into this section. Section 13068 would then be proposed for repeal.</p>	<p>The purpose of the proposed revision is to improve the clarity of the regulations addressing speaker's presentations by providing for the treatment of such presentations in one</p>	<p>17</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
			regulation, thereby making it easier for affected members of the public to identify and understand all procedures that affect them in making presentations to the commission.	
REPEAL 13068	This section also addresses speaker's presentations.	The proposed revision would incorporate the provisions of this section into § 13067. This section would then be proposed for repeal.	The purpose of the proposed revision is to improve the clarity of the regulations addressing speaker's presentations by providing for the treatment of such presentations in one regulation, thereby making it easier for members of the public to determine the requirements that apply to them in making their presentations to the commission.	17

Additional Hearings, Withdrawal and Off-Calendar Items, Amended Applications - Ch. 5, Subch. 1, Art. 11

AMEND 13070	This section addresses the commission's ability to continue public hearings to a subsequent meeting.	The proposed revision would add a provision which specifies that the executive director shall provide notice of a meeting that has been continued to a subsequent time consistent with the provisions of § 13063.	The purpose of the proposed revision is to improve the clarity of the regulation and ensure that all hearing notices are provided in a consistent manner so as to maximize public participation.	18
AMEND 13071	This section provides for the withdrawal of applications before commission action on the application.	The proposed revision would revise a cross-reference from § 13109 to § 13056.1, the section number it is proposed to be revised to.	The purpose of the proposed revision is to maintain internal consistency between the regulations.	18
AMEND 13072	This section provides hearing procedures for applications that are proposed to be amended in a material manner before commission action.	1) The proposed revision would clarify and distinguish procedures for commission consideration of proposed material amendments to a pending application made prior to and at a public hearing.	1) The purpose of the proposed revision is to improve the clarity of the existing regulations by distinguishing material amendments made prior to rather than at a public hearing. It is necessary to clarify and distinguish these procedures because although adequate public notice is required in either case, no staff report may have been generated for a material amendment made prior to a public hearing. In addition, unlike a	18-19

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		2) The proposed revision would eliminate the requirement that an applicant agree to extend the final date for public hearing "not more than 49 days from the date of such amendment."	material amendment proposed at a public hearing, material amendments proposed prior to a public hearing require an applicant to agree to extend the final date for public hearing. 2) The purpose of the proposed revision is to eliminate a 49-day time constraint that would not be applicable to amended applications under either the Permit Streamlining Act or the Coastal Act, thereby avoiding confusion and ambiguity.	18-19
Preparation of Staff Recommendation - Ch. 5, Subch. 1, Art. 12				
REPEAL 13073	This section governs staff analysis contained in staff recommendations.	The proposed revision would incorporate the provisions of this section into § 13057. This section would then be proposed for repeal.	The purpose of the proposed revision is to eliminate outdated procedures that were designed to implement a two-step hearing structure that previously existed when the commission met twice a month; the proposed revision combining the contents of application summaries and final staff recommendations into one section would more accurately reflect a hearing process in which the commission meets once rather than twice a month. The consolidation of the hearing process into 1 meeting has eliminated the need for applicants and other interested persons to attend two public hearings, thereby reducing the public costs of participating in commission permit proceedings.	19; 10-11
REPEAL 13074	This section governs the submission of additional written evidence at the public hearing.	The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.	The purpose of the proposed revision is to eliminate confusion and redundancy by providing for the treatment of written communications in one regulation, thereby increasing public awareness of procedures that affect them in submitting written comments to	20; 13

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
<p>REPEAL 13075</p>	<p>This section details the required content, pursuant to the Coastal Act and CEQA, of the executive director's final staff recommendation to the commission on a permit application.</p>	<p>The proposed revision would incorporate the provisions of this section into § 13057. This section would then be proposed for repeal.</p>	<p>the commission. The purpose of the proposed revision is to eliminate outdated procedures designed to implement a two-step hearing structure that previously existed when the commission met twice a month; the proposed revision combining the contents of application summaries and final staff recommendations would more accurately reflect a hearing process in which the commission meets once rather than twice a month. The consolidation of the hearing process into 1 meeting has eliminated the need for applicants and other interested persons to attend two public hearings thereby reducing the public costs of participating in commission permit proceedings. The proposed revision would retain the required content listing, including the ability of the executive director to provide a staff recommendation after public comment and commission discussion where such discussion would facilitate preparation of the staff recommendation.</p>	<p>20; 10-11</p>
<p>REPEAL 13076</p>	<p>This section requires distribution of the final staff recommendation in accordance with § 13059.</p>	<p>The proposed revision would incorporate the provisions of this section into § 13059. This section would then be proposed for repeal.</p>	<p>The purpose of the proposed revision is to eliminate outdated procedures designed to implement a two-step hearing structure that previously existed when the commission met twice a month; the proposed revision combining the distribution of application summaries and final staff recommendations would more accurately reflect a hearing process in which the commission meets once rather than twice a month. The consolidation of the hearing process</p>	<p>20; 12</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
			into 1 meeting has eliminated the need for applicants and other interested persons to attend two public hearings, thereby reducing the public costs of participating in commission permit proceedings.	
REPEAL 13077	This section provides that any person may respond to the staff recommendation in writing to the commission, subject to certain procedural limitations.	The proposed revision would incorporate the provisions of this section into § 13060. This section would then be proposed for repeal.	The purpose of the proposed revision is to eliminate confusion and redundancy by providing for the treatment of written communications in one regulation, thereby making it easier for affected members of the public to identify and understand all procedures that affect them in submitting written comments to the commission.	21; 13

Commission Review of Staff Recommendations - Ch. 5, Subch. 1, Art. 13

REPEAL 13080	This section specifies alternatives for commission consideration of the staff recommendation.	The proposed revision would combine the alternatives for commission consideration of staff reports contained in §§ 13080-13082, and incorporate those provisions into § 13090, governing commission vote on staff reports. This section would then be proposed for repeal.	The purpose of the proposed revision is to combine the procedures for commission review of and vote on staff reports into one section, eliminating ambiguity and duplication.	21; 24-25
REPEAL 13081	This section specifies applicable procedures if the staff recommendation is included in the application summary.	The proposed revision would combine the alternatives for commission consideration of staff reports contained in §§ 13080-13082, and then incorporate those provisions into § 13090, governing commission vote on staff reports.	The purpose of the proposed revision is to combine the procedures for commission review of and vote on staff reports into one section, eliminating ambiguity and duplication.	21; 24-25
REPEAL	This section specifies applicable procedures if a verbal staff	The proposed revision would combine the alternatives for commission	The purpose of the proposed revision is to combine the procedures for commission review	21; 24-25

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
13082	recommendation is provided by the executive director upon conclusion of public hearing.	consideration of staff reports contained in §§ 13080-13082, and incorporate those provisions into § 13090, governing commission vote on staff reports. This section would then be proposed for repeal.	of and vote on staff reports into one section, eliminating ambiguity and duplication.	
REPEAL 13083	This section addresses the ability of the commission to consider staff recommendations at a meeting subsequent to the oral hearing.	The proposed revision would incorporate the provisions of this section into § 13090, governing the commission's vote on staff reports, or § 13070 governing the commission's ability to continue hearings. This section would then be proposed for repeal.	The purpose of the proposed revision is to combine the procedures for commission review of and vote on staff reports into one section, eliminating ambiguity and duplication.	22; 18, 24-25
REPEAL 13084	This section addresses procedures for presentation of staff recommendation & responses of interested persons.	The proposed revision would incorporate the provisions of this section, governing the procedures for presentation, into § 13066, governing the order of proceedings. This section would then be proposed for repeal.	The purpose of the proposed revision is to improve clarity and eliminate duplication.	22; 15-16
AMEND & RENUM. 13085 to 13073	This section addresses an applicant's automatic right to the first postponement of the hearing on the coastal development permit and subsequent requests for postponements which are granted at the commission's discretion.	1) The proposed revision would identify that an applicant for a coastal development permit must exercise their automatic right for postponement prior to the public testimony portion of the public hearing but would eliminate this requirement for subsequent requests for postponements which are granted at the commission's discretion.	1) The purpose of the proposed revision is to improve administrative efficiency by ensuring that postponements by the applicant as a matter of right occur prior to lengthy public testimony. The proposed revision would also improve the clarity of the regulation by identifying when an applicant must exercise their right to postponement. The requirement to request subsequent postponements prior to staff's presentation at the public hearing would be eliminated because unlike the first postponement	23

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>2) The proposed revision would eliminate the requirement that communications regarding postponement be made in writing, instead allowing for the postponement request to be stated on the record in a commission meeting.</p> <p>3) The proposed revision would require an applicant who requests a postponement to include a waiver of any applicable time limits not only if the postponement is requested as a matter of right but also if the postponement is granted at the commission's discretion.</p>	<p>made by the applicant as a matter of right, the decision on subsequent postponements granted at the commission's discretion can be made by the commission at the hearing after assessing the numbers of persons who had traveled to testify at the public hearing and the ability of those persons to provide the commission with public comment at a subsequent hearing.</p> <p>2) The purpose of the proposed revision is to facilitate the ability of the applicant to obtain postponement.</p> <p>3) The purpose of the proposed revision is to improve the clarity and consistency of the regulation by requiring an applicant's request for postponement to be accompanied by a waiver of applicable time limits regardless if the postponement is requested as a matter of right or granted at the commission's discretion. It is necessary to include the requirement that a request for postponement be accompanied by a waiver of applicable time limits to ensure that a postponement is not granted inconsistent with either Coastal Act or Permit Streamlining Act time limits.</p>	<p>23</p> <p>23</p>

Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>4) The proposed revision would require an applicant who requests postponement to provide another set of stamped envelopes.</p> <p>5) The proposed revision would eliminate a reference to § 13071 governing withdrawals.</p> <p>6) The proposed revision would renumber the regulation from § 13085 to 13073 so that it is contained in article 11, governing additional hearings, rather than article 13, governing commission review of staff reports.</p>	<p>4) The purpose of the proposed revision is to improve administrative efficiency by decreasing agency processing time and costs.</p> <p>5) The purpose of the proposed revision is to improve the clarity of the regulations by eliminating an unnecessary cross-reference to the applicant's ability to withdraw a pending application because the withdrawal of applications is not affected by this section.</p> <p>6) The purpose of the proposed revision is to locate the regulation governing the postponements of hearings in the article governing additional hearings rather than the article governing the commission's review of staff reports because postponements involve the conduct of hearings rather than the commission's review of staff reports.</p>	<p>23</p> <p>23</p> <p>23</p>
<p>AMEND & RENUM.</p> <p>13087 to 13074</p>	<p>This section addresses rescheduling of a hearing that has been postponed at the request of the applicant.</p>	<p>1) The proposed revision would extend the applicability of the rescheduling provision to all postponements, whether requested by the applicant as a matter of right or granted at the commission's discretion.</p> <p>2) The proposed revision would add a provision which specifies the manner in which the executive director shall provide notice of the rescheduled</p>	<p>1) The purpose of the proposed revision is to ensure that procedures applicable to the rescheduling of a hearing after a postponement are consistent, regardless whether the postponement was exercised by the applicant as a matter of right or granted at the commission's discretion.</p> <p>2) The purpose of the proposed revision is to improve the clarity of the regulation and ensure that all hearing notices are provided in a consistent manner.</p>	<p>23</p> <p>23</p>

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		<p>motion.</p> <p>3) The proposed revision would relocate a portion of subsection (d) to § 13096 addressing the commission's adoption of findings.</p>	<p>3) The purpose of the proposed revision is to improve clarity and reduce confusion by relocating a provision that addresses the commission's basis for action to the section addressing commission findings.</p>	<p>25</p>
<p>AMEND 13095</p>	<p>This section addresses voting by members absent from a hearing.</p>	<p>The proposed revision would clarify that a member who has been absent from all or part of a hearing may vote on the application if they have familiarized themselves with the evidence presented rather than with the hearing presentation itself.</p>	<p>The purpose of the proposed revision is to provide clarification and eliminate ambiguity. The proposed revision requiring a member to familiarize themselves with the evidence presented rather than with the hearing presentation is necessary since the regulation is intended to address a member who has been absent from all or part of the hearing presentation.</p>	<p>26</p>
<p>AMEND 13096</p>	<p>This section addresses the commission's findings in support of their action on permit applications.</p>	<p>1) The proposed revision would cross reference, without reiterating, the mandatory elements of the commission's findings identified in § 13057(c) governing preparation of the staff report.</p> <p>2) The proposed revision would identify a procedure for the adoption of revised findings.</p> <p>3) The proposed revision would add a provision which specifies the manner in which the executive director shall provide notice of the public hearing for</p>	<p>1) The purpose of the proposed revision is to improve the clarity of the regulation and maintain internal consistency between regulations.</p> <p>2) The purpose of the proposed revision is to improve the clarity of the regulation, thereby making it easier for affected members of the public to understand the procedures governing the commission's adoption of findings.</p> <p>3) The purpose of the proposed revision is to improve the clarity of the regulation and ensure that all hearing notices are provided in a consistent manner.</p>	<p>26</p> <p>26</p> <p>26</p>

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		the adoption of the revised findings.		
Consent Calendar Procedures - Ch. 5, Subch. 1, Art. 15				
AMEND 13100	This section addresses applications processed on the consent calendar.	<p>1) The proposed revision would replace the term "de minimis" with the term "significant".</p> <p>2) The proposed revision would allow the consent calendar to be utilized for those applications which, as recommended to be conditioned, do not raise significant issues in addition to those applications which do not raise significant issues as submitted.</p>	<p>1) The proposed revision would improve the clarity of the regulation by utilizing a term that is more customarily used and universally understood by the regulated community.</p> <p>2) The purpose of the proposed revision is to expedite the processing of permit applications which do not raise significant issues either as submitted or as recommended to be conditioned.</p>	27 27
AMEND 13101	This section addresses procedures for consent calendar.	The proposed revision would remove duplicative references to procedures set forth in other sections.	The purpose of the proposed revision is to eliminate duplication and ambiguity.	27
AMEND 13102	This section addresses conditions in staff reports for consent calendar items.	The proposed revision would allow conditions in staff reports for consent calendar items to be modified after the staff report has been mailed if those changes are not substantial.	The purpose of the proposed revision is to increase administrative efficiency and reduce processing delay by allowing changes to conditions for consent calendar items after the staff report has been mailed if those changes are not substantial.	27-28
AMEND 13103	This section addresses public hearings on consent calendar items.	The proposed revision would make explicit that items removed from the consent calendar will be scheduled for public hearing on the regular permit calendar.	The purpose of the proposed revision is to eliminate ambiguity and improve the clarity of the regulation.	28

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Reconsideration - Ch. 5, Subch. 1, Art. 18				
<p>AMEND 13109.2</p>	<p>This section addresses how reconsideration proceedings are initiated.</p>	<p>1) The proposed revision would specify that the request should be provided to the appropriate area office rather than to the executive director.</p> <p>2) The proposed revision would add a provision which directs the executive director to prepare a staff report on the merits of the reconsideration request.</p> <p>3) The proposed revision would add a provision which prescribes the manner in which the executive director shall distribute the staff report addressing the merits of the reconsideration request.</p>	<p>1) The purpose of the proposed revision is to eliminate potential confusion and improve the clarity of the regulation.</p> <p>2) The purpose of the proposed revision is to more precisely reflect the existing practice of the commission.</p> <p>3) The purpose of the proposed revision is to improve the clarity of the regulation and ensure that all staff reports are distributed in a consistent manner.</p>	<p>28</p> <p>28</p> <p>28</p>
<p>AMEND 13109.5</p>	<p>This section addresses the hearing on reconsiderations.</p>	<p>1) The proposed revision would add a provision that specifies the manner in which the executive director shall provide notice of the hearing on the reconsideration.</p> <p>2) The proposed revision would eliminate the requirement for the commission to vote on the reconsideration at the same hearing.</p> <p>3) The proposed revision would delete a reference to the regional commission.</p>	<p>1) The purpose of the proposed revision is to improve the clarity of the regulation and ensure that all hearing notices are provided in a consistent manner.</p> <p>2) The purpose of the proposed revision is to allow the commission to continue the hearing to a subsequent meeting consistent with commission continuances on the application pursuant to § 13070.</p> <p>3) The purpose of the proposed revision is to eliminate a reference to a regional commission structure which no longer exists.</p>	<p>29</p> <p>29</p> <p>29</p>

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		4) The proposed revision would correct a cross-reference to the regulations governing the processing of new applications.	4) The purpose of proposed revision is to improve internal consistency between the regulations.	29
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Applications for Emergency Permits - Ch. 5, Subch. 4, Art. 2

AMEND 13138	This section specifies how to apply for a permit in an emergency situation. It allows for application by letter or by telephone.	The proposed revision would allow permit applications in an emergency to be submitted by fax during business hours in addition to letter and telephone.	The purpose of the proposed revision is to allow application by fax in addition to the methods of application currently allowed, which are mail, telephone, and personal delivery. Faxes can provide a faster alternative to mail thereby assisting applicants who have emergency situations to submit an application as quickly as possible thereby decreasing their time for commission action.	29
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Emergency Actions Without a Permit - Ch. 5, Subch. 4, Art. 4

AMEND 13144	This section requires the executive director to be notified by telegram of those emergency actions that are authorized to occur without a permit pursuant to Coastal Act § 30611.	The proposed revision would require notice of emergency actions without a permit by fax or telephone rather than by telegram.	The purpose of the proposed revision is to enable the public to use current technology to notify the executive director that development has been undertaken without a permit because of an emergency. Faxes and telephones are faster, more reliable, and more accessible than telegrams.	29-30
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Contents of Permits - Ch. 5, Subch. 6, Art. 1

AMEND 13156	This section identifies several standard permits terms. This section provides that permits expire within 2 years unless construction has commenced. It also provides that permits must be assigned in accordance with procedures in § 13170 and that permits do not become effective until the commission has received a	1) The proposed revision would clarify that permits are not required to be assigned because they run with the land, binding all future land owners.	1) The purpose of the proposed revision is to eliminate ambiguity created by the requirement that a permit be assigned.	30
		2) The proposed revision would delete the word "construction", which is not defined in the Coastal Act and replace it	2) The purpose of the proposed revision is to eliminate ambiguity resulting from the current provision that "construction" must be	30

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	signed acknowledgment in accordance with § 13158.	with the word "development", which is defined. The change would clarify that a permit expires within 2 years of commission approval unless development (not construction) has commenced.	commenced within 2 years in order to vest a permit. The Coastal Act provides that the commission has jurisdiction over "development," a term that is defined in the Coastal Act to include many activities that are not limited to construction. Permits can authorize actions that are development but either do not include construction (i.e., subdivision) or include many actions in addition to construction. Thus, the change will clarify that commencement of the activities defined as development and authorized under the permit (rather than commencement of the more limited set of activities related to construction) is sufficient to vest a permit.	

Notice of Receipt and Acknowledgment - Ch. 5, Subch. 6, Art. 2

AMEND 13158	This section provides that an approved permit becomes effective only after the applicant has signed and returned the permit with a statement acknowledging and accepting the permit and its contents.	1) The proposed revision would clarify that an approved permit cannot be issued to an applicant for purposes of acknowledgment until all "prior to issuance" conditions have been satisfied.	1) The purpose of the proposed revision is to ensure compliance with permit conditions by enabling the commission to oversee compliance with certain conditions before the permit becomes effective.	30-31
		2) The proposed revision would clarify that an approved permit must be issued and acknowledged in order to become effective and that development cannot commence until the permit is effective.	2) The purpose of the proposed revision is to eliminate redundancy in the regulations and to clarify that after a permit is approved by the commission, it does not become effective (and therefore development cannot commence) until the applicant has acknowledged the terms and conditions of the permit.	30-31
		3) The proposed revision would confirm the commission's authority to consider	3) The purpose of the proposed revision is to make this section consistent with the section	30-31

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		<p>extending permits that have been approved but not yet issued.</p>	<p>governing permit extensions. (That section allows extension of permits that have been approved by the commission but not yet issued for acknowledgment, as well as extension of those permits that have been issued and acknowledged.)</p>	
Time for Issuing Permits and Distribution - Ch. 5, Subch. 6, Art. 5				
<p>AMEND 13162</p>	<p>This section requires the commission to send copies of issued permits to the Secretary of the Resources Agency for posting and inspection as required by CEQA.</p>	<p>1) The proposed revision would update the citation to the CEQA section that requires the filing of an agency decision with the Secretary of Resources Agency. (The accurate citation is CEQA § 21080.5(d)(v).)</p> <p>2) The proposed revision would insure that the required notice of an agency decision is provided to the Secretary of Resources following approval, not issuance, of the permit by the commission.</p>	<p>1) The purpose of the revision is to reflect a change in numbering in CEQA § 21080.5. The regulation cites a section of CEQA that has been renumbered.</p> <p>2) The purpose of the revision is to reflect the proposed amendments to § 13158. The amendments clarify that after a permit has been approved, it can only be issued if the applicant has complied with all "prior to issuance" conditions. For purposes of CEQA § 21080.5(b)(v) the agency decision triggering a notice to the Secretary of Resources is the commission's approval of the permit, not issuance.</p>	<p>31</p> <p>31</p>
Amendments to Permits - Ch. 5, Subch. 6, Art. 5				
<p>AMEND 13164</p>	<p>This section requires permit amendment applications to be submitted in writing and to include an adequate description of the proposed amendment.</p>	<p>The proposed revision would clarify that amendment applications must be accompanied by the same type of information as an amendment application, <i>i.e.</i>, information concerning the proposed change, the impacts, and</p>	<p>The purpose of the proposed revision is to eliminate confusion over whether amendment applications are subject to the information filing requirements as regular applications. Amendments applications must be accompanied by the information required of regular</p>	<p>31</p>

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		the alternatives.	applications in order for the commission to satisfy the Coastal Act requirements for conformity with Chapter 3 policies and the CEQA requirements for analysis of impacts and alternatives.	
AMEND 13166	This section governs commission action on amendment applications. It provides for: executive director rejection of amendments that lessen or avoid the intended effect of a conditioned permit, designation of immaterial amendments that can be approved by the executive director without a hearing, and approval of material amendments by the commission. This section requires public notice that a proposed amendment has been designated immaterial. Any written objections to the designation automatically trigger treatment of the amendment as material (i.e., and therefore subject to hearing requirements).	<p>1) The proposed revision would clarify the executive director's authority to reject amendments that lessen or avoid the intended effect of an approved permit by eliminating the reference to "partially approved" permits.</p> <p>2) The proposed revision would clarify that the commission has authority to overrule the executive director's decision to reject a permit amendment application.</p> <p>3) The proposed revision would define "material" amendments as those amendments that have the potential for adverse impacts on coastal resources or public access.</p>	<p>1) The purpose of the proposed revision is to reflect that the commission does not issue "partially approved" permits. The revision also confirms the executive director's authority to reject an amendment that lessens or avoids the intended effect of the permit by changing an aspect of the project or proposed mitigation that was critical to the commission's finding of conformity with Chapter 3.</p> <p>2) The purpose of the proposed revision is to inform permittees of the commission's authority to overrule the executive director and to set forth the process for seeking commission review of the executive director's determination.</p> <p>3) The purpose of the proposed revision is to provide guidance to the executive director and to the public as to which amendments cannot be approved administratively by the executive director. Immaterial amendments can be approved by the executive director without a commission hearing. Without a definition of materiality, it is unclear which amendments can be approved administratively. The definition of</p>	<p>32-33</p> <p>32-33</p> <p>32-33</p>

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		<p>4) The proposed revision would allow an amendment to be designated immaterial even if it would change a permit condition.</p> <p>5) The proposed revision would allow the executive director to designate objections to immaterial amendments as invalid (<u>i.e.</u>, not raising an issue of conforming with the Coastal Act) and to approve an immaterial amendment without a hearing, even if an objection has been received, if the objection is invalid. The amendment would not be effective until reported to the commission.</p> <p>6) The proposed revision would clarify that the standard for approval of amendments is whether the development as amended is consistent with Chapter 3 policies of the Coastal Act, or a certified Local Coastal Program if applicable.</p>	<p>materiality is based upon the Coastal Act standard for de minimis waivers of permit requirements, which are approved under a process similar to that of immaterial amendments.</p> <p>4) The purpose of the proposed revision is to streamline the amendment process for permittees who are proposing a minor amendment to a permit condition.</p> <p>5) The purpose of the proposed revision is to reduce the delay that occurs as a result of receipt of an objection to the executive director's designation of an amendment as immaterial. Such delays are warranted only when the objection raises Coastal Act issues. The revision gives the commission the opportunity to review the executive director's determination of immateriality.</p> <p>6) The purpose of the proposed revision is to eliminate the confusion inherent in the current standard, which suggests that the commission can only amend permits for development that has not yet been initiated and which does not identify the applicable standard for review of amendments in those cases when an LCP has been certified since the commission's approval of the permit.</p>	<p>32-33</p> <p>32-33</p> <p>32-33</p>

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AMEND 13168	This section establishes an application fee for permit amendments.	The proposed revision would clarify that the fee for amendment applications is no longer \$25 and that the fee is identified in § 13055.	The purpose of the proposed revision is to make this section consistent with the fee regulation (§ 13055), which was revised in 1991 to increase the fee for amendments (to 50% of the permit fee).	33-34
Extension of Permits - Ch. 5, Subch. 6, Art. 6				
AMEND 13169	This section authorizes the commission to extend the expiration date of permits. It specifies what must be included in an application for an extension and provides for: automatic approval of extensions by the executive director when there are no changed circumstances, commission hearings on whether there are changed circumstances, and commission hearings on permits that are not extended because of changed circumstances. This section establishes a process for public notice of extension applications that the executive director proposes to approve administratively. If a written objection is received, the extension is referred to the commission for a hearing on whether there are changed circumstances that may affect consistency of the development with the Coastal Act.	<p>1) The proposed revision would clarify that it is development, not construction, that must commence within 2 years of commission approval in order to avoid expiration of the permit.</p> <p>2) The proposed revision would clarify that the fee for extension applications is no longer \$50 and that the fee is identified in § 13055.</p> <p>3) The proposed revision would clarify that a permit can be extended even if the permittee has not yet satisfied "prior to issuance" conditions.</p> <p>4) The proposed revision would require permittees to provide the commission</p>	<p>1) The purpose of the proposed revision is to eliminate ambiguity resulting from the current provision that "construction" must be commenced within 2 years in order to vest a permit. Permits can authorize actions that are development but not construction (i.e., subdivision) and therefore it is commencement of development, not commencement of construction that vests a permit. (See comments concerning amendment of § 13156, note 2.)</p> <p>2) The purpose of the proposed revision is to make this section consistent with the fee regulation (§ 13055), which was revised in 1991 to increase the fee for extensions (to \$200-\$400).</p> <p>3) The purpose of the revision is to reflect that some "prior to issuance" conditions may require a significant amount of time to complete. The purposes of the Coastal Act are not furthered by forcing permittees to reapply for a new permit in two years simply because they have not satisfied all "prior to issuance" conditions.</p> <p>4) The purpose of the proposed revision is to place the cost of mailing notice of an extension</p>	<p>34-36</p> <p>34-36</p> <p>34-36</p> <p>34-36</p>

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		<p>with stamped envelopes addressed to persons known to be interested in an extension application, including those identified in § 13054 (i.e., people who live/own property within 100 feet of the property on which the development is proposed).</p> <p>5) The proposed revision would clarify that the applicant, not the executive director, has the obligation to post a notice of the proposed extension at the site of the development.</p> <p>6) The proposed revision would require the executive director to report immaterial extensions (i.e., those extensions that can be approved administratively because there are no changed circumstances) to the commission so that the commissioners have an opportunity to object to the executive director's determination that there are no changed circumstances.</p> <p>7) The proposed revision would establish a process for the executive director to designate an objection to an immaterial extension as invalid, to report such designation to the commission (at the time of reporting the extension) and to approve the extension</p>	<p>on the applicant rather than the commission.</p> <p>5) The purpose of the proposed revision is to eliminate confusion over who must post notice of the requested extension at the site.</p> <p>6) The purpose of the proposed revision is to insure that the commission is informed of extension applications that the executive director proposes to approve administratively without a hearing.</p> <p>7) The purpose of the proposed revision is to reduce delays that occur as a result of receipt of an objection to an extension where the objection does not identify changed circumstances that could affect consistency of the development. The proposed revision would allow the commission to review and overrule the executive</p>	<p>34-36</p> <p>34-36</p> <p>34-36</p>

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		<p>administratively if the commission does not object.</p> <p>8) The proposed revision would clarify that the standard for review of an extension application is whether there are changed circumstances that affect consistency of the proposed development with Chapter 3 policies of the Coastal Act or with a certified local coastal program if applicable.</p> <p>9) The proposed revision would clarify that when the commission denies an extension and schedules the proposed development for a hearing, the applicant must submit information regarding how the changed circumstances affect the proposed development if such information is necessary for the commission to evaluate the proposed development.</p> <p>10) The proposed revision would clarify that the prohibition on vesting a permit (by commencing development) after filing an extension request, applies only during the time that the permit would be expired but for the submission of an extension application (which stays the</p>	<p>director's determination that the objection is essentially invalid.</p> <p>8) The purpose of the proposed revision is to eliminate the current ambiguity over whether certification of a local coastal program after approval of the permit results in review of the consistency of the development with the certified LCP rather than Chapter 3 policies of the Coastal Act.</p> <p>9) The purpose of the proposed revision is to eliminate ambiguity over whether a denial of an extension request forces the commission to schedule the proposed development for action without obtaining information needed to evaluate the development. Since the development had been previously found consistent with the Coastal Act, the only information necessary is that relating to whether the changed circumstances affect that prior determination of consistency.</p> <p>10) The purpose of the proposed revision is to eliminate any suggestion that filing an extension request prior to the expiration date of a permit causes the permittee to lose the ability to vest the permit prior to the expiration date.</p>	<p>34-36</p> <p>34-36</p> <p>34-36</p>

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expiration until commission action).				
Assignment of Permits - Ch. 5, Subch. 6, Art. 7				
<p>AMEND 13170</p>	<p>This section requires that a landowner who is not the original permittee obtain assignment of a permit before undertaking any development pursuant to the permit.</p>	<p>1) The proposed revision would allow new landowners to complete development approved under a permit obtained by the prior landowner without having to obtain an assignment of the permit from the prior permittee.</p> <p>2) The proposed revision would allow landowners to reflect changes in ownership, and hence changes in permittees, by reporting a transfer of the permit to the commission.</p> <p>3) The proposed revision would allow permittees to reflect changes in ownership without payment of a fee.</p>	<p>1) The purpose of the proposed revision is to eliminate obstacles for landowners who wish to undertake development pursuant to a permit obtained by the former landowner. An assignment may be impossible if the original permittee is uncooperative or cannot be located. Further, the revision would reflect the current legal status of permits, which is that they run with the land and bind all future landowners regardless of whether there has been an assignment.</p> <p>2) The purpose of the proposed revision is to improve the commission's ability to oversee compliance with permit conditions by establishing a process for revising commission permit files to reflect the change in landowner.</p> <p>3) The purpose of the proposed revision is to encourage landowners to update the commission's permit records.</p>	<p>36-37</p> <p>36-37</p> <p>36-37</p>
Existing Single-Family Residences - Ch. 5, Subch. 6				
<p>AMEND 13250</p>	<p>This section lists those types of improvements to single family residences that involve a risk of adverse environmental effect and therefore are not exempt from permit requirements under Coastal Act § 30610(a).</p>	<p>1) The proposed revision would clarify that a permit is required for improvements that are either in one of the sensitive areas identified in § 13250(b)(1) or to a structure located in one of these sensitive areas.</p>	<p>1) The purpose of the proposed revision is to eliminate the ambiguity in subsection (b)(1). Improvements to a residence that is located in one of the listed sensitive areas may have adverse effects even if the improvement itself is not directly in the sensitive area.</p>	<p>37-38</p>

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		<p>2) The proposed revision would require a permit for improvements to residences where the improvement or residence is located in an ESHA or in an area designated as highly scenic in a certified land use plan.</p>	<p>2) The purpose of the proposed revision is to reflect that improvements to residences located in an ESHA or in an area that is designated in a land use plan as highly scenic area involve a risk of adverse environmental effect and therefore should be subject to permit requirements.</p>	<p>37-38</p>
		<p>3) The proposed revision would clarify the distinction between § 13250(b)(1) and (b)(4) by specifying that the improvements identified in subsection (b)(4) are those that are not covered by subsection (b)(1).</p>	<p>3) The purpose of the proposed revision is to eliminate ambiguity by clarifying that subsection (b)(1) applies to improvements to structures located on a beach while subsection (b)(4) applies to improvements to residences that are not directly on the beach but between the beach and the first public road paralleling the beach.</p>	<p>37-38</p>
		<p>4) The proposed revision would require a permit for improvements that involve significant alteration of land forms in ESHAs.</p>	<p>4) The purpose of the proposed revision is to confirm that improvements that involve land form alteration in an ESHA are subject to permit requirements. The regulations currently require a permit for improvements that involve a significant alteration of land form in an area of natural vegetation designated by resolution of the commission as significant natural habitat. The commission no longer designates area of significant natural habitat. Instead areas of ESHA are determined through various means.</p>	<p>37-38</p>
		<p>5) The proposed revision would give local governments the same authority as the commission to approve development</p>	<p>5) Even those improvements that are exempt from permit requirements can present a risk of adverse environmental effect as a result of</p>	<p>37-38</p>

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		on condition that all future improvements are subject to permit requirements even if they would otherwise be exempt.	unique circumstances pertaining to a particular residence. Local governments are governed by § 13250 and should have the same authority as the commission to identify these types of improvements and require permits for them on a case-by-case basis.	

Repair and Maintenance Activities that Require a Permit - Ch. 6, Subch. 7

AMEND 13252	This section lists those methods of repair and maintenance that are extraordinary and therefore not exempt from permit requirements under Coastal Act § 30610(d).	<p>1) The proposed revision would clarify that the activities of public agencies and utilities listed in the commission's 1978 guidelines are subject to the provisions of § 13252 if the proposed repair and maintenance involves one of the identified extraordinary methods and will have a substantial adverse impact on public access, ESHA, wetlands, or public views to the ocean.</p> <p>2) The proposed revision would clarify that replacement of 50% or more of a single family residence or any other</p>	<p>1) The purpose of the proposed revision is to eliminate ambiguity over whether the 1978 guidelines exempt repair and maintenance activities that will have substantial adverse impacts on coastal resources. The revision will confirm the requirement of a permit for those methods repair and maintenance by public and private agencies that will have substantial adverse impacts on the most significant of coastal resources: public access, ESHA, wetlands, and public views to the ocean. (That these resources are among the most significant is based upon the Coastal Act policies that address these resources.) Thus, the regulations will provide an exemption from permit requirements for those methods of repair and maintenance by public and private agencies that meet the criteria listed in 13252(a), are listed in the 1978 guidelines, and do not have a risk of substantial adverse impacts to public access, ESHA, wetlands, and public views.</p> <p>2) The purpose of the proposed revision is to clarify the definition of "repair and maintenance." Rebuilding a structure is new</p>	<p>38-39</p> <p>38-39</p>
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Section	Description of Existing Regulation	Proposed Revision and Effect	Purpose and Rationale for the Proposed Revision	Page No. In the Text
		<p>3) The proposed revision would clarify the distinction between § 13253(b)(1) and (b)(4) by specifying that the improvements identified in subsection (b)(4) are those that are not covered by subsection (b)(1).</p> <p>4) The proposed revision would give local governments the same authority as the commission to approve development on condition that all future improvements are subject to permit requirements even if they would otherwise be exempt.</p>	<p>3) The purpose of the proposed revision is to eliminate ambiguity by clarifying that subsection (b)(1) applies to improvements to structures located on a beach while subsection (b)(4) applies to improvements to structures that are not directly on the beach but are between the beach and the first public road paralleling the beach.</p> <p>4) Even those improvements that are exempt from permit requirements can present a risk of adverse environmental effect as a result of unique circumstances pertaining to a particular development. Local governments are governed by § 13250 and should have the same authority as the commission to identify these types of improvements and to require permits for them on a case-by-case basis.</p>	<p>39-40</p> <p>39-40</p>

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USE OF SPECIFIC TECHNOLOGIES

The proposed amendment and repeal of the regulations will not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Commission has not considered any alternatives to the proposed regulatory action. 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.

SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The proposed amendment and repeal 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 regulatory action will not have a significant adverse impact on business because the purpose and effect of the proposed regulatory action is to 1) expand the range of options for the Commission to fulfill its responsibilities under the Coastal Act and its implementing regulations, 2) provide needed clarifications to existing regulatory provisions, and 3) conform to existing statutes.

DOCUMENTS RELIED UPON

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

COMPARABLE FEDERAL REGULATIONS OR STATUTES

There are no existing comparable federal regulations or statutes.

EXHIBIT 4



POSSIBLE RULEMAKING SCHEDULES ¹

	OPTION 1	OPTION 2	OPTION 3
1998 RULEMAKING SCHEDULE	COMMISSION ADOPTS SOME OR ALL AMENDMENTS AS ORIGINALLY PROPOSED OR WITH "NONSUBSTANTIAL" OR "SOLELY GRAMMATICAL" CHANGES	COMMISSION ADOPTS AMENDMENTS WITH "SUFFICIENTLY RELATED" ADDITIONAL CHANGES ²	COMMISSION ADOPTS AMENDMENTS WITH ANY OTHER CHANGES ³
JANUARY 13	Commission discusses desired amendments and text of proposed amendments, votes to commence rulemaking	Same	Same
FEBRUARY 20	Notice of intent published, public comment period begins	Same	Same
MARCH	Required public comment period	Same	Same
APRIL	Required public comment period	Same	Same
APRIL 9	Commission continues scheduled public hearing	Same	Same
MAY			
JUNE 8	Commission holds public hearing and adopts some or all of amendments as proposed or with "nonsubstantial" or "solely grammatical" changes	Commission holds public hearing and votes to have staff circulate amendments with limited changes ²	Commission holds public hearing and votes to have staff prepare text of amendments with substantial changes ³
JULY	Staff prepares rulemaking record and submits amendments to OAL	Commission holds public hearing and adopts some or all of the amendments	Commission holds workshops to identify desired changes and may vote to commence new rulemaking
AUGUST		Staff prepares rulemaking record and submits amendments to OAL	Commission holds workshops to identify desired changes, votes to commence new rulemaking
LATE AUGUST			New Notice published, public comment period begins
SEPTEMBER	OAL reviews and approves or denies amendments (30 working days)		
OCTOBER	If OAL approves regulations, it files them with Secretary of State and they become legally effective (30 days after filing)	OAL reviews and approves or denies regulations (30 working days)	
NOVEMBER		If OAL approves regulations, it files them with Secretary of State, and they become legally effective (30 days after filing)	Commission holds public hearing and adopts some or all of the amendments
DECEMBER			Staff prepares rulemaking record and submits amendments to OAL
1999 FEBRUARY - MARCH			OAL reviews and approves or denies regulations (30 working days) If OAL approves regulations, it files them with Secretary of State, and they become legally effective (30 days after filing)

¹ The schedules reflect the minimum timeframes established by the Administrative Procedure Act. Postponement of any of the steps would result in postponement of the subsequent steps in order to satisfy APA requirements.

² An additional comment period of 15 days is required for changes that are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Govt. Code, § 11346.8(c).) A change is "sufficiently related" to the original text "... if a reasonable member of the directly affected public could have determined from the notice that these changes to the regulation could have resulted." (Tit. 1, CCR, § 41.) No additional comment period is required for changes that are "nonsubstantial" or "solely grammatical." "Nonsubstantial" changes "... clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text." (Tit. 1, CCR, § 40.)

³ A new rulemaking with an additional public comment period of 45 days is required for all changes other than those described in footnote 2.



EXHIBIT 5



CALIFORNIA TRADE AND COMMERCE AGENCY

REGULATION REVIEW COMMENTS

RECEIVED

APR 03 1998

CALIFORNIA
COASTAL COMMISSION

Phone: (415) 904-5220

Fax: (415) 904-5400

To: Ann Cheddar
Legal Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

From: James J. Lichter, Analyst *J.L.*
Regulation Review Unit

Date: April 3, 1998

Subject: Proposed Regulations in Title 14 Related to *Coastal Development Permits Issued by Coastal Commission and Exclusions from Permit Requirements (OAL Notice File #Z98-0206-01)*

Under the authority granted by Government Code (GC) section 15363.6, the California Trade and Commerce Agency Regulation Review Unit (RRU) has completed a review of the subject regulations and is submitting the following comments to be included in the rulemaking record.

The California Coastal Commission proposes to make numerous changes to its regulations in Chapters 5 and 6 of Division 5.5 of Title 14 of the California Code of Regulations. In the initial statement of reasons, the Commission states that "The primary objectives of the proposed action are to clarify ambiguities, eliminate repetitive and outdated provisions, reorganize for clarity, streamline certain processes, and implement requirements of other statutes, such as the Permit Streamlining Act."

RRU acknowledges the intent of the Commission and thanks Commission staff for their responses to our questions.

However, after our review of the regulations, we have a number of comments and questions. Most of these items were discussed with Commission staff in a telephone conversation on March 20, 1998, or in subsequent telephone conversations. Specific items are listed sequentially by section number, followed by a more general discussion of the plain English requirement of the Government Code.

§ 13055. Fees. It may be possible to present all or most of this section in tabular form. Presenting the fees in such a manner would constitute a less burdensome alternative, since it would make it easier for affected parties to understand the Commission's fee structure. For example, in Section 13055(a)(2), there are three possible single-family residence fees, based on square footage. This fee information could be presented as a simple table, as follows:

California Coastal Commission

Page 2 of 6

<i>Square Footage</i>	<i>Fee</i>
<1500	\$250
1500 to 5000	\$500
>5000	\$1,000

In Section 13055(a)(6), there are six possible fees for an office, commercial, convention or industrial development, based on square footage. This information could be presented as a six-line table. Similarly, in Section 13055(a)(8), there are six possible fees based on the value of the development cost. This information could also be presented as a six-line table.

§ 13057. Preparation of Staff Reports. In several instances in this section, the Commission refers to the "California Coastal Act of 1976." This reference appears to be misleading since the Act has been amended since 1976. In various other places throughout the regulation text the Commission refers to the Act as simply the "California Coastal Act" or the "Coastal Act." RRU recommends that these references be harmonized, and if the date 1976 is included then the phrase "as amended" should be added. One possibility would be to define "Coastal Act" as "The California Coastal Act of 1976, as amended," and then replace the various forms of reference in the text with the common reference form "Coastal Act."

§ 13060(c) This subsection allows the executive director to summarize lengthy and/or numerous written communications orally, rather than distribute them to the commissioners. However, this approach could cause information to be inadvertently distorted. It is not clear from the initial statement of reasons why information from regulated parties will be summarized before presentation to the commissioners.

§ 13073(a) This subsection allows an applicant only one "right" to postpone the vote on his or her application to a subsequent meeting. The proposed new regulation text requires the applicant to exercise that right prior to public testimony. However, the nature of the public testimony may be such that the applicant decides it would be best to request postponement after hearing public testimony. A less burdensome alternative may be to allow the applicant to request postponement either before or after the public testimony.

§ 13169(b) This subsection states that "The applicant shall post such notice at the project site within three (3) days" RRU believes that this time period should be specified as "three (3) working days".

§ 13170. Transfer of Permits. In subsection (b), the following regulation text is being deleted: ~~The executive director's review shall ordinarily be completed within ten (10) working days of the receipt of a completed application for assignment.~~ This change would leave unspecified how long the executive director has to approve the transfer of a permit. RRU believes that the time period allowed for the executive director to approve the transfer should be specified in the regulation text, in accordance with the Permit Reform Act of 1981. GC section 15374 states that "It is the intent of the Legislature that this chapter create a system of specific deadlines and

procedures designed to expedite the process of obtaining permits and other forms of authorizations and thereby ensuring the timely and efficient handling of permit applications."

Adverse Economic Impacts and the Plain English Requirement

The Notice of Proposed Regulatory Action (Notice) states that "It has been determined that the proposed regulation may affect small business." RRU agrees with that determination.

GC section 11346.2(a)(1) states that "If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation." GC section 11342(e) states that "'Plain English' means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English." The Commission states in the Notice that "The express terms of the proposal written in plain English have been prepared by the Commission ... and the informative digest for this proposal constitutes a plain English summary."

RRU acknowledges that the Commission has attempted to draft the regulations in plain English. However, a readability analysis of the proposed regulations indicates that they are not written at the level required by GC section 11342(e). Consequently, businesses and private persons may incur unnecessary time and expense attempting to understand and comply with the regulations. Some businesses and individuals may attempt to guess at the meaning of the regulations, contact the Commission for clarification, or employ expensive consultants. The time and expense incurred may have an adverse economic impact on those small businesses and individuals.

We realize that defining and measuring the grade level of written material is not an exact science. However, statistics that provide an approximate measure of grade levels are readily available from computer software such as *Word* and *WordPerfect*. RRU used *Word* to evaluate the grade level of a commonly-known sentence and several selected subsections from the proposed regulations. The results of these evaluations are included as an attachment to these comments. They indicate that the regulations are currently written at a grade level considerably above the level required by GC section 11342(e).

RRU believes the regulations can be rewritten so that they more closely approximate plain English. This would lessen the adverse economic impacts on small businesses and private persons affected by the regulations.

RRU also evaluated some text from the Informative Digest to determine if it constituted a plain English summary, as stated by the Commission in the Notice. The results of that evaluation indicate that the Informative Digest is also written at a grade level considerably above the level required by GC section 11342(e).

California Coastal Commission

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If you have any questions regarding these comments, please contact me at (916) 323-0484 or via the Internet at jlichter@commerce.doc.ca.gov. Please send us a copy of your response to these comments and a copy of the final statement of reasons, so we can better understand the findings of your agency regarding the proposed regulations.

cc: Chris Holben, Undersecretary
California Trade and Commerce Agency (CTCA)

Don Perry, Director
Office of Economic Research, CTCA

Attachment – Readability of Selected Subsections in the Regulations

RRU used *Microsoft Word 7.0* to evaluate the grade level of a commonly-known sentence and several selected subsections from the regulations being proposed. The results of these evaluations indicate that the regulations are currently written at a grade level considerably above the plain English level required by GC section 11342(e).

The following are the readability scores for the sentences presented after this table:

Average or Statistic	Results for the Following Specific Cases				
	Easy	§ 13055(g)	§ 13067(c)	§ 13158(e)	Digest
Words per Sentence	9.0	28.5	Too	32.0	28.2
Flesch Reading Ease ¹	94.3	28.7	long	13.1	14.6
Flesch-Kincaid Grade Level	2.3	16.3	to	19.4	18.2
Coleman-Liau Grade Level	3.8	13.5	compute ²	17.2	17.2

¹ The Flesch Reading Ease is an index that ranges from 0 to 100. The average writing score is approximately 60 to 70. The higher the score, the greater the number of people who can readily understand the document. Low scores correspond to documents that are difficult to understand.

² The second sentence in this subsection contains 54 words and was too long for *Word* to process for grammatical structure.

The first case in the above table is a commonly-known sentence that is included to give a sense of the readability scores.

Case Easy The quick brown fox jumps over the lazy dog.

The following cases are some of the new subsections in the proposed regulations.

Case § 13055(g) "The required fee shall be paid in full at the time an application is filed. However, if an application is filed as an administrative calendar application but subsequently scheduled for another calendar by the executive director or removed from the administrative calendar by the commission, the applicant shall pay the difference between the administrative calendar fee and the regular fee. Such additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit that requires payment of the fee prior to issuance of the permit."

Case § 13067(c) "The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her

California Coastal Commission

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presentation, exhibits models or other large materials may satisfy this requirement by submitting accurate reproductions or photographs of the models or other large materials and by agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding."

Case § 13158(e) "No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall send the permit applicant a notice of commission approval that identifies those conditions that must be satisfied before the permit can be issued for acknowledgment."

The following case is from the Plain English Summary section of the Informative Digest. The Commission states that "... the informative digest for this proposal constitutes a plain English summary."

Case Digest "The majority of the regulations governing applicant and permittee requirements and permit exclusions would be amended to clarify a number of ambiguities that have become apparent during the implementation of the regulations. For example, the revisions would clarify that permit amendments are subject to the same information filing requirements as permit applications, and that approved permits can be extended even if they have not been issued. Clarification of the ambiguities would make the regulations easier for applicants to understand and would save staff time. Several of the proposed revisions introduce new streamlining measures that would save time for applicants. For example, minor amendment and extension applications that qualify for administrative approval are currently required to be referred to the Commission for hearing if a member of the public objects to administrative approval of the application. The revisions would allow such applications to be approved administratively despite receipt of an objection if the Executive Director concludes, subject to Commission review, that the objection does not raise valid Coastal Act issues."



City of El Segundo

March 23, 1998



Ms. Ann Cheddar
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Notice of Intention to Amend and Repeal Portions of the California Coastal Commission's Permit Regulations

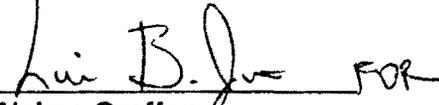
Dear Ms. Cheddar:

Thank you for providing the City of El Segundo, Department of Planning and Building Safety, Planning Division, with a copy of the proposed amendment and repeal of a portion of the California Coastal Commission's regulations. Overall, we believe that the proposed revisions will clarify and streamline the current Coastal Development Permit procedures.

Thank you for the opportunity to review and comment on the proposed Amendments to the California Coastal Commission regulations, and we look forward to receiving any future proposed Amendments and the final revised adopted regulations.

Sincerely,

Department of Planning and Building Safety
Bret B. Bernard, AICP


Naima Greffon
Planning Technician

xc: Bret B. Bernard, Director of Planning and Building Safety
Laurie B. Jester, Senior Planner
California Coastal Commission File

Elected Officials:
Dorinda Jucoski,
Mayor
Nancy Wormick,
Mayor Pro Tem
Jane Friedkin,
Councilwoman
Lisa Weston,
Councilman
Michael Gordon,
Councilman
Clayton Kirtzinger,
City Clerk
Susan Cooper,
City Treasurer

Appointed Officials:
George M. ...
City Manager
Mark ...
City Attorney

Department Directors:
James ...
Economic Development
Julie Kramer,
Finance
Joseph ...
Fire
Robert ...
Human Resources
Richard ...
Library
Bret B. Bernard,
Planning & Building Safety
Laurie ...
Police
Patricia ...
Public Works
James ...
Recreation & Parks

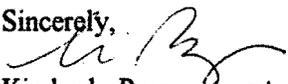
p:Naima\nop-2.ccc

California Coastal Commission
Legal Division
45 Fremont St. Ste.2000
San Fransisco, CA
94105-2219

To Whom It May Concern;

I am currently a resident of California and I am aware of the mass development that has caused coastal land to become so valuable, however, I feel that the revision of the California Coastal Act will only provide more loopholes for developers. Maintenance of the environment and especially our coastal wildlife is very important to the prosperity of Californians. Without biodiversity our future is lost. Please vote no on the revision that will allow developers to more easily attain permits and allow them to develop on land that is rich in ecology. The vast amount of lost species diversity will leave nothing for generations to come. By allowing developers to attain single permits and allowing the Executive Director to bypass any permit requirement greatly undermines the voice of the Californians. The people have voted on the California coastal Act before and they were heard, please listen now to the damage that this amendment can do. So many coastal species are suffering because of habitat decline, one example is the vast amount of wetlands that developers have filled in order to build homes and make profit. The best decision you can make is to greatly restrict any coastal development more than the act currently requires and to create an act that does not allow for loopholes that allow developers to degrade our state.

Sincerely,


Kimberly Perez

return address: 15619 Fada Dr
La Mirada, CA 90638

BEFORE THE CALIFORNIA COASTAL)
COMMISSION IN THE MATTER OF)
COMMISSION ADMINISTRATIVE)
REGULATIONS, CHAPTERS 5 AND 6)
[TITLE 14, CAL. CODE OF REGULATIONS])

TU-10d



**TESTIMONY ON COMMISSION STAFF-PROPOSED REVISIONS
AND PETITION FOR RULEMAKING**

Submitted by:

Norbert H. Dall
Stephanie D. Dall
(Appearing as Individuals)
6700 Freeport Boulevard
Suite 206-207
Sacramento, California 95822

May 30, 1998

101-01

EXECUTIVE SUMMARY

Commendably, the Coastal Commission and its staff have begun the demanding task to review and modernize the Commission's body of administrative rules and procedures within the framework established by the policies of the Coastal Act, the Administrative Procedure Act, and other applicable laws. The paucity of other comments in this rulemaking process to-date is both indicative of the decline in the public's understanding and participation in the coastal program and reflective of the complexity and relative inaccessibility of the several hundred regulations, rules, and procedures addressed. A primary objective of the present and proposed rulemaking should be to halt and reverse those conditions.

We concur with staff that thirteen (13) regulatory sections in Chapter 5 (permit procedures) can be repealed in the interest of coastal program clarity and efficiency, including through consolidation, harmonizing, simplification, and specification of regulatory parts and subparts. In addition, redundant §13168 (fees) and §13146 (application form contents), and §13234 (termination of urban land exclusions), which section is inconsistent with the Coastal Act, should be repealed.

We recommend that the Commission (a) divide the large mass of regulations into clear and manageable parts for its review, and (b) consider establishing a subcommittee to perform that deliberative review and report its recommendations to the full Commission.

We further recommend that the Commission (A) request staff to recast all regulations in simple English; (B) rely on Coastal Act public participation, conservation, and development criteria to make regulations performance oriented, rather than prescriptive; (C) provide only for rules that are consistent with the Coastal Act and other laws, and articulate complete references to authority, policy referent(s), and history; (D) utilize modern computers and other technologies to enhance programmatic efficiencies and reduce trivial paperwork; (E) affirmatively invite and pursue local government and other agency cooperation in permit reform, without imposing new unfunded mandates; and (F) document and evaluate direct and indirect cost savings from regulatory program review, including with regard to production of housing, economic growth, jobs in the coastal zone, and beneficial effects on small businesses, as well as natural coastal resources and public access thereto.

We petition and request the Commission, within Chapter 5 of the regulations, to address the existing, in some instances lacking, and proposed revised procedures that govern:

- (1) Effective participation by applicants, other public agencies, and the public in the coastal program, including, but not limited to, the conduct of public hearings;
- (2) Permit applications and Commission precedents;

- (3) Whether the application fee structure achieves full recovery of actual reasonable Commission and staff costs;
- (4) Veracity and facticity of oral and written evidence;
- (5) Notice and distribution of staff reports and other documents;
- (6) Permit finality, issuance, monitoring, evaluation, and reporting.

We further petition and request that the Commission work with cooperative local governments and other agencies, including through revision, repeal, and promulgation of regulations, as appropriate, to:

- (7) Simplify and streamline the permit regulatory process in the coastal zone through development and implementation of a unified comprehensive application form;
- (8) Define and implement joint permit processing for the area of the Commission's retained permit jurisdiction and other areas;
- (9) Identify infill urban land area coastal permit exclusion zones pursuant to §30610.5 where development (including redevelopment) may occur without substantial adverse environmental effects; and
- (10) Substantially increased reliance on modern communications and office systems, and enhanced Commissioner and staff roles and capacities, including through training.

Our detailed analysis and specific rulemaking recommendations, below, are based on 25 years' experience with the different levels and forms of the California coastal program and a careful review of both the body of regulations and applicable laws. In some areas, rigorous application of existing rules by Commissioners and staff may avoid the need for additional rulemaking; conversely, the staff's own use of some guidelines calls into question whether they are, in factual practice, not regulations under law.

We have devoted substantial care and time to the preparation of this memorandum. We offer it to the Commission and staff in appreciation for their efforts in this matter, and as a challenge to promulgate a body of regulations that fully and clearly implements the Coastal Act, as amended.

The comments provided herein are made by the authors as individuals and do not constitute testimony, or recommendations, of any client of our firm, or of any organization with which we are affiliated.

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¹ This existing article of Commission regulations is not addressed in staff's revisions.

² This existing article of Commission regulations is not addressed in staff's revisions.

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³ This existing subchapter of Commission regulations is not addressed in staff's revisions.

⁴ This subchapter was repealed in 1981.

⁵ This section was repealed in 1981.

SPECIFIC COMMENTS REGARDING CCC STAFF-PROPOSED REVISIONS
TO CCC ADMINISTRATIVE REGULATIONS

4. INTRODUCTION.

4.1. Background

We commend the California Coastal Commission ("Commission") and its staff for the present review of some of the rules and regulations governing coastal development permits and exclusions from permit requirements. (Title 14, Cal. Code of Regs., Chapters 5 and 6.)

The bulk, complexity, and age of the current regulations call out for careful and detailed consideration by all practitioners who are dedicated to an environmentally and economically sustainable California coast, and a fair, equitable, and efficient coastal management program. The Governor's and Legislature's initiatives in strengthening the State's Administrative Procedure Act have added further substantive and procedural objectives and standards to that purpose.

Unfortunately, perhaps, a review of this sort generates more analysis, comment, and recommendations, than if the regulations had been reviewed and updated more regularly, and with greater attention and commitment by the Commission, in the past.

We strongly urge the Commission, and staff, not to let another fifteen years pass before the next periodic review of the regulations, and to complete this and conduct future regulatory reviews in smaller and therefore more readily manageable parts.¹

In any event, the substantial experience of the coastal permit regulatory program since May 4, 1977 (when the Commission first adopted "permanent" procedures), the size of the body of regulations, and a perception of the systemic connection among the necessary subparts to rigorous implementation of the California Coastal Act of 1976,

¹ We also recommend, as we have previously, that Commissioners and staff convene workshops with active practitioners, local governments and other public agencies, and public focus groups in the various coastal administrative or bio-regions to affirmatively review the coastal program's procedures.

SPECIFIC COMMENTS REGARDING CCC STAFF-PROPOSED REVISIONS
TO CCC ADMINISTRATIVE REGULATIONS

as amended ("the Act"), all contribute to the detail and length of this memorandum.

We are deeply appreciative of the substantial work by Commission legal staff in enhancing the quality, accuracy, clarity, and consistency of the subject regulations, even where we may be critical on specific points, especially regarding the deteriorated state of public notice, understanding, and participation in the regulatory program and the lack of systematic project monitoring. Similarly, we invite specific consideration and implementation by the Commission, Governor, and Legislature of procedural or programmatic alternatives, and additional funding, to enhance Commission productivity and reduce repetitive regulation, costs, or competitive disadvantage.

In submitting these comments, we are mindful that these regulations, promulgated as they are pursuant to the 1976 Act, reflect a commitment, without regard to party or faction, to appropriate conservation and development of "the state's most distinctive and valuable natural resource", the California coast.²

4.2. Authority

California Coastal Act §30333³ authorizes the Commission to "adopt and amend, by a vote of a majority of the appointed membership thereof, rules and regulations to carry out the purposes of [the Act], and to govern procedures of the Commission."

The rules and regulations are required to be consistent with and within the scope of the Act and other applicable-law,⁴ to consider whether they affect small businesses (as defined),⁵ and to be prepared and adopted in accord with the provisions of the

² The reference occurs in the first (1970) statewide California coastal bill, AB 2131, by (then) Assemblyman and now Governor Pete Wilson.

³ All references to §§30000-30900 are to the California Coastal Act of 1976 (Division 20, Public Resources Code), as amended, unless otherwise noted.

⁴ §30333; Cal. Gov't Code (Administrative Procedure Act) §11342.1.

⁵ Defined at Cal. Gov't Code §11342(h) to mean, in summary, a listed business activity that is (a) independently owned and operated, and (b) not dominant in its field of operation. As defined, a small business does not include, among others, a manufacturing concern with more than 250 employees, a health care facility with more than 150 beds or \$1.5 million in annual gross income, a "mortgage or investment banker", "subdivider or developer", "landscape architect, architect, or building designer", nonprofit institution, "entertainment activity or production", a "utility" (as defined), a "petroleum producer" or "pipeline", or business activities with annual gross receipts variously above \$1 million (agriculture), \$1.5 million (transportation, warehousing), services or retail trade (\$2 million), special trade construction (\$5 million), or general construction or wholesale trade (\$9 million). (Id.)

SPECIFIC COMMENTS REGARDING CCC STAFF-PROPOSED REVISIONS
TO CCC ADMINISTRATIVE REGULATIONS

California Administrative Procedure Act.⁶

§30620(a) requires the Commission to prepare and adopt procedures for the "submission, review, and appeal of coastal development permit applications and of claims of exemption." The Act mandates that these rules, which are to be transmitted to each local government in the coastal zone and be made "readily available" to the public,⁷ include, but are not limited to:

⁶ Government Code §§11340-11359 relate to "rulemaking". In adopting the "Agency Rulemaking" directions and standards within the Administrative Procedure Act, the Legislature declared its intent and provided standards to reduce the number of regulations and improve their quality, including through:

- (1) Substituting performance standards based on criteria for prescriptive standards (Gov't Code §11340.1(a); §11342(d)) [all references in this note are to the Cal. Government Code];
- (2) Providing for complete references to authority, substantive statutory reference, and history (§11340.1(b));
- (3) Requiring a regulation, to be valid and effective, to be necessary, consistent and not in conflict with the statute and reasonably necessary to effectuate its purpose(s) (§11342.2);
- (4) Drafting regulations in plain, straightforward language that avoids technical terms as much as possible; uses a coherent and easily readable style; and uses plain English, or provides for a non-controlling plain word summary where plain English for technical reasons is infeasible (§11346.2(a)(1));
- (5) Providing notation for each regulation that identifies the statutory authority for it, as well as the specific statutes or other legal provisions being implemented, interpreted, or made specific by the regulation (§11346.2(a)(2));
- (6) Providing a specific statement of reasons, including underlying problems or conditions, specific purpose(s), evidentiary basis (-es), alternatives considered, including to reduce impacts on small businesses, and reasons for rejecting alternatives not selected, and avoidance of unnecessary duplication, for the adoption, amendment, or repeal of the regulation (§13346.2(a)(4) and 11346.5(a)(12));
- (7) Assessing the potential of the regulations for unnecessary or unreasonable imposition of record keeping, reporting, or compliance requirements, or other adverse impacts on California business enterprises or individuals, including with regard to interstate economic competitiveness, jobs, and the creation, maintenance, or expansion of businesses in the State (§13346.3), and one or more declarations relating thereto (§13346(a)(7) and (8));
- (8) Noticing of the proposed regulations through mailing to a "representative number" of representative small business enterprises, that may be affected by them, or their representatives (§13346.4(a)(3));
- (9) Determining whether the regulation imposes a mandate on local agencies and whether State reimbursement is required (§13346(a)(5));
- (10) An estimate of direct and indirect costs or savings due to the regulations (§13346(a)(6), including on persons and businesses directly affected, and on housing costs, by the regulations (§13346(a)(9) and (11));

(The citation in §30333, as published by the Commission, to Gov't Code Chapter 4.5 and §11371 et seq., which refers to medical quality hearing panels, is erroneous.)

⁷ §30620(b).

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- Application and appeal forms;⁸
- Notification to the Commission and other interested persons of any action taken by a local government pursuant to Coastal Act Chapter 7, "Development Controls";
- Interpretive guidelines to assist in applying the provisions of the Coastal Act in areas of the coastal zone prior to certification of the respective local coastal program ("LCP");⁹
- Public notice and appeal procedures for the review of developments that are appealable to the Commission from coastal development permit ("CDP" or "coastal permit") decisions of local governments or the four Southern California coastal ports pursuant to their effectively certified LCP's or Port Master Plans ("PMP's), respectively.

In addition, the Commission may "require a reasonable filing fee and the reimbursement of expenses for the processing by Commissioners and staff of any application for a coastal development permit, and for any other filing by a non-governmental agency."¹⁰ (Emphasis added.)

The Commission regulations governing permits and exclusions¹¹ are also part of the federally certified California Coastal Management Program ("CCMP"), into which they were incorporated in their original and amended form.¹²

⁸ Notwithstanding the specific Coastal Act provision, neither form is contained for Commission consideration or promulgation in the March 19, 1998, "Memorandum " regarding "Public Hearing on Proposed Revisions to Portions of Chapter 5 and 6 of the Commission's Permit Regulations" that is addressed herein. Given the fundamental importance of the CDP application and appeal forms to the Commission's regulatory program, we read the specific requirement of the Act to appropriately supersede the more limited provision at Gov't Code §11342(g) that the term "regulation" for Administrative Procedure Act purposes does not mean "any form prescribed by a state agency or any instructions relating to the use of the form" .

⁹ Some Commission guidelines are given regulatory effect, e.g., in Section V, Part 12 of the coastal permit application form, which appropriately requires submittal as part of a completed application of a "comprehensive, site-specific geology and soils report (including maps) prepared in accordance with the coastal Commission's Interpretive Guidelines."

¹⁰ §30620(c).

¹¹ Title 14, Chapters 5, §13050-13188 (and Appendix A) and 6, §13200-13259, which are the subject of the current rulemaking proceeding, were

¹² Office of Coastal Zone Management, U.S. Department of Commerce, and California Coastal Commission, "State of California Coastal Management Program and Final Environmental Impact Statement", August, 1977, Appendix 4, Chapter 5 at pages 11-64; Chapter 6 at pages 65-90.

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4.3. Summary of Recommendations

In summary, we offer the following recommendations as part of the pending rulemaking to simplify the permit regulatory process and make it more efficient, understandable, open to effective public participation, and capable of achieving the conservation and development objectives of the Coastal Act:

1. The Commission should adopt the staff's recommendation for revision and/or deletion (repeal) of superannuated or redundant regulatory sections at §13061, 13067, 13073, 13074, 13075, 13076, 13077, 13080, 13081, 13082, 13083, 13084, and 13091.¹³
2. The Commission should direct staff to rephrase, to the maximum extent possible, all regulations in Chapters 5 and 6 in simple English, and to provide non-binding informational digests of regulations that must unavoidably resort to legal or technical terminology. Regulations should be presented in sequential, continuous order to avoid uncertainty and confusion created by seemingly "missing" sections.
3. The Commission should direct staff to insure that the statutory mandate for full public, including applicant, local government, and intervenor, notice and widest opportunities for effective participation in the regulatory program is reflected throughout the regulations, including through creation of a formal Public Advisor position within staff.
4. The Commission should direct staff to provide for full cost recovery of all bona fide regulatory program costs and expenses, which include Commissioner's professional time, staff (including training and post-decision monitoring), technical experts, and, on a pro-rata basis, modern machinery, operating programs, and overhead, to the extent allowed by law.
5. The Commission should direct staff to strengthen requirements for adequacy, accuracy, and veracity in application submittals, staff reports, and public testimony, including by requiring sworn testimony.
6. The Commission should direct staff to provide for increased notice of,

¹³ In this context, the Commission should consider, however, whether any of staff's "Procedural Guidance" documents as a matter of practice constitute standards solely for the internal management of the Commission, or whether they are, or should be, in part or whole, procedures and hence regulations of the Commission under the meaning of §30333 and Gov't Code §11342(g). As an aid to analysis and consideration, we recommend C. Mathias (ed.), "California Rulemaking Law, Statutes and Regulations Governing the California Rulemaking Process", Sacramento: Office of Administrative Law, 1997.

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and reliance on, identified precedential permit and appeal decisions.

7. The Commission should direct staff to provide for comprehensive post-decision permit monitoring, evaluation, and reporting.
8. We petition the Commission, pursuant to Government Code §11340.6 and its existing authority pursuant to §30333, to promulgate regulations to more effectively implement the legislative intent for permit streamlining, increased agency efficiency, maximized public notice and participation, statutory consistency, and reduced regulatory costs, as follows:
 - (a) Implement §30337 to provide for joint permit processing and review procedures with cooperating local, state, and federal agencies, applicants, and other interested persons, including in areas of retained ("original") jurisdiction pursuant to §30519(b) and for developments with supra-local significance or effect(s).¹⁴
 - (b) Initiate a proceeding, in cooperation with local governments, including redevelopment agencies, to identify urban land areas that qualify for exclusions from the coastal development permit requirement, both prior to and after LCP certification, pursuant to the infill and direct or cumulative effect avoidance standards of §30610.5.
 - (c) At §13050,¹⁵ 13050.5, 13052, 13053, 13053.6, 13064, 13065, 13066, 13069, 13071, 13072, 13073, as more specifically described in the analysis and recommendations below.
9. The Commission should direct staff to post the regulations, including all forms, with citations for reference, authority, and history, as well as relevant case law, on the Commission's Web-site. The regulations should be made key-word accessible.
10. The Commission should direct staff to work with cooperating local governments and other state and federal agencies to prepare a unified (comprehensive) application form for required permits or other discretionary entitlements (approvals) for development in the coastal zone.

Where required pursuant to Gov't Code §11340.6, the comments and

¹⁴ As defined at §13513.

¹⁵ This listing addresses only those sections of the regulations where Commission staff has not proposed any revisions to them.

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recommendations presented herein are submitted to the Commission as commenters' petition for adoption or repeal of regulations. The facts and opinions set forth herein are affirmed to be true and correct to the best of the authors' professional information and belief. In each instance, below, the petition states the substance or nature of the request in the part entitled "Recommendation(s)", which is preceded with a statement of the reason(s) therefor and citation to specifically applicable provisions of the Act, in addition to the general provisions for the review and adoption of regulations noted above. All recommendations are deemed by the authors to be directly, necessarily, and sufficiently related to the text of originally provided and proposed regulations such that other interested persons were adequately noticed that the additional regulatory clarifications, specifications, and other recommendations made herein may be forthcoming.

5. CHAPTER 5. COASTAL DEVELOPMENT PERMITS ISSUED BY COASTAL COMMISSIONS

The title of this Chapter suggests that it is limited to coastal development permits ("CDP's") issued by the Commission(s). In fact, its direct and indirect application is substantially greater than stated.

By cross-reference, the provisions of this Chapter also apply to CDP's issued by the following broad range of state, regional, local, and special district agencies, as well as the federal government operating on the Outer Continental Shelf ("OCS"):

- Local governments prior to Local Coastal Program ("LCP") certification [Chapter 7, Subchapter 1],¹⁶
- Public Works Plans by utilities (excluding energy facilities), public transportation system providers (excluding the four Southern California coastal ports), publicly financed recreational facilities by the California Department of Parks and Recreation and other agencies, all projects of the State Coastal Conservancy, all special district developments, and all community college facilities [Chapter 7, Subchapter 2],¹⁷
- College and University Long Range Development Plan development

¹⁶ As authorized by Coastal Act Section ("§") 30600(b). See, e.g., §13304 (Notice per §13059), §13306 [Fees not to exceed those in §13055], §13318 [Format of Appeals per §13111 and §13119; §13319 [Preliminary Local Approvals], etc.

¹⁷ As defined in Coastal Act §30114. See, e.g., §13352 [Preliminary Approvals per §13052], §13370 [Notice per §13057]

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project review [Chapter 8, Article 14],¹⁸

- LCP CDP Implementation Regulations [Chapter 8, Article 17],¹⁹
- Port planning and permitting [Chapter 8, Subchapter 6],²⁰
- Sewage treatment works [Chapter 9, Subchapter 1],²¹
- Federal Consistency Certifications for Outer Continental Shelf Exploration and Development of Production [Chapter 10, Subchapter 1],²²

5.1. §13050-13050.5

5.1.1 §13050. Scope of Chapter.

A coastal program participant (hereinafter, "participant"²³) seeking guidance as to applicability of the regulations of this Chapter may be expected to refer to this Section.

The advertised scope of this chapter states that it is limited to two situations where the Coastal Commission retains CDP jurisdiction (pursuant to §30600(b) and 30601). That statement, however, is inconsistent with the list of federal, state, regional, local, special district, community college and higher educational, and public works agencies, facilities, projects, and/or actions to which various Chapter 5 regulations apply by reference, as shown above.

¹⁸ As authorized by Coastal Act §30605. See, e.g., §13548 [specified exemption for educational facilities from CDP standards at §13050-13173]; §13550 [LRPD impending development reporting/review procedures to parallel consent calendar process established by §13101-13103]

¹⁹ As authorized by Coastal Act §30620(b). See, e.g., §13571 [Appeals in the Event of Notice of Local Failure to Act per §13110 *et seq.*]; §13573 [Exhaustion of Local Appeals for §13111].

²⁰ Chapter 8 contains no Subchapter 1, 3, 4, or 5. See, e.g., §13600 [Organization and procedural provisions of Chapter 5 of these regulations, as applicable, shall govern any development, the issuance of any coastal development permit, and the certification of any port master plan of the Ports of Hueneme, Long Beach, Los Angeles, and San Diego, except as provided in Subchapter 6]; §13627 [Notice of Completion of a Port Master Plan/Amendment per §13059]; §13630 [Notice of Public Hearing on Master Plan]; §13632 [Distribution of CCC Staff Report to Known Interested Persons per §13059]

²¹ E.g., §13654 [Exemption from preliminary approvals per §13052], §13657 [CCC Public Hearing and Voting per §13073-13096].

²² E.g., §13660.6 [De Novo Public Hearings per Chapter 5], §13660.7 [Consent Calendar Procedures per Chapter 5].

²³ As used in these comments, the term "participant" or "coastal program participant" includes Commissioners, staff, applicants, applicant's representatives, technical consultants, advisors, public agencies, non-governmental organizations, appellants, and any other person interested in, or affected by the coastal permit regulatory program.

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The participant who seeks access to regulations should also find them to be clear, well organized, readily understandable, and as concise as possible.²⁴

The Coastal Act,²⁵ in §30006, provides that "achievement of sound coastal conservation and development is dependent on public understanding ... and should include the widest opportunity for public participation."

However, regulation §13050, like many others, is written in a dense, ungrammatical, and largely inaccessible style that makes the Coastal Commission's body of regulations, overall, difficult to understand, imprecise, and unnecessarily wordy.

Recommendation: (1) This regulation, and all regulations promulgated by the Commission should specifically advise the reader of its (their) entire direct and indirect applicability by cross-reference to all sections affected or that invoke provisions of Chapter 5 regulations. A "Table of Sections Affected" may be a useful heuristic device in this regard.

(2) All Coastal Commission regulations should be written in simple and consistently structured sentences to comply with the "understandability" clause of §30006.

Where more than one phrase, referent, or statutory provision is addressed in a regulation, it should first present the key operative provision, followed by clearly and sequentially marked subparts ("subdivisions"). Key terms, such as the legislative-legal term "subdivision", should be

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²⁴ The authors are aware that replacing the dense legalese of the existing regulations with plain English is likely to somewhat lengthen the regulations, but consider that to be an acceptable cost of enhanced public understanding.

²⁵ Division 20, Cal. Public Resources Code, Section 30000 et seq., as amended.

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defined where they cannot be avoided.²⁶

5.1.2 §13050.5 Permit Jurisdiction Over Portions of a Development Not Within the Coastal Zone.

§13050.5(b) purports to give the Commission regulatory jurisdiction outside (i.e., to landward of) the coastal zone over "any development involving a structure or similar integrated physical construction" that straddles the coastal zone boundary.

We note that the Reference (specific statutory basis) provided by the regulation for subdivision (b) is not to any specific Coastal Act policy, but rather to the statute as a whole.

In direct contrast to this regulation, §30600 limits the applicability of the coastal development permit requirement to the "coastal zone" and §30604(d) specifically provides, in relevant part, that "No development or any portion thereof which is outside the coastal zone shall be subject to the coastal development permit requirements of [the Coastal Act]"²⁷

²⁶ The purpose of these comments is not to provide a recommended rewrite of the Commission's regulations, which appropriately is the province of Coastal Commission legal staff. However, the following revision of §13050 is offered as a possible example of a simplified version of the existing and recommended regulatory section:

"The sections of this Chapter govern all coastal development permit applications made

- (a) prior to effective certification of a Local Coastal Program (LCP) for the area in which the development is proposed;
- (b) where a local government, prior to LCP certification, chooses not to exercise jurisdiction over coastal development permits; and,
- (c) in other situations, where they apply by cross-reference (see Sections [LIST]).

"Where the provisions of this Chapter do not apply in any of the following sections, it is specifically stated.

"NOTE: Authority cited: Coastal Act (California Public Resources Code) Section 30333. Reference: Sections 30600, 30601, Public Works Plans, LRPD's, LCP CDP Implementation, Ports, Sewage Treatment Works, OCS federal consistency certification."

²⁷ As defined at §30103 to be delineated according to finite lines on a map. The 1976 legislative history of the Coastal Act clearly denies the Commission jurisdictional extra-territoriality. See, e.g., the third sentence in §30103(a) with regard to San Francisco Bay and any body of water, as defined, upstream thereof; §30200(a) regarding "consideration" of direct effects from outside the coastal zone on coastal resources; 30500(a) regarding the applicability of LCPs to the coastal zone; and 30700 regarding the applicability of Port Master Plans to the coastal zone. If any case law has granted the Commission extra-territorial regulatory jurisdiction (of which the authors are unaware), it should be cited here.

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Recommendation: (3) The Commission should delete §13050.5(b) because it specifically conflicts with the Coastal Act.²⁸

5.2 Subchapter 1, Regular Permits

a. Article 1, Local Applications Required. §13052-13053

5.2.1 §13052 When Local Application is First Required

The key terms of this section are ambiguous. It also lacks a mechanism to determine a finite acceptable showing of successful local application or preliminary approval.²⁹

The regulation also appears to (1) lack a specific referent in the Coastal Act that substantively supports the regulation as written;³⁰ (2) establish standards, such as approval of dredging or filling of water areas,³¹ that because of multi-jurisdictional review by, e.g., the US Army Corps of Engineers, may be infeasible prior to application for the coastal development permit; and (3) may be inconsistent with §13053, e.g., as to whether a draft or certified final EIR may be required as a condition precedent to coastal development permit application filing.³²

²⁸ Pursuant to the federal Coastal Zone Management Act, the Coastal Commission clearly has consistency review jurisdiction over federal agency activities and actions outside the coastal zone that affect coastal resources.

²⁹ The disjunctive between the titular reference to "local applications" and the operative requirement for "approvals" is glaring. Examples of basic structural ambiguities include: (1) the open-ended reference in the preamble to this regulation to "a permit from one or more cities or counties or other state or local governmental agencies", which may or may not be germane to coastal resource protection review by the Coastal Commission. Similarly, (2) the reference to an applicant's having "been deemed to have complied... when the proposed development has received approvals of any or all of the following aspects..." lodges extraordinary discretion in staff on a case-by-case basis, while creating substantial uncertainty in the regulatory process for applicants, local governments, and other interested persons. Or (3), what are the geographic areas pursuant to §13052(j) that the Executive Director has "specified" where "will serve" letters are required, what areas are not so specified, what is the meaning of "other appropriate entity" in this context, and where or from whom may an applicant or other interested person obtain the Executive Director's specification prior to tendering an application?

³⁰ The reference to §30620 is not on its face self-evident. Subdivision (a)(1) applies to application forms; (b) applies to notification of any local government action relating to the applied-for coastal permit, but limits Commission authority to matters of detail, not scope or type of local approval; (c) addresses guidelines, where are inapplicable here. If the Commission is relying on the "additional procedures necessary to better carry out this division" clause in §30600(b), it should so state and identify the grounds for it.

³¹ §13052(h).

³² Compare §13052(g), which requires (as part of its "any or all" standard in the preamble) a final EIR, whereas §13053(a)(5) allows the waiver of preliminary local approval if a draft EIR has been completed and the public comment period on it is closed, but the EIR is not certified. Please see also the discussion of applicable Permit Streamlining Act requirements, below.

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As a practical matter, these ambiguities have created substantial variation and uncertainty in the regulatory program at the point of permit application, depending on the staff assigned to project review at local government and at the Commission, as well as staffs' respective perceptions of the project and applicable requirements.

In turn, these variations have created inconsistent staff requirements as to whether local government must render, or has adequately rendered, the subject preliminary approvals and, consequently, whether a permit application is accepted by staff for filing. Cumulatively, these factors have added significant amounts of time and cost to the regulatory program, as it affects both applicants and the State.

Structurally, §13052 cross-references §13053, which staff proposes to be amended to reflect Permit Streamlining Act (Government Code) §65941.³³

However, the very lack of finitude in §13052 as to what local application(s) or preliminary approvals shall or may be required fails to meet the "specification in detail" required of this regulation by the Streamlining Act (§65940).

Recommendations: (4) Consistent with the provisions authorizing consolidated permit applications in §30337 and §65940, the Commission should consider and adopt such finite application criteria, including a specified list of preliminary applications to, or approvals from, local government, in concert with affected local governments and other public agencies, and publish them on the Commission's Web-site.

(5) The Commission should monitor and biannually report on the specific implementation of this regulation to identify areas of programmatic congruence and incongruence in permit regulation between or among the Coastal Commission, local governments, and other involved public agencies.

5.2.2 §13053. Where Preliminary Local Approvals are not Required

Like §13052, §13053 suffers from fundamental conceptual and discretionary ambiguities, which have created in the past and - unless corrected - may create in the

³³ In relevant part, §65941(a) states that "The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project." (Subdivisions (b) and (c) are not relevant to the present matter.) §65940 states, in relevant part, that "Each state agency ... shall compile one or more lists which shall specify in detail the information that will be required from any applicant for a development project."

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future substantial variations and inconsistencies in the application of this regulatory requirement, with attendant costs to applicants, interested persons, other government agencies, and coastal resources or public access thereto.³⁴

Key terms (e.g., "public purpose", "impact on coastal resources a major factor", "substantial changes", etc.) are not defined; the potential impact on public access to and along the shoreline is not explicitly stated to be a factor in the determination; application pursuant to this section is extended to federal agency approvals, whereas the matter is left unaddressed in §13052; and public works projects by special districts and others "may" be excluded by the Executive Director from prerequisite local government approval requirements, but no standards are provided for such waivers. Moreover, §13053 contains no provision requiring Commission staff to make a written case-by-case finding of when, or why, preliminary approvals may be required or not be required.³⁵

Proposed new §13053(e) and its accompanying Statement of Reasons do not identify the specific basis in §65941 for the additional asserted authority of the executive director to waive preliminary approvals prior to coastal permit filing based on this Streamlining Act provision.

The Commission should establish the extent to which subdivision (e) is intended to address the provision of §65941(c)³⁶ that, where the Coastal Commission is a "responsible" agency pursuant to the California Environmental Quality Act, an applicant shall be advised³⁷ and may request the Commission to commence processing a coastal development permit application prior to final action on the project by a lead agency, provided that the necessary information is available to the Commission to commence permit processing. In this context, the Commission should list, or at least identify the parameters of, what it deems "necessary information" to process an application in this situation.

Recommendations: (6) Where any Coastal Commission regulation cross-references a statutory or regulatory section not included verbatim in the Coastal Act or Commission regulations, the text of said section should be provided in full in a note or clearly identifiable appendix to Title 14, Chapter 5.5.

³⁴ Experience indicates that this latter problem may arise especially where applicant's representations about the "cost of a development" may qualify it for administrative permit processing pursuant to §30624 and subsequent amendments to the permit are processed without any local public review or notice.

³⁵ Commission staff computerized application tracking at the District office level may already accommodate this important aspect of the regulatory program.

³⁶ We assume, but request clarification, that Commission staff has this subdivision in mind in the revised regulation.

³⁷ Pursuant to §65940.

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(7) §13053(e) should specify the reference to the intended subdivision of §65941 and identify (list or otherwise describe) the required necessary information to commence application processing pursuant to §65941(c)..

(8) Where any Coastal Commission regulation cross-references a statutory or other regulatory provision, the reference should be to the specific part(s) or subpart(s) of said provision.

(9) In reviewing §13053.5, which provides for the Coastal Commission's application form for coastal development permits, the Commission should include all necessary information requirements to facilitate full implementation of §65941(c), including by advising prospective applicants of their rights to application processing if all necessary information is provided to the Commission.

(10) Consistent with Permit Streamlining Act §65923.8, the Commission should revise its CDP application form to advise applicants and other participants of the existence of the Office of Permit Assistance ("OAP") in the Governor's Office of Planning and Research. In addition, because of the many Coastal Act-specific technical factors, for which OAP cannot be assured to have its current high level of expertise given its statewide responsibilities, we recommend that the Commission create the Office of Public Advisor to assist applicants and other interested persons in the coastal program.

(11) Consistent with the authority for consolidated permit processing pursuant to §30337, the Commission should initiate a combined permit application and review process with cooperating cities and counties in the coastal zone, especially with regard to projects on or adjacent to tidelands, submerged lands, public trust lands, environmentally sensitive areas, public recreational and access areas, and projects that involve uses of greater-

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than-local significance.³⁸

Such a process would, if generally implemented, largely obviate the need for §13052 and 13053, except in unusual circumstances, while strengthening state-local cooperation in coastal management. The Commission may wish to give consideration to whether such a process may be optimally established by Commissioners from the geographic regions of the coast and Commission staff working jointly with participating local governments.

b. Article 2, Application for Permit §13053.4-13053.6

5.2.3 §13053.4. Single Permit Application

The proposed revised regulation deletes existing §13053.4(b), which since 1977 has provided that "the executive director shall not accept for filing an application for an amendment to a (coastal development) permit until such permit becomes final." (Emphasis added.)

The "Statement of Reasons"³⁹ states (1) that "(t)he purpose of the proposed revision is to eliminate confusion over whether a permit becomes 'final' at the time that it is approved or the time that it is issued" and (2) that it would eliminate redundancy with §13164-13166⁴⁰ regarding amendments of permits after they have been approved, but before they have issued.

However, a plain reading of proposed amended §13053.4 indicates that it does not address when a coastal permit becomes "final", which renders staff's first reason inapplicable.

In fact, staff's cross-referenced §13166⁴¹ fundamentally changes the basis by which an applicant may seek to amend a coastal development permit. The proposed new rule

³⁸ Uses of supra-local importance are defined at §13513 and include, in addition to park and recreational areas and facilities and environmentally sensitive habitat areas, military installations and their reuse, major energy facilities, highways and other transportation facilities, regional public works projects, harbor and fishing facilities (outside the four designated Southern California ports), and visitor-serving developments. Where such developments are located within the jurisdiction of an effectively certified LCP, the Commission's role is limited to appellate jurisdiction as defined in the Act.

³⁹ At page 3.

⁴⁰ §13164-13166 are themselves proposed to be substantially amended. §13166 does not apply to administrative permits.

⁴¹ At pages 36-37 of the "Memorandum, Public Hearing on Proposed Revisions to Portions of Chapters 5 and 6 of the Commission's Permit Regulations", March 19, 1998 ("Th 16").

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may significantly undermine the ability of the Commission to effectuate its intended decisions.

First, §13166 proposes to abolish the long-established basic standard in the coastal program that an applicant cannot amend a coastal permit until it has become final, i.e., all conditions precedent to the permit have been satisfied, and the full permit as approved by the Commission has been issued by staff.

The purpose of that existing provision has been to assure the Commission, and the public, that applicants faithfully implement the approved permit and, furthermore, that amendments which would abrogate or undermine special public access and other coastal resource conditions of approval of a development not be allowed.

Basic to this structure of permit governance has been the consistent advice of Commission Chief Counsel that final ("issued") coastal permits, which require the applicant's signed acceptance of all terms and conditions of the permit, constitute contracts between the applicants and the Commission, by which both are obligated to abide.

Second, staff's proposed revised regulation would (1) substitute the "approved" permit for the "final permit", (2) create a new staff process for amendment classification review, including Commission review for material amendments, and (3) create a new class of formal appeals to the Commission from determinations by the executive director.⁴² The Coastal Act does not appear to contain any specific statutory authority for this new appellate procedure recommended by staff in the regulations.

Recommendations: (12) The Commission should carefully consider whether it wishes to fundamentally change the basis on which a permit amendment may be filed from that of a final permit, where the applicant has met all conditions precedent to permit issuance and has accepted the permit (contract) in writing, to an approved permit on which the Commission has voted, but which the applicant has not accepted. Staff's recommendation would, in effect, create a second and generally repetitive permit review process for a disaffected applicant, at a 50% reduction in permitting fees as

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⁴² See §13166(a)91). Commission legal staff that has worked on these proposed revisions to regulations has advised that none of the proposed changes reflect, or are intended to address, pending litigation or previous appellate court decisions. We also call attention to the fact that staff recommends a reduction in public notice and deletes the public hearing requirement at 13072 for pending applications for materially amended permits.

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compared to a new application, irrespective of staff workload created by staff's proposed new procedure⁴⁴.

(13) The Commission may wish to carefully consider whether it wishes to create a new internal permit amendment appeal process from decisions of staff to the Commission, for which there is a lack of authority, and the programmatic and monetary costs of such new procedure. We recommend against staff's new procedure.

(14) Where Commission regulations are not consecutive in number, as here, an indication should be given in the body of the regulations, as well as in the table of contents, that the omitted sections (e.g., §13053.1, 13053.2, and 13053.3) are reserved (blank) by intention. Otherwise, the participant may be uncertain if he/she has a complete set of the regulations.

5.2.4 §13053.5 Application Form and Information Requirements

Staff proposes a minor clarifying amendment to §13053.5(d) regarding the size and number of exhibits provided by applicant.

However, the state of application forms and information requirements in the coastal program invite the following broader consideration:

First, individual offices of the Commission have from time to time utilized different coastal development permit application forms, including differing requirements for technical studies in support of an application.

Second, although the Commission's regulations require applicants to coordinate their application filings between the Commission and local governments, the coastal program has not evolved a unified statewide or regional permit application form with local governments in the coastal zone.

Third, application forms may presently only be obtained from Commission offices in person or by mail, notwithstanding the Commission's excellent Web-site on which the form could be posted for downloading.

Fourth, the application form(s) is (are) a bare-bones information-gathering document that may, and sometimes do, fail(s) to elicit either the data necessary to demonstrate

⁴⁴ See staff-proposed §13055(a)(9).

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compliance with the Coastal Act or LCP, or with previous guiding decisions of the Commission (that may assist an applicant to design and present a Coastal Act-consistent application).

In addition, applications and required technical studies may be tendered without being sworn as to their facticity and/or veracity. No assistance is provided by the form in helping applicants to conceptualize or describe environmentally preferred alternative forms of their proposed project(s), or of the meaning of the terms "feasibility" or "significant adverse effect on the environment" under the Coastal Act or CEQA. Maps and drawings are frequently allowed to be of low quality and extremely difficult to reproduce, to the detriment of the applicant and the public alike, although computer assisted drawing and map files and portable disks that can contain large amounts of textual, graphic, spreadsheet, and other information relevant to the coastal program are widely available and in use.

Fifth, application forms (and appeals and other documents) at present can only be filed with the Coastal Commission in person or by mail, although modern electronic filing techniques are available and in widespread use by other public agencies.

Sixth, it is noteworthy that the application form⁴⁵ provided by Commission staff headquarters contains: (a) many Coastal Act terms of art that are undefined, or only partly defined, in the application form, or the regulation(s), and are generally not within the popular vocabulary;⁴⁶ (b) apparent errors of law or implementation thereof;⁴⁷ (c)

⁴⁵ Dated 7/91.

⁴⁶ Among them are: "incorporated area", "principal permitted use", "certified Land Use Plan", "development", "project", "secondary improvements", "structures", "relocation site", "California Coastal Zone Conservation Commission" [reference to former Regional Commissions is also omitted], "height of structure", "standard" and "compact" parking spaces, "first public road and the sea" [compare §13011: "first public road paralleling the sea"], "grading", "area of high geologic risk", "open coastal waters", "wetlands", "estuaries", "any beach", "any tideland", "any submerged land", "any public trust land", "lower-cost facilities", "land previously uses for agriculture", "development near sensitive habitat area", "development near 100 year floodplain", "other scenic route", "harbor area", "other governmental requirements", "roads" [public, private?], "required local approvals", "parties", "known to express an interest", "copy(s)",

⁴⁷ E.g., with regard to Appendix A, the campaign contributions disclosure form; the failure to identify the Office of Permit Assistance;

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internal inconsistencies;⁴⁸ and contains a "Coastal Commission Fee Schedule" that is inconsistent with §13055, as follows:

Development	Fee (in \$) in Application Form	Fee (in \$) in §13055
1. If qualified for Administrative Permit	250	200
2. Major Permit Amendment	1/2 of full permit fee (based on current fee schedule)	50% of original permit fee
	\$125-\$10,000+	\$12.50-\$1,250+

Note: The original permit fees are from the Commission's action adopting regulations on May 4, 1977 (effective July 0, 1977) at §13055(a)(1), \$25 fee for development qualifying for an administrative permit and §13055(a)(8), \$2,500 for office, commercial, convention, or industrial development of more than 100,000 SF, any other development costing more than \$5 million, or any major energy facility project.

Seventh, staff presently publishes a rudimentary list of "new submittals" in the addendum sheets to its monthly "Meeting Notice", which is an acknowledged improvement compared to the status quo ante, although at the District offices applications for proposed developments are carefully logged into the Commission's data base.

The present practice causes a minimum 2-3 week delay in public notification of impending development applications and identification of the assigned Commission staff analyst, when daily posting of the same information on the Commission's Web-site would assure substantial compliance with the mandate in §30006 to maximize public understanding and opportunities for timely participation in the coastal program.

The overall quality of Commission decision-making would likely increase from listing of coastal permit applications, and related materials, on the Commission's excellent Web-site.

Practical opportunities for the public to participate in a substantive manner early during the review process would likely allow the time at public hearing to be put to more substantive, less redundant, and less lengthy testimony. In addition, staff, applicants

⁴⁸ E.g., At Section V, part 10 on page 7 of the application form, "as part of the application" submittal is required of a copy of the Final CEQA document (Negative Declaration or EIR) or NEPA document (EIS, but no reference is made to a Finding of No Significant Impact (FONSI)), including comments of all reviewing agencies and responses thereto, but in Appendix B, the local agency review form, a parenthetical comment has been added to "CEQA Status", to state, "(Negative Declaration or Final EIR not required to file an application for coastal development permit.)" (Emphasis added.) It is noted that no provision on the form is made for a response involving a NEPA document. Appendix B also does not require the signature of the local official who prepares or authorizes preparation of the form, nor does it require a copy of the "discretionary" approvals that may be indicated as having been granted locally. The form also does not advise the participant that Commission regulations provide for specified exemptions from the prior local discretionary approval "requirement".

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and other active parties to a proceeding would likely be earlier informed and have a better opportunity to respond than during the current telescoped public notice and hearing process.

Seventh, although this regulation (and others) require(s) provision of public notice, including posting of the project site, as part of the permit application process, the 8 1/2 by 11 inch notice sign prepared by staff is essentially illegible at 30 feet. Also, applicants are not required to submit photographic or other proof of posting of the notice to the Commission, which, together with inadequately posted and maintained public notices during the pendency of the application, has been a continuing problem in the coastal program.

- Recommendations:**
- (15) All offices of the Coastal Commission should use a standardized permit application form, with identical technical information requests. Application forms should be required, to be deemed complete, to include photographic proof of posting of the Notice of Permit Application in a specified publicly readable location at the perimeter of the project site.
 - (16) The Commission should work cooperatively with local governments in the coastal zone to prepare a unified application form for developments in the coastal zone.
 - (17) The Commission should post the coastal development application form on its Web-site and establish a program to accept electronic filing of applications, appeals, and other documents relating to the program.
 - (18) The Commission should consider formally creating the position of an independent "Public Advisor" to assist applicants and other interested persons with the Commission's regulatory process, including completion and filing of applications, appeals, and other forms, communications, and materials.

5.2.5 §13053.6 Amendment to Application Form

Staff proposes to leave the regulation providing for the Commission's review and approval of the coastal development permit application form unchanged from the present, i.e., that Commissioners will consider the form only in the event that a

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"significant change in the type of information requested" is proposed by the executive director.

A review of the application form provided by the headquarters office of the Commission dated 7/91 identifies the following noteworthy parts that the Commission may wish to address:

First, a cover memorandum, dated December 10, 1993, advises applicants of the "authorized and compensated persons to communicate" disclosure requirement in §30319, which includes the admonition that a subsequent list be provided to Commission staff of any additional such authorized and compensated persons, on penalty of fine, imprisonment, or permit denial for failure to comply.⁴⁹ However, the memorandum fails to indicate either the "staff" with which, or the time within which, such list is to be filed, although the statute requires disclosure "prior to any communications" by authorized and compensated communicators with the Commission or its staff. A Commission-adopted rule in this regard appears both prudent and necessary, since key terms (e.g., "communication", "staff", and whether the disclosed list must be on file with Commission staff - whatever it may be - prior even to procedural or other non-substantive communications, etc.) have remained undefined for nearly six years.

Second, experience indicates that staff, in its determination as to whether a "new development" qualifies for administrative permit review pursuant to the \$100,000 cost ceiling, apparently at least some of the time excludes the cost of land (or lease of water), and apparently all other indirect costs that may otherwise be included as actions defined as "development" in §30106, from the threshold definition. Given the ambiguity in this matter, the Commission may wish to promulgate a definitive rule to provide direction to staff and program participants in cost calculation.

Recommendations: (19) The Commission should request Counsel to draft and circulate for review proposed Commission regulations to clarify and implement §30319 and associated "fairness and due process" provisions of the Coastal Act.

(20) The Commission should review and adopt the coastal development permit application form as a part of the regulatory review, and include the adopted application form as §13053.7.

(21) In connection with the CDP application form, the

⁴⁹ §30319.5, which was added to the Coastal Act in 1992, prohibits reapplication for two (2) years for an "identical or similar project" where a previous permit was denied by the Commission for failure to comply with §30319.

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Commission should consider promulgating clarifying regulations regarding:

- (a) The definition of the term "new development" as it applies to the qualification for administrative permit review.
- (b) The complete address, in light of modern communications technology, of applicants and applicants' representatives.
- (c) In connection with Section I, part 4, the complete and correct application of the Fair Political Practice Act §84308 prohibition against any participation by a Commissioner or alternate in the event of receipt by either of more than \$250 from any party, as defined, to the CDP proceeding before the Commission.
- (d) The exact prohibition timeline pursuant to §84308, which extends for one calendar year from the date the contribution was made.
- (e) To reflect the limitation, pursuant to the Fair Political Practices Reform Act, on participation by a Commissioner, or alternate, who has solicited a campaign contribution from a party, as defined, within three months of the date of a Commission vote on a CDP, and advise participants in the program thereof, Appendix A should also require the applicant and other parties, as defined, to list any campaign solicitation received from any Commissioner, or alternate, during the preceding three months to Commission vote on the applicant's project.

(22) Given the fundamental programmatic significance of the coastal development permit application form, including as recommended for improvement herein, Coastal Commissioners should periodically review it for accuracy and adequacy of content, including now.

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c. Article 3, Notice §13054

5.3.1 §13054 Applicant's Notice Requirements

Subdivision (b) is proposed to be amended to cross-reference the notice requirements of §13063(b), which itself is proposed to be amended. When considered together and in light of the right to full participation in coastal management that is recognized by §30006, the revision constitutes an unfortunate and undesirable diminution of notice by applicants to nearby residents, property owners, and known interested parties. Throughout its history, a basic premise of the coastal program has been that the obligation to provide extensive notice, or to bear the burden of proof, rests with the party that seeks to change the status quo (here, permit applicants). This revision would substantially contribute to, or facilitate, a change in that well-considered order, contrary to the public interest for the following specific reasons:

First, the notice substitution would effect a likely reduction in the timing, substantive content, and functionality of notice prior to hearing. The amended regulation would allow the executive director to waive the standard mailed notice requirement to adjacent residents, property owners, and all known interested person and substitute for it the Commission's bare-bones and reduced size meeting notice, which typically contains substantially less, and less legible, information than the standard (one-two page, 8 1/2 x 11 inch in size) notice.

(It may be noted that the existing standard notice of upcoming permit hearing also raises questions of adequacy, since it typically only arrives at the same time as, and never more than a week or so before, the Meeting Notice. While somewhat more conducive to facilitating timely public participation in the critical Commission-staff report evidence gathering and preparation process, the standard notice nonetheless largely relegates the interested public to a belated reactionary role vis-a-vis Commission staff and the applicant.)

Second, as an additional alternative, the proposed regulation allows publication of the notice in a newspaper of general circulation, which experience has shown to be a significantly less effective means of providing notice to a target public because of its lack of focused delivery. Although notice by newspaper publication may serve as a valuable adjunct to mailed notice, because of its restricted circulation, typically reduced size, obscure location in newspapers, and the frequently poor quality of newspaper printing, such notice does not serve as the functional equivalent to the standard mailed notice, or to posting newly filed applications on the Commission's Web-site.

The proposed revision, in subdivision (c), also would require applicants who request a

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continuance to provide an additional set of stamped and addressed envelopes within ten days to Commission staff for subsequent notice. Commission staff's effort in this regard is commendable, since in the past notice was sometimes not provided in this situation, but again because of the constricted time that may be involved before the next Commission meeting date (generally 10-15 days) falls short of meeting either the §30006 or the CEQA notice mandates to facilitate full public understanding and opportunities for maximum public participation in actual coastal program decision-making.⁵⁰

The revised regulation also proposes an important change to the troubled existing provision that requires posting of the application at a conspicuous place on the site of the proposed development, including by requiring the executive director to refuse to accept the application for filing in the event of non-compliance.

However, notwithstanding its objective, subdivision (d) does not require an applicant to provide photographic evidence or a sworn statement that the site was, in fact, posted as required. Nor does the regulation specify what constitutes posting "in a conspicuous place, easily read by the public which is also as close as possible to the site of the proposed development". In fact, different offices of the Commission construe the regulation differently, with some requiring or suggesting perimeter posting, whereas others accept posting of the already difficult-to-read 8 1/2 x 11 inch notice of pending application sign inside glass doors within the project site that are not visible from the nearest public street, or even the nearest public walkway. Failure by applicants to provide, and the Commission staff to enforce, consistently adequate public notice posting may constitute a significant failure of the coastal program to implement §30006. The Commission at present has no monitoring program to track compliance with this regulations, which renders subdivision (e) basically unimplementable, since any person who may call the failure to provide notice as required to the Commission's attention may be considered to have received constructive notice.

Recommendation: (23) The Commission should instruct staff to post all applications (including appeals) for (or of) coastal development permits, at the point, or date, of submittal for

⁵⁰ As Commissioners, staff, and the public are aware, the coastal program in substantial part is a staff driven enterprise in which the ability of the public (applicant, appellants, adjacent residents and property owners, other interested persons) to substantively participate in the evidence gathering and staff-report formulation process prior to Commission hearing is vital to playing an effective role. Incrementally limiting the public's role in the coastal program to playing 60- or 120-second talking heads at the day of hearing does a severe injustice to the public interest in the Coastal Act-consistent conservation, development, and use of coastal resources, and public access thereto, including not least by clogging public hearings and dumping large amounts of new and previously unanalyzed written and oral information on Commissioners, staff, and active parties. This process diminishes the effectiveness, fairness, and majesty of the coastal program, and should therefore be a high candidate for change by the Commission.

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filing, by entering it onto the Commission's Web-site, including by listing the name and e-mail address of the assigned Commission staff analyst.⁵⁰

(24) The Commission should direct, for consistency with §30006, that applicants provide mailed written notice to the standard Commission notice list, as applicable in each matter, and subject to proof of service, at:

- (a) the point of permit application to the Commission;
- (b) no less than thirty (30) days before the scheduled Commission hearing on the application;⁵¹ and,
- (c) by expedited delivery no less than 48 hours before any request to continue a scheduled public hearing (or action) date to future time.

⁵⁰ The authors note that the Commission's sibling California Coastal Management Program agency, the San Francisco Bay Commission (BCDC), as standard practice lists the Internet address of assigned staff to all regulatory, planning, and administrative matters before it. The authors recommend to the Coastal Commission, and the Governor and legislative leadership, that a one-time funding augmentation be placed in the Coastal Commission's FY 1998-99 budget to provide (1) a modern computer, with individual Internet and facsimile connection, and CD-Rom capability, to each staff member and Commissioner; (2) necessary ancillary equipment to maximize the functionality of the computers, including high-speed telephone lines, scanners, networking capability, and software; and (3) training to all users to optimize the functionality of the system. Based on the authors' experience, we would recommend that the Commission obtain a mix of Macintosh and PC equipment to benefit from their respective strengths, including the ease of use and graphic qualities of the former. (The authors, acknowledged Mac fans, do not represent Apple Computers or any of its authorized vendors.)

⁵¹ The purpose of this recommendation is to bring the Commission's regulatory program into compliance with its functional equivalency to CEQA, which mandates a minimum 30-day public notice and availability of staff recommendation prior to the Commission's combined hearing-action date. Prior to the mid-1980's, when the Commission ceased to hold two meetings per month because of reduced workload and budgetary constraints, the Commission arguably remained in compliance with the 30-day notice and document availability requirement in CEQA by first scheduling a public hearing on the application to gather evidence and public input (within the 49-day rule established in §30621(a) at the Commission's recommendation in 1976) and then, secondly, acting on the application within 21 days following the hearing (as per the requirement in §30622). As noted in Part ___ of these comments, the Commission may wish to consider revisiting this tiered hearing-action approach, not lest to achieve compliance with its functional equivalency program status, including through either (a) scheduling reduced length meetings twice a month, or (b) requesting the Governor and Legislature to amend §30622 to provide for a 60-day rather than 21-day window to facilitate the tiered hearing-action schedule. Typically, applicants would prefer the shorter time span of the former, which superb Commission staff in the persons of Stephanie Hoppe and Phil Kier managed in 1976-1980.

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(25) The Commission should investigate upgrading its de minimis notice of application sign to make it legible from a minimum of fifty (50) feet, to require its posting every one hundred (100) feet around the perimeter of a development project site facing a public street, bikeway, or public accessway, and to require the applicant to maintain the signs during the pendency of the application. The notice of application sign should also contain the Commission's Web-site address and in indication that additional information about the application may be obtained from it. The sign should be in English, Spanish, Vietnamese, and such other languages as the executive director may have reason to believe are spoken by persons likely to be affected by the proposed development within the coastal district in which the application is made.

(26) The Commission should define the term "posting in a conspicuous place" to mean "posting along the perimeter of the development project site every one hundred (100) feet, with the signs facing the nearest public street, bikeway, equestrian way, or pedestrian accessway." Where the development site does not front on a public street, bikeway, equestrian way, or pedestrian accessway, at least one notice of pending application sign should be posted along the nearest said public way.

(27) As part of the recommended enhanced Commission permit monitoring program, the Commission should require statistically random field monitoring by staff, and quarterly reporting to the Commission, to determine compliance with the permit application notice provisions.

(28) Instead of relying on a haphazard revocation process pursuant to §13105(b), which by design appears to render a permit revocation based on failure to provide notice, as required, an impossible ("Catch-22") act, the Commission may wish to place the burden of proof that legally required notice was given and posted on the moving party (applicant or appellant), with a documented assertion of failure to constitute rebuttable evidence for Commission refusal to

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issue an otherwise approved coastal permit.

d. Article 4, Application Fees §13055

5.4.1 §13055. Fees

The applicable Coastal Act section is §30620(c), which provides that "(t)he commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit ... and for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission." The Commission's application fee structure has, in different parts, not been updated for seven or seventeen years, during which the Consumer Price Index has risen to a 1996 CPI of 156.9 from 136.2 (1991, or 15% increase) and from 90.9 (1981, 73% increase).⁵³ The Statement of Reasons that accompanies the proposed revised regulations provides no indication that any analysis of the Commission's true cost of processing any application in 1998 underlies the fee schedule.⁵⁴

The Commission fee structure for processing coastal permit and other applications raises the following questions:

First, do the fees reflect the actual costs, respectively, of staff and Commission processing of the various classes of applications?

Second, what is the basis for a general fee cap of \$20,000 (§13055(d) and how often since 1991 has the Commission, in reliance on §13055(e) required an applicant to reimburse it for additional reasonable expenses incurred in application processing?

Third, in its application since 1981 or 1991, has the fee structure in any application involved a higher staff and Commission processing cost than the application fee requested? Is there a gift of public funds to private sector applicants that underwrites the processing of coastal development permit applications, including required post-project action monitoring?

Fourth, the proposed regulations (including parts that are carried forward in various ways from previous versions of this section) generally provide for a lower per-unit

⁵³ The New York Times 1998 Almanac, page 337. The Commission's existing and proposed revised regulations to not specify which subdivisions remain unchanged since 1981 or 1991. The authors will transmit a separate note on this matter based on a review-in-progress of each §13055 subdivision.

⁵⁴ See, e.g., Statement of Reasons at pages 7-9 and the disclaimers at page 42 that no alternatives or other studies or reports have been considered in the preparation of these proposed revised regulation.

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application processing fee as proposed projects increase in size.⁵⁵ Is that generally declining fee scale based on a current Commission processing cost analysis for differential project size?

Fifth, the proposed revised regulations contain ambiguities that invite unequal application of the fee structure on a case-by-case basis. For instance, pursuant to §13055(a)(2), as proposed to be revised, an application for a coastal permit for a 1500 SF single family residence may be charged both \$250 or \$500, depending on whether line 1 or 2 of this subdivision is applied.

Sixth, in residential development applications, does the \$200 basic grading fee for up to 75 CY, when taken together with the \$5/1000 CY surcharge, for a total of \$5,199.63, actually cover the cost of staff and Commission review of a grading plan for 1 million CY in an area that includes major natural landforms and geologically unstable earth, which are afforded either high protection or strenuous consideration by the Coastal Act?

Since the term "grading" is not defined in the Commission's regulations, it is also unclear whether such processing fee applies to proposed filling of wetlands and other water bodies. Moreover, it appears from §13055(a)(6) that grading or filling in association with office, commercial, convention, or industrial development is not proposed by Commission staff to be charged any additional permit processing fee.

Similarly, in §13055(c) the term "lot considered as one single-family residence for purposes of calculating the application fee" is not defined in relation to §13055(a)(2), where various fees for detached residences are provided, or with regard to §13055(a)(4), where fees for attached residences are established.

Seventh, it is noteworthy that whereas residential development processing fees are

⁵⁵ For instance, the per square foot processing cost of a single family residence 1500 SF or less is 17 cents/SF (or 33 cents/SF), whereas for a residence over 10,000 SF it is 10 cents/SF and for a residence over 50,000 SF it is 2 cents/SF. Similarly, the processing fee for commercial or industrial developments declines, on a square footage basis, from 50 cents/SF (to \$2.00/SF) for very small structures of 1,000 SF or less, to 12 cents/SF for structures of 100,000 SF, but increases to 20 cents/SF for a structure of 100,001 SF or larger. An application for a private 1 million SF commercial structure would, under the proposed regulations, cost 2 cents/SF, irrespective of whether it were proposed to be located as an infill development in an urbanized incorporated area with all necessary infrastructure and no coastal access or storm water runoff issues, or on agricultural-wetlands-endangered species habitat parcel outside defined urban limit lines in a rural county. Similarly, the negatively sliding scale cost factor for changes in intensity of use of existing facilities, and all "other" development, ranges from a fee factor of .006 for projects costing \$100,000 or less, to a fee factor of .0032 for a development costing \$250,000, .002 for a development costing \$10 million and .001 for a development costing \$20 million. It remains an open question whether this regressive fee schedule, which causes a small project applicant to pay significantly proportionately more than a larger project applicant, has any cognizable relationship to actual permit application processing costs by staff or Commissioners.

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based on the size of the structure or the number of subdivision lots, fees for office, commercial, convention, or industrial development are based on the gross size of the development area. For example (and assuming all other factors to be the same), a 300 unit condominium residential development with units 1000 SF in size on two acres would be charged an application fee of $\$250 \times 300 = \$75,000$, with a cap of $\$20,000$, whereas a ten story, 300 room lodging facility with similarly sized rooms/suites on a development footprint of two (2) acres (88,000 SF) on the same site would be charged a fee of $\$12,000$, or 40% less.⁵⁶ Is there a basis in Commission staff or Commissioner processing of these two types of applications to support the difference in fees?

Eighth, mixed use structures, where commercial uses along a near-shore street are combined with office-commercial, overnight lodging, or residential uses in building levels above, including to minimize building footprint and maximize open space, constitute an established preferred Coastal Commission land use tool in urban areas pursuant to §30250(a) and 30252. However, the Commission's fee structure - apart from whether it reflects full cost recovery - appears to defeat, or at least undermine, the coastal resource and public access objectives of the Coastal Act.

For instance: A mixed use project involving 45 residential units (1,300 SF each) and 12,000 SF of commercial space, which arguably constitutes a Coastal Act-good, since the Commission required it over a "pure" residential project would have an application fee under the proposed regulations of $45 \times \$120 = \$5,400$ plus $\$4,000 = \$9,400$. However, if the commercial space were to be converted into residential units at the same SF as for the rest of the project - a project type the Commission rejected as inconsistent with the Act at LCP review - the resultant 54 unit residential project would pay an application fee of $\$6,480$.

Similarly: §30250(a) clearly favors infill residential, commercial and industrial development to contain urban sprawl along the coast, but the Commission's existing and proposed coastal permit fee structure treats applications for infill development in incorporated urban settings with adequate public service infrastructure equally with applications that would develop "raw" land outside a designated urban limit line in an unincorporated area. The environmental history of the coastal program over the past 25 years strongly suggests, even without published analyzed data, that substantially greater programmatic effort - including staff and Commissioner time - is devoted to reviewing and considering development applications in the latter situations. In the absence of specific data to support the proposed fee structure, it preliminarily appears, therefore, that in the urban infill situation, applicants may be overcharged, while in raw land development they may be undercharged, at least in those instances where a project raises many technical issues and is accompanied by high levels of public interest and participation in the Commission's application review and decision-

⁵⁶ The fee structure for the hypothetical condominium is based on §13055(a)(4). The fee structure for the comparably sized hotel in the same location is based on §13055(a)(6)(v).

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making.

Ninth, the revised regulations are proposed to consolidate the fee structure for permit amendments, which presently occurs, with notable inconsistency, in both §13055(a)(9) and §13168.

Regarding minor or immaterial amendments, the existing former regulation provides for a fee of \$200, whereas the latter provides for a fee of \$25. The proposed revised regulation provides for a fee of \$200, a 0-800% increase, without apparent basis in either staff or Commission processing cost.

With regard to material amendments, the existing regulation provides for a fee of 50% of the original permit application fee, whereas the proposed revised regulation would apply the current fee schedule as the basis for calculating the actual fee.⁵⁷ The proposed revision could have draconian implications in the rate of increase of the fee charged under some circumstances, although the Statement of Reasons provides no basis in actual staff or Commission processing cost to support it.

Tenth, preliminary information suggests that the Coastal Commission fee structure may be substantially below that charged for comparable projects by local governments with certified LCP's. Although Commission staff may, for various reasons, from time to time be more efficient or focused in coastal program-specific project review than some of its local government staff counterparts, the apparent fee differentials between the Commission and cities or counties (which generally practice full cost recovery in the face of severe cutbacks in previous state subventions and previously available taxing bases) may contribute to the lack of incentive by some private sector segments to see the completion of effectively certified LCP's.

Eleventh, since 1973, the coastal permit application review and monitoring aspects of the Coastal Zone Conservation Commission, the six regional Commissions, and the State Coastal Commission have benefited substantially from the tens of thousands of hours spent by members of the public, including representatives of non-governmental organizations (NGO's), to inform the Commissions' de novo and appellate regulatory processes. Numerical and technological limitations on Commission staff, the sheer size of the State's coastal zone, and the reduced frequency of meetings have all contributed to a quantitatively significant and programmatically substantial reduction in the opportunities for, and benefits of, public participation in the coastal program. The Commission should consider cost-effective means of supporting informed public ("intervenor") participation to help meet the statutory mandate for full and widest opportunities for meaningful public participation in its processes.

⁵⁷ For a hypothetical \$5.1 million development on three (3) acres that was approved on the consent calendar in 1986 after paying an application fee of \$100, but which now falls under §13055(a)(6)(vi), the present fee to amend the permit would be 50% of \$20,000, or \$10,000, a 10,000% increase.

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Twelfth, the fee structure set forth in §13055, by its failure to expressly provide for the justice-by-turnstyle \$300 appeal fee pursuant to §30620(d) that was amended into the Act in 1995, renders §13055 incomplete and may cause appellants to have to pay an even higher fee, ranging from \$600-\$20,000, to have their appeals filed if staff relies on the "all other development" fee structure provided in §13055(a)(8).

Recommendations: (29) The Commission should perform a survey of actual staff and Commission costs incurred in the processing of coastal permit and other applications for Commission decision to establish the basis for determining the statutory "reasonable filing fee and reimbursement of expenses for the processing by the Commission of any application (as defined at 30620(c))."

We recommend that the Commission's fee structure be guided by the settled principle of full cost recovery and that special attention be paid to comparing and attuning the Commission's fee structure with local governments' to avoid the creation of incentives for non-completion of LCP's. In this context, §13055(g) should be revised to address the "basic fee" and also make provision for full cost recovery, consistent with §13055(e) and the recommendations herein.

The Commission should also correlate its fee schedule to (a) the amount of staff time required to review an application for filing, (b) the extent to which a proposed project is served by existing infrastructure within an existing urbanized area, and (c) the extent to which a project as proposed is consistent with the policies of Coastal Act Chapter 3 and a certified LUP or LCP.

The Commission should specifically consider whether a declining fee cost-factor (based on increased structural square footage, gross development envelope size, or project cost) accurately reflects actual staff and Commissioner processing time.

The Commission should consider including its (i.e., Commissioners) actual application processing costs, based on a professional time basis) in addition to those of staff.

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(30) Given the statutory mandate for maximizing public participation opportunities in the interest of sound coastal conservation and development (§30006), the Commission should consider requesting a Legislative Counsel Opinion and Attorney General's Opinion as to whether reasonable funding of intervenors in the application review process constitutes a permissible expense component of the Commission's review process pursuant to the Coastal Act. Appropriate additional regulations should be promulgated by the Commission to define appropriate levels of intervenor funding.

(31) In addition to establishing a basic fee schedule, which should include full cost recovery, to reflect the reasonable cost and expenses of processing applications, the Commission should provide for a cost-of-living index to annually adjust the basic fees.

(32) Commission staff should eliminate all overlapping fee schedules to clearly (a) provide one fee for each type of application filed, (b) promulgate regulations to implement the appeal fee provided at §30620(d), and (c) should specifically define key terms, such as "grading", "lot considered as a single-family residence" that are not otherwise defined in the statute or the regulations, and "patently frivolous".

(33) The Commission should avoid any arbitrary cap on application fees and should consider replacing its potentially substantial fee increase for applications to amend a permit with a reasonable basic processing fee based on actual average staff and Commissioner time spent and provision for full cost recovery.

e. Article 5, Permit Filing Determination §13056

5.5.1 §13056. Filing

As recommended above, the Commission should utilize one unified application form throughout the coastal zone and not rely on different forms in separate administrative

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districts of the coastal program.

§13056(a) appropriately requires the executive director (staff) to review a tendered application for "completeness", but fails to define this critical term. Experience indicates substantial variation within the program in the definition and application of this critical threshold determination.

Given the various performance time periods for processing and acting on applications in the Coastal Act and Permit Streamlining Act, substantial Commission staff workload, the known frailties of the human mind, and the existence of computerized tracking hardware and software in the Commission's offices, the recommended revision in §13056(a)(1) and (2) to delete the requirement for day-of-submittal and day-of-filing stamping of the application in favor of an imprecise after-the-fact "date of receipt reflecting the date [the application] was received [or filed]" appears imprudent and unnecessary.

Commission staff recommends extending the pre-filing application review for completeness period from the current general five (5) days to ten-to-thirty (10-30) days, notwithstanding the express provision in the Permit Streamlining Act that its maximum 30 day pre-filing review period shall not become the default standard. Experience indicates that Commission staff in various district offices has adopted the 30-day pre-filing review period as its practical standard and advises applicants that the Permit Streamlining Act is the legal basis for it.

Change to the existing regulation, which already allows additional pre-filing review time in "unusual circumstances" beyond a work-week, appears unnecessary and imprudent, especially if the Commission, as recommended, adopts a unified application form, provides for electronic filing of applications, and the Governor and Legislature authorize the recommended computer enhancements of the coastal program.

Similarly, the proposed revision to §13056(c), which would provide an additional thirty (30) day pre-filing review period for any material required by Commission staff to make the application complete after the initial pre-filing review (and a finding of incompleteness), is unnecessary and on its face inconsistent with the admonition previously cited in the Permit Streamlining Act.

Rather than seeking to extend the pre-filing review period, with its attendant delays and costs to applicants, this regulation may perhaps more creatively be utilized to establish and convene in the coastal program the pre-application consultation and conflict resolution process among staff, the applicant, and affected or interested parties that has been found to be capable of significantly enhancing the quality of

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conservation and development decision-making world-wide.

Rather than the applicant's preparing an application from his/her universe of perceptions, which may be fundamentally inconsistent with the coastal program or contrary to the expectations of third party effective stakeholders, - all of which in the present system may contribute to quasi-adversarial posturing and delay in achieving desirable coastal conservation and development objectives, as provided in §30001 and 30001.5 - the Commission is invited to consider implementing a more collegial and perhaps effective (pre-)application process. The goals of such a process may be to:

- (1) increase applicants' certainty about applicable rules, standards, time to decision, and costs;
- (2) seek to achieve maximum feasible consensus about the project prior to application filing through a mandatory convening of the parties and clearly identifying unresolved significant issues early in the regulatory process;
- (3) focus the Commission's CEQA functionally equivalent process on the identified issues and establishing a path through informed and competent technical studies to a necessary and sufficient evidentiary base for decision-making;
- (4) maximize functional opportunities for public and public agency understanding and effective participation through consistent application and use of modern electronic communications and access to the Coastal Commission and local government data bases;
- (5) allow Commission staff to prepare, post, and issue a draft "Notice of Staff Recommendation" at the time of accepting the application for filing, which would generally reduce the amount of additional time allocated to subsequent application review and preparation of a staff report, prior to public hearing.

Staff also proposes additional specificity in §13056(d) with regard to appeals to the Commission of any staff determination to refuse to file an application on the grounds that it is deemed incomplete. Such specificity is generally commendable in regulations, but here the addition of a new, but undefined, appellate process and the addition of upwards of 120 days (4 months) to the process appears to render the matter unnecessarily cumbersome, lengthy, and costly, all to the disadvantage of the applicant. In the narrow case, where Commission staff declines to accept an application on second bona fide attempt by the applicant to make it complete, the matter should automatically be set for determination by the Commission based on a written report by both the staff and applicant. From a broader view, such impasse should and may be avoided through the collegial pre-application procedure

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recommended herein.

Recommendations:

(34) The Commission should define the term "completion" specifically in relation to an updated application form, including consistent requirements for mandatory technical studies (e.g., soils or geotechnical reports, environmental habitat characterizations, standardized before and after visual quality impact analysis, etc.), to avoid unnecessary and undesirable variations at the point of application pre-filing review.

(35) The Commission should continue the general administrative practice of date-stamping applications on the day they are received, or filed as complete, and decline staff's recommended revision for its introduction of undesirable uncertainty into the coastal program.

(36) The Commission should retain the 5-working day application pre-filing review period, with provision for extension in unusual circumstances (as consistent with the Permit Streamlining Act), and decline the staff-proposed creation of a 10-30 day pre-filing review period.

(37) The new, but undefined, appellate process relating to arguments over whether an application is complete for filing, and the four month period assigned to it in proposed revised §13056(d) is unnecessarily bureaucratic, time-consuming, and costly, and should therefore be declined by the Commission.

(38) The Commission may wish to avail itself, as a part of this regulation review, of the opportunity to consider establishing a cooperative pilot program with interested local governments to design, test, and evolve a collegial and integrated public agency-applicant-third party coastal permit application program that functions on a basis of enhanced public information and opportunities for effective participation, convening the parties for early issue identification and resolution, and improved permit processing.

5.5.2 §13056.1 (formerly 13109). Reapplication.

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Staff recommends that this relocated regulation be revised to preclude reapplication within six (6) months of a withdrawal of, or final decision on, a substantially similar development. The recommended revision also (1) proposes to apply the undefined appellate process presented in §13056 where a dispute exists between Commission staff and the applicant, (2) proposes to delete the existing standard that "elimination of conditions required for a [previously adjudicated] permit shall not be considered a substantial change, and (3) proposes to omit the existing provision that allows otherwise permissible reapplication in the situation where the Commission previously denied the application without first again going through preliminary local government review.

The reformulated regulation appears to be unduly broad, cumbersome, and inattentive to potentially changed material circumstances, as follows:

First, withdrawal of an application prior to the staff report or the close of Commission public hearing may be for reasons unrelated to the Coastal Act (e.g., financial, business, or personal health, etc.), which should not be a priori be punished by being relegated to a presently undefined, hence potentially subjective, "good cause" determination by a staff member pursuant to §13056.1(e).

Second, a coastal permit application may be withdrawn in good faith from Commission consideration in the context of a contemporaneous LCP certification action that is (hypothetically) beneficial to the applicant's position, only for the applicant to discover that the local government declines effective certification (i.e., coastal development permit jurisdiction) for other reasons. The applicant should not be denied the benefit of a Commission substantive decision, as in this situation, for a period of six months because of uncontrollable acts by others, or in the alternative being required to seek an uncertain good cause exemption from this rule.

Third, new material evidence (e.g., regarding technical matters affecting use of a site, appellate court decisions, etc.) may come to the applicant's attention following withdrawal or final decision, which again should not require him/her to postpone reapplication for six months or seek an uncertain good cause exemption from Commission staff.

Rather than requiring an applicant to repeat preliminary local government review, as envisioned in the recommended revision of this regulation, which experience has indicated may involve back door efforts by some Commission staff to preclude such local government review and preliminary approval the Commission may wish to consider requesting the reviewing local government in the first instance to place a time limit on the length of the validity of its preliminary review and approval, and then

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following up in the second instance to ascertain whether there are any changed material circumstances at local government that may affect the continued validity of the first preliminary approval.

Recommendations: (40) The Commission should either provide explicit exemptions to the six month reapplication prohibition, as outlined above, or clarify (specify) typical good cause exemptions to help guide staff in a consistent application of the latter rule.

(41) The Commission should consider amending the "Local Government Preliminary Review and Approval" attachment sheet to the Commission's application form to request local government to state the duration of the preliminary local government approval.

f. Article 6, Application Summaries (Staff Reports, Distribution) §13057-13059)

5.6.1 §13057. Staff Report Contents

The proposed revision would strike the existing regulation in its entirety and replace it with an apparently similar, but in several important regards substantially less informative, regulation, as follows:

First, the important concept that the application made by the applicant be briefly, understandably, and fairly presented to describe the significant features of the proposed development, "using the applicant's words wherever appropriate" is proposed to be deleted in favor of merely "an adequate" description of the proposed development, but including its site and vicinity, (§13057(a)(1)). The term "adequate" is not defined and the revision appears to constitute a reduction in a highly desirable specificity, since who better than the applicant may be in a position to describe his/her project?

Second, the revision proposes that maps, plans, and photographs be "legible and reproducible", which is highly commendable, given the frequently poor copy of such important attachments to staff reports. To effectuate this regulation, and uniformly legible graphics in staff reports, the Commission should consider inviting applicants to submit maps, plans, and photographs either in a CAD file electronically, or on disk. Such presentation would allow Commission staff to graphically evaluate alternatives and impacts during the review period, allow the graphics to be readily loaded onto the Commission's web-site for public review, and also present high quality graphics to the

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Commission in the staff report and at hearing. Photographs should be in color to provide the greater information it conveys than most black-and-white prints do.

Third, the revisions proposes to allow Commission staff, at its discretion and without qualification or guidance, to attach "a summary of public comments on the application" in-lieu of a copy of the actual comments. Commission should decline this proposed revision as inconsistent with §30006, especially when - as recommended - documents will be able to be filed electronically with the Commission and posted by staff on the Commission's Web-site for public review. The actual number of additional hard copies that are required to be made is relatively small and therefore not an undue burden on the agency.

Although the Coastal Act specifically recognizes the right of the public to fully participate in the coastal program, experience indicates that staff, from time to time, has - for whatever reason - either inaccurately or incompletely summarized public written and oral comments, or left them out of the staff report as attachments altogether. In both types of instances, the Commissioners and the public were therefore apprised of an incomplete public record, especially since Commission staff has also ceased the statutorily-required practice of bringing the entire administrative record file to the Commission meeting for any matter on the agenda.

Fourth, the Commission, staff, applicants, and the public have, from time to time, each experienced and expressed substantial difficulties with, or at least articulated significant doubt about, the factual nature of evidence presented in the public hearing record. The Commission should consider whether revised subdivision (a)(2) should, among other considerations of "significant questions of fact", require the staff report to address the factual, sworn, or other supportable standard of evidence (e.g., citation to professional publications, appellate case law, etc.) that is presented. A related question that the Commission may wish to address is whether all evidentiary offers regarding an application, whether by applicant, staff, or third parties, should be sworn.

Fifth, the regulation proposes to maintain the existing provision, at §13057(b)(1),⁵⁸ that the staff report either include a copy of the relevant CEQA or NEPA document, or an appropriate summary of it. Given the frequent bulk of such documents and staff's predominant practice since the mid-1980's of not attaching said environmental document(s) to the staff report, we recommend that based on the public understanding clause of §30006, the Commission require staff to either post the entire environmental document on the Commission's web-site as part of the application file or to provide a copy of the document on request by mail.

Sixth, whereas the existing regulation, consistent with principles of equal treatment of

⁵⁸ Presently at §13057(a).

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similar applications and the Coastal Act's precedential guidance clause, requires the staff report to include both a discussion of "related previous applications" and "prior decisions of the Commission that, pursuant to §30625(c) may be precedent(s) for the issues raised by the application", the proposed revision at §13057(b)(2) would delete the latter requirement.

We think the recommended deletion would be a significant programmatic reduction in (1) affording equal treatment to applicants, (2) providing a changing and diverse Commission, staff, and interested public with suitable guidance from prior key Commission decisions, and (3) providing efficiencies in Commission staff processing frequently similar applications in specified geographical subareas of a Commission administrative district.

Rather than delete presently existing §13057(a)(7), we recommend that the Commission specifically identify coastal permit decisions it considers to have precedential or guiding import and direct staff to post them as such on the Commission's Web-site to assist future applicants, planners, and the public, as well as staff, in being informed of the administrative guidance provided by the Commission.⁵⁹

Seventh, whereas the existing regulation specifically requires the staff report to address "public comments on the application" and "written responses to significant environmental points raised by members of the public or other public agencies", the proposed revision deletes both of these standards in favor of a much less precise formulation that the staff report contain "written responses to significant environmental points raised during the evaluation of the proposed development as required by (CEQA)". On the one hand, the revised regulation appear to limit the scope of this subdivision to consideration and response regarding the CEQA process at local government, rather than the Commission's administrative review. On the other hand, the revision appears to excuse Commission staff from addressing, and responding to, public comments presented to the Commission during its coastal permit review process. That this concern is not academic may be seen from many recent staff reports which do not address, or respond to, raised public comments at all, but rather construct the staff report to be a gloss, whether favorable or otherwise, on the application and Commission staff's view(s) of it under color of the Coastal Act.

Recommendations:

(42) The Commission may wish to take the opportunity presented by this regulation review to consider whether it may wish to reinstitute a two-

⁵⁹ Quite clearly, we disagree with the stated position of the Executive Director that every coastal permit application presents, and is or should be reviewed and decided, as a unique case, on the grounds that (a) the staff's and Commissioners' actual practice frequently contradicts it, (b) applicants in similar positions should be treated similarly, and (c) enormous program efficiencies are foregone if each application is considered sui generis.

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tier public hearing on the application and subsequent vote on the staff report procedure akin to what the Commission practiced before 1986.

(43) §13057(a)1) should be further amended to require applicants to submit maps, plans, and photographs, which should be in color, in a CAD file electronically or on disk.

(44) §13057(a)(4) should be amended to delete "or summary" from the requirement to provide the Commission or public with a copy of comments on the "application", which should be clarified to state, "application and staff report".

(45) The Commission should consider amending §13057(a)(2) to clarify that the staff report should address the facticity of evidence presented with regard to any application, and that all evidence should be sworn to be accurate and truthful, under penalty of perjury, to be admissible.

(46) §13057(b)(1) should be amended to require either posting of the environmental document (EIR, EIS, Negative Declaration, FONSI, Mitigated Negative Declaration, Statement of Exemption, etc.) as part of the application file on the Commission's Web-site or making a copy of the document available on request.⁶⁰

(47) The Commission should institute a formal procedure whereby it may designate coastal development permit decisions as constituting applicable guidance (precedent), as it may be defined and declared, and should further direct staff to post precedential decisions on the Commission's Web-site and address them, as applicable, in staff reports.

⁶⁰ Consolidated local government-Coastal Commission permit processing would further simplify increasing document availability. Until that recommended programmatic enhancement is reached, applicants should be required to submit a sufficient number of environmental document copies to meet anticipated demand for hard copies.

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(48) The Commission should retain the existing requirements that staff reports address, and respond to, public comments on the application, as well as significant environmental points raised by the public, public agencies (and we would urge: applicants and local governments). The Commission should decline to adopt the weakened and more ambiguous formulation presented in proposed §13057(c)(3).

5.6.2. §13058. Consolidation

The proposed revision retains the existing regulatory provision that allows consolidation of staff reports, and would extend the rule to also cover public hearings. However, in the process, staff proposes to delete the specifically recognized present opportunity in the existing regulation for an applicant, appellant, or third party to "make a sufficient showing to the commission that the consolidation would restrict or otherwise inhibit the commission's ability to review the development for consistency with the [Coastal Act]".

That provision, although only occasionally used, constitutes an important safeguard of the public's, including applicants', rights in the public hearing process to a full hearing on the unique facts and pertinent law pertaining to a specific application before the Commission. Although staff's objective to bring greater efficiency to the coastal program is laudable, here the proposed deletion from the regulation of the assurance of a basic right appears ill-advised.

Recommendation: (49) The Commission should retain as a last sentence in §13058, as otherwise proposed for revision, the existing provision that "Prior to a determination to consolidate staff reports or public hearings on applications, an active party to the proceeding(s) shall be afforded the opportunity to show that consolidation would inhibit Commission review of, or adequate public hearing on, an individual application."

5.6.3 §13059. Distribution of Staff Reports.

Staff's proposed revision to this regulation would eliminate the distribution of staff reports to known interested persons in an application and substitute for it notice via the Commission's meeting or application hearing notice.

Given the lateness in which either notice is presently mailed relative to the hearing

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date, and the inefficiencies of the United States snail mail, the effect of the proposed revision would be to give identified interested members of the public as little as 5-7 days prior to the start of the Commission meeting to (a) request a copy of the staff report, (b) rely on already heavily burdened Commission clerical staff to mail it, and (c) rely on snail mail to deliver it to the requester. Typically, the staff report would be received 2-4 days before the start of the Commission meeting for which the staff report is prepared, thereby effectively eliminating the ability of interested persons to read the staff report, conduct any necessary independent analysis, and prepare a written response to staff and the Commission for delivery prior to the start of the Commission meeting. The proposed revision, therefore, would effectively disenfranchise this important part of the public, whose participation rights are protected by §30006, from effective understanding and involvement in the regulatory program. Instead, it would relegate them to the least effective moment in the process, the one-three minute public hearing vignette, when Commissioners frequently are struggling to read other late mail or addenda to staff reports, which themselves are the unwanted children of an ill-considered staff report schedule (especially when viewed in light of the CEQA functional equivalency).

The Commission's unfortunately belated arrival in the post-Gutenberg age offers several opportunities for continued (and expanded) widespread public notice and staff report distribution, while incurring substantial economies in staff time and snail mail costs. The excellent work of Commission staff in this regard in the recent Soka and North San Luis Obispo County matters should serve as a model, including for additional legislative funding, of a coastal program-wide electronic posting of staff reports.

First, the recommended posting on the Commission's Web-site of the intended application would provide Commission staff, and in fact all the parties to the matter (including "other" interested persons), with an early up-dated e-mail address list, to which staff reports can then be sent electronically. Other interested persons, who do not have access to the Internet, should be sent a copy of the staff report by mail.

Second, the Commission should resume its previous practice, through circa 1980, of mailing (or now e-mailing) a copy of each staff report to the local libraries in the area of the proposed development, as well as to the University of California's Institute of Governmental Studies at Berkeley. These libraries, many of which are now connected to the Internet, provide important public reference points for persons who themselves are not subscribers to an on-line service. The IGS library has served for many years as a repository of the California coastal program and makes its collection available both to scholars and the public.

Third, for consistency with CEQA, where the Commission is the lead agency (i.e.,

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where no prior discretionary action by local government is or may be required, as in grading; change(s) in intensity of use of an existing development; utility projects, such as oil pipelines; or lot line adjustments, among others), the Commission should adhere to its CEQA functional equivalency status and §21091 by providing:

- (a) for a twenty (20) day staff report review period prior to the date of public hearing where the staff report is identified to be the functional equivalent of a Negative Declaration, or,
- (b) for a thirty (30) day staff report review period prior to public hearing where the staff report is identified as the functional equivalent of an Environmental Impact Report.

The same public review schedules for staff reports should, of course, also be applied where the Commission actually prepares a Negative Declaration or EIR on a development application where it is the lead agency.

Fourth, experience has repeatedly indicated that the general staff practice of mailing staff reports at the time of, or in conjunction with, the final monthly meeting notice - which is typically mailed only ten (10) calendar days prior to the start of the Commission meeting - is frequently inadequate to fully inform the public, applicants, and by their comments from time to time, Commissioners prior to hearing.

Substantively, the current general staff practice typically provides less than a work week in which applicants, appellants, public agencies, or other interested persons may:

- (a) review the staff report, including recommended special conditions that have not previously seen the light of day;
- (b) conduct, or cause to be prepared, such independent analysis or study to technically address often complicated issues or questions raised by the application and/or staff report;⁶¹
- (c) confer with other interested parties, other public agency officials, as well as legal, programmatic, technical experts, to prepare a reasoned response to the staff report, and,
- (d) transmit the response to Commission staff and Commissioners so as to afford them a reasonable period of time to review it prior to public hearing.

As ample evidence indicates, in any application or staff report that involves even a

⁶¹ The recommendation, above, that Commission staff post the application at the earliest practicable time, including at the recommended pre-application consultative stage, would substantially address this aspect of the current problem.

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modest measure of complexity, it is impossible to complete steps (a) - (d) within the time afforded, even if all the persons involved work days, nights, weekends, and on holidays. Notice and distribution of staff reports pursuant to the staff-recommended third sentence in §13059 simply does not, and physically cannot, comply with the full public information and maximum participation clauses of §30006. Similarly, the Commission should consider requiring the applicant to pay the cost for distribution of staff reports, rather than to erect and maintain a toll gate before the statutorily recognized portal to public participation in the coastal program.⁶²

Recommendations: (50) The Commission should decline staff's recommendation that "other" interested parties be deleted from automatically receiving a copy of the Commission staff report.

(51) The Commission should amend §13059 to require (a) posting all staff reports on the Commission Web-site a minimum of twenty (20) days prior to the date of public hearing, where the staff report is identified by staff as the functional equivalent of a Negative Declaration or Mitigated Negative Declaration,⁶³ and (b) mail a copy on the same date to all persons, including public libraries, who are identified as without Internet access through the recommended pre-application consultative process, or who specifically request a paper copy.

(52) The Commission should amend §13059 to require staff to electronically post and mail staff reports that are identified by staff as the functional equivalent of an Environmental Impact Report thirty (30) days prior to the date of hearing.

(53) The Commission should consider amending §13059 to require that all staff reports be electronically posted and mailed twenty (20) days prior to the date of public hearing, where:

⁶² The proposed revision significantly expands the ability to charge the public for the basic programmatic tool inherent in staff reports by recommending deletion of the "extensive duplicating or mailing costs" test, such that the public may be charged to pay for even the slimmest, but most critical, of staff reports, such as the already highly elusive "addenda" to staff reports that are sometimes metered out the night before public hearing by staff to Commissioners and, occasionally, a select few.

⁶³ Consideration should be given to applying this same standard to any Commission staff-proposed Findings of No Significant Impact (FONSI's) or Environmental Impact Statements, pursuant to the National Environmental Policy Act (NEPA), as may be applicable based on the specific facts of consistency certifications or determinations submitted to the Commission, where the Commission may act as lead agency.

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- (a) the Commission acts as a responsible agency under CEQA; and
- (b) the matter involves:
 - (i) an appeal from a decision of local government,
 - (ii) development within the Commission's retained permit jurisdiction; within 300 feet of the beach, shoreline where there is no beach, or in or adjacent to a wetland or other environmentally sensitive habitat area;
 - (iii) development located between the first continuous public street or road and the shoreline (sea); or
- (c) staff recommends one or more special conditions of approval, or recommends denial of the application.

(54) The Commission should consider retaining, and promulgating as a specific rule in §13059, the current de facto ten (10) day mailing deadline before public hearing, and require concurrent electronic posting, where staff reports on applications recommend approval of the application with standard conditions, the application is recommended for the consent calendar, the applicant concurs in any special conditions recommended by staff, and there is no substantive opposition to the development from a party to the proceeding before the Commission.

(55) The Commission should consider amending §13059 and, as applicable, §13055, to provide that staff report distribution costs shall be borne by the applicant for the coastal development permit.

g. Article 7, Public Comments §13060-13061

5.2.8.1. §13060. Written Comments on Applications and Staff Reports.

The proposed revisions to this regulation at §13060(a) and (c) would allow the executive director to "orally summarize", rather than distribute actual copies of,

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"lengthy", "similar", or "late received"⁶⁴ communications by the public on applications and staff reports, and thus create a diminution in the substantive and publicly available content of the coastal program. The revision would deprive Commissioners of potentially significant parts of the administrative record. The revision is unnecessary, however, if the Commission determines to implement previous recommendations, made above, in addition to retaining the existing §13060, that would make all communications received by the Commission on an application immediately available via its Web-site. To the Governor and Legislature, we recommend legislative funding of this important coastal program enhancement.

The revision also recommends a requirement that written communications be made to staff in the "appropriate district office" prior to the day of hearing, or in the "hearing room" on the day of hearing.

With regard to the former, which experience has shown from time to time to result in misdirected or lost submittals, the Commission should consider establishing a centralized "Office of the Clerk", which, as in many other agencies, would receive and appropriately redistribute communications within Commission staff, to Commissioners, and the public. In the interest of bringing appropriate and timely closure to submittal of written communications at the Commission meeting prior to, or during, the public hearing, the Commission should consider limiting day-of-hearing communications to oral testimony, rebuttal, and submittal of written questions to staff and other active parties in the proceeding, as appropriate.

With regard to the latter, the Commission appears unnecessarily removed and dysfunctional in the modern communications period to disclaim, as the last sentence in §13060(b) does, any responsibility for receiving ("delivery of") written communications to the hearing room. While third party facsimile charges might be reasonably declined as a coastal program cost-saving measure, it would appear to be a very modest measure for Commission staff to install a lap-top computer, with fax and e-mail modem capacity, and a printer, at its hearing site staff room or other similar nearby location to receive (and send) communications during the Commission meeting.

Recommendation: (56) The Commission should clarify and extend the distribution rule for written and oral communications by:

- (a) Requiring electronic posting on the day of receipt of all written communications on any application, with an electronic (or mailed) notice (or paper copy) thereof, as feasible

⁶⁴ The terms are not defined in the regulations. Experience indicates that staff, from time to time, may be substantively selective in its presentation of correspondence and other attachments to Commissioners and/or the public.

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for the applicant and all active parties in the proceeding.⁶⁵ Communications should be posted on an accessible Web-site that allows interested persons to send follow-up communications, discuss them on-line, or down-load them.

- (b) Providing for computer dictation (voice recognition) equipment, including telephone hook-ups, at each Commission district office to facilitate immediate transference of oral testimony on a pending application to the administrative record (on disk) and to the Commission's Web-site.
- (c) Adopting and widely advertising reasonable rules regarding firm deadlines, sufficiently far in advance of key steps in the regulatory process, for submittal of communications to allow staff, Commissioners, applicants, appellants, and other interested persons adequate time for reading, analyzing, and responding to them.⁶⁶
- (d) Directing the executive director to provide facsimile, e-mail, and printing/copying equipment at the Commission meeting venue to receive and send communications, consistent with applicable rules governing pending applications.

(57) The Commission should decline the proposed revision for oral staff summaries of public correspondence

⁶⁵ This recommendation would require each Commission office to be equipped with one or more scanners and appropriate and trained clerical staff to transfer communications on paper to electronic format and post the information on the Commission's Web-site.

⁶⁶ Two key components of a disciplined submittal schedule would be (1) a cut-off on communications to staff after the posting of applicant's "pre-application" to provide staff with sufficient time to conduct its analysis and prepare the staff report, and (2) a similar cut-off at least five (5) working days prior to the date of hearing to provide Commissioners time to review the submittals. Given the substantial time burden on Commissioners' professional time, consideration should be given by the Governor and legislative leaders to making Commissioners compensated full-time/part-time officials on the model of the Air Resources Board and other similar state agencies whose mandate(s) govern a similarly vital segment of California's interrelated economy and environment as the Coastal Commission.

contained in §13060(c).

(58) Rather than rely on a decentralized pre-modern system for receiving and filing communications on applications, the Commission should consider supporting the executive director to establish a centralized office within the Commission to receive, store, maintain, and distribute all communications through contemporary technology.

(59) The Commission should adopt a rule within §13060 to limit day-of-hearing communications to oral testimony, rebuttal, and submittal of written questions to staff and other active parties in the proceeding, as appropriate.

(60) All written and oral testimony by staff, applicants, appellants, and any other party should be submitted to the Commission as truthful and correct, under penalty of perjury.

h. Article 8, Hearing Dates and Notice §13062-13063

5.2.8.2 §13062. Scheduling⁶⁷

As noted previously, the statutory and regulatory 49-day "set for hearing" clause is a programmatic remnant of previous biweekly Commission meetings and a bifurcated application and staff recommendation report process.⁶⁸ To facilitate reasoned application review, hearing, and decision procedures that provide maximum feasible regulatory certainty within the shortest practicable timelines, consideration of the following sequence for substantive or controversial applications is recommended, including to increase program efficiencies, reduce the amount of time required to render a decision, and thereby reduce applicant, Commission, and intervenor costs:

- (a) Substantive pre-application consultative process;
- (b) Carefully tiered sequential staff report preparation and distribution, and public review and comment periods;

⁶⁷ §13061 is proposed to be deleted and its substance reincorporated, although with amendments that are considered by the authors as adverse to Commissioner and public full understanding of potentially material matters, into §13060(c).

⁶⁸ Preliminary evidence, subject to further study, indicates that the Commission's coastal permit process on public hearing items may frequently take 130-170 days, but both shorter and longer regulatory review periods occur with some regularity..

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- (c) A fixed comment submittal cut-off date prior to the date of public hearing to provide adequate time for Commissioner review of the matter; and,
- (d) A provision for public hearing on the application, if desired by the applicant, within 49 days of the date on which the application is deemed filed (formally accepted for filing), and a scheduled Commission action on the application within 49 days of the close of the public hearing.

5.2.8.3 §13063. Distribution of Notice

The revised regulation proposes to set an unduly short 10-day notice of hearing schedule, which has been addressed above.

In a major departure from the full public understanding and maximum public participation provisions of §30006 and the existing regulation at §13063(a), staff now proposes a staff-determined, but presently undefined, "unreasonable burden" test to allow the applicant, or staff, to avoid written notice of public hearing to all known interested parties (§13063(b)(2)).⁶⁹

On the one hand, staff would limit notice of public hearing to persons who have made a special request for it, or are the applicant or an involved local government.⁷⁰

On the other hand, staff suggests (at §13063(b)(1)), contrary to 25 years of repeated coastal program experience, that "publication" of a newspaper notice may reasonably be expected to constitute "adequate or better notice to interested parties". No matter how inadequate snail mail may be to provide timely delivery of notice or documents in the condensed Commission regulatory process, directed personal delivery of both is significantly more effective in providing substantive notice and information than the scattered, voluntary (self-selective), obscure, often barely legible, and uncertain distribution provided by newspapers.

In a further step away from, and contrary to, the public participation mandates of §30006 and the current regulation at §13063, staff at proposed §13063(c) recommends that no notice of hearing is required where a person or agency is sent

⁶⁹ Including adjacent residents, property owners, other state and federal public agencies, and other interested persons, such as business, community, or environmental NGO's, unaffiliated community leaders, or local libraries.

⁷⁰ From the proposed revision, it is even unclear (if perhaps only for lack of provided cross-reference) whether an appellant, short of formally requesting notice of hearing, would receive it.

the Commission's arcane and user unfriendly⁷¹ regular meeting notice (§13015), or the executive director pursuant to §13017 acknowledges the unreliability of snail mail and utilizes newspaper, radio, television, posting, and any other similar 1950's technology in 21st Century California to provide public notice.

Recommendations: (61) The Commission should decline the proposed revision of §13063, regarding distribution of notice, as inconsistent with §30006.

(62) Regarding notice of public hearing on an application, the Commission should amend existing §13063 to provide for electronically posted (including transmitted to the full notice list), and where requested, mailed notice of the public hearing, at the time that the application is deemed by staff to be complete for filing, but no less than 30 days prior to the hearing date.

(63) In addition to (2), above, the regulation should further be amended to require the applicant to publish, every seven days during the pendency of the application, a legible notice, with a minimum size of 4 inches x two newspaper columns, in a conspicuous location in a daily and a weekly newspaper of general circulation to advise the public of the application and the Commission public hearing date, when set. To effectuate the "full understanding" of coastal conservation and development decision-making provided by §30006, newspaper publication shall be in English and any other language spoken by at least 5% of the population in the, or each, county in which the development project is proposed.

i. Article 9, Oral Hearing Procedures §13064-13068

5.2.9.1 §13064. Conduct of Hearing.

The existing regulation references only "permit" matters. To maintain internal consistency with other regulations, the reference should be to "application" and/or

⁷¹ The authors invite Commission comparison of its sister agency BCDC's meeting notices, which include an 8 1/2 x 11 inch format with legible print; maps with excellent public transit as well as automobile directions to meetings; generally neutral descriptions of pending matters; and the full name, direct dial telephone number, and e-mail address of the principal staff person(s) working on the matter.

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"development".

Coastal program experience from time to time has, unfortunately, shown that the "deemed most suitable" clause in the existing regulation substantially clouds, at the point of application, the "fundamental fairness to all parties" provision of the regulation, as when applicants, environmentalists, and local government officials have been afforded severely uncivil treatment by previous and some present members of the Commission in the conduct of public hearings.

Recommendations: (64) To maintain internal consistency within the regulations, consideration should be given to replacing the phrase: "hearing on ~~a permit matter~~ an application".

(65) As a modest measure to continue, and maintain, the generally high level of Commission decorum generally instituted by the current chairman and vice-chair, the Commission may wish to delete the relativistic clause "deemed most suitable" from the basic proposition that its public hearings "shall be conducted to ensure fundamental fairness to all parties..."

5.2.9.2 §13065. Evidence Rules

Many Commission staff reports and decisions are based on truthful and accurate evidence in the record. However, at times during the history of the coastal program, various participants - reflecting numerous divergent views - have correctly observed the fact that the Commission's evidence rules exclude undue repetition or irrelevant testimony, if the chair so orders, but not assertions to the Commission that have the texture of whole cloth, are without peer review or even likely support, or constitute obvious blatant misrepresentations of fact or law.

The lack, variously, of (1) coastal program documentary files and site-specific data⁷² at hearing, (2) interest in eliciting and requiring public and technical expert input, (3) mandatory post-permit action monitoring and reporting, and (4) accurate and complete minutes of the Commission's hearing and decision-making processes all contribute significantly to the occasionally weak, absent, or erroneous grounds on which some Commission staff recommendations and Commissioner decisions have professed to stand.

⁷² For instance, from the generally unknown and apparently dormant computerized "coastal resource information center" for storage and clearinghouse of information pertaining to estuarine, marine, and terrestrial coastal environments, which was authorized in 1982. (§30343.)

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Especially telling has been the absence of a requirement in the Commission's regulatory process that evidence be sworn under penalty of perjury and be submitted by all the parties, including staff, sufficiently far in advance of the public hearing to allow an informed consideration and rebuttal, as appropriate, of it during the hearing. Inevitably, serious doubts about the veracity or accuracy of written and oral testimony have generated efforts to import "objective" experts to referee among competing opinions, studies, and recommendations in such subjects as shoreline erosion, habitat analysis, and soil or geological stability.

Yet, as every student of epistemology knows, professional knowledge is in many ways related to the position of the knower or practitioner relative to his or her subject. The tradition of focused interrogatories and requirement to answer may be useful tool to elicit a more complete, and truthful, understanding of the subject, without requiring the formalities of a trial.

An alternative, less antagonistic or perhaps less legalistic, methodology to increase the quality of evidence before the Commission may be to locate its presentation, consideration, and review in an intentionally consensus-oriented convened forum before, and with, Commission staff, prior to accepting an application for filing. In this methodology, technically qualified and legally supported Commission staff or one or more Commissioners would convene all the parties in a fact-finding and -gathering conference to identify the greatest possible universe of consensus evidence, identify mutually agreeable and Coastal Act-consistent approaches to fill gaps in information, and agree on a peer review group to assist in resolving outstanding evidentiary issues to the maximum extent possible. Unresolved questions of fact, or law, would, along with consensus factual findings, be submitted to the Commission for adjudication, following oral argument limited to the points at issue.

- Recommendations:**
- (66) The Commission should consider establishing a panel (subcommittee) to evaluate the state of evidence before the Commission generally and consider whether to recommend to the full Commission a restructuring of the Commission's evidence rules in quasi-judicial regulatory matters.
 - (67) The Commission should require that all evidence submitted to the Commission in any proceeding regarding an application, including by staff, should be sworn or affirmed, subject to the rules governing perjury.
 - (68) The Commission should provide for timely submittal

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of all evidence in a proceeding regarding an application, with allowance for written interrogatories by active parties and staff, and a requirement for responses, prior to public hearing.

(69) As recommended above, the Commission should consider establishing a consultative pre-application process involving the applicant, Commission staff, and interested parties to identify applicable issues, available consensus evidence, gaps in information, and a methodology for addressing them, prior to filing of the application and preparation of a consensus-based staff report.

(70) As part of every action on a coastal permit, the Commission should require a clearly defined post-approval and -implementation monitoring program, with specified criteria and milestones to measure compliance, and periodic reporting thereon to the Commission and the public. As recommended above, the cost of such monitoring should be part of the overall permit application fee, payable by the applicant for the duration of the monitoring program.

5.2.9.3 §13066. Order of Proceedings

To affirm and protect the majesty of the coastal program, as well as to provide all participants with a well-recognized order to its affairs, the Commission's order of proceeding in public hearing should remain constant.

For the past 25 years, staff has played a unique advocacy before, and mediative role between, the Commission and the public hearing process, which subdivisions (a) and (b) reflect in locating staff's "presentation" outside the public hearing on the application.

In the previous communications era in which the coastal program began, it made sound functional sense for staff to consume substantial amounts of time to orally "present" the application, the staff analysis, and recommendation at the outset of each hearing item. The volunteer Commission, burdened by an extremely heavy planning, permitting, and exclusion workload, may not otherwise had the opportunity to consider the large and diverse quantities of information that were flowing into the staff offices and the various administrative records.

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However, in the contemporary period it is a fair question whether the professional Commission's, staff's, and the public's time may not be used to better advantage by - as recommended above - electronic posting of the staff report⁷³ and indeed all application materials significantly in advance of the public hearing, which would facilitate efficient review prior to the start of oral testimony.

As recommended above, the briefing of the application and winnowing of issues may substantially be moved to the pre-hearing phase, with the Commission's valuable public hearing time allocated to:

- (a) A swearing of all witnesses in the proceeding by the Chairman;⁷⁴
- (b) A concise summary of the application by the applicant (or statement of appeal by the appellant(s));^{75,76}
- (c) A statement of outstanding (unresolved) issues and applicable law or administrative precedent by Commission staff;
- (d) A focused presentation regarding outstanding factual or technical issues by an appropriately convened panel of experts, ;⁷⁷
- (e) A period of total fixed, but sufficient, time allocated to intervenors (active parties to the proceeding, including local governments or other public agencies with overlapping jurisdiction), both for and against the application and/or the staff report;
- (f) A period of total fixed time for members of the general public to address The Commission on the matter;
- (g) A period of total fixed time for rebuttal testimony by the applicant, appellant(s), and active parties to the proceeding, including staff;⁷⁸
- (h) A concise summary of the staff recommendation by the executive director in light of the complete hearing record; and,

⁷³ In addition the distribution of paper copies where requested.

⁷⁴ The purpose of this recommended first step is to enhance the formality and majesty of the coastal program, including through a more rigorous adherence to facticity and veracity.

⁷⁵ All witnesses should also be granted time to respond to previously submitted written interrogatories by other active parties to the proceeding, and by Commissioners.

⁷⁶ Questions posed by Commissioners through the Chair to witnesses should be in order at all times, although deference to witnesses' presentations and the orderly sequence of the proceeding would indicate that most questions should be reserved to the end of the public hearing.

⁷⁷ Whose testimony should also be sworn to maintain internal procedural consistency.

⁷⁸ Contrary to the recommended staff revision to §13066(b)(2), which would "allow" rebuttal testimony at the chairman's discretion, we recommend that the Commission adhere to the clear intent of §30333.1, which requires the Commission "to allow reasonable rebuttal time prior to the final vote for both applicants and appellants, if either so requests, in permit matters where new material is brought up and where equity would not be served unless such person is provided that rebuttal opportunity." We read "appellant" to include active parties to the proceeding, because to exclude them from the opportunity to rebut would be to create a one-sided procedure in applications de novo before the Commission, which the Legislatures presumably did not intend to create.

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(i) Questions by Commissioners to witnesses.

Since experience clearly shows staff to be a, if not the, principal party to any application, it would appear both prudent and functional for staff's participation to be formally included in the public hearing process, rather than to frame it from the outside before it starts and then to step into it as the last participant before it closes, as is current practice and the proposed revised staff rule recommends.

The effect of the authors' recommended revised procedure, when taken together with the previous recommendations for substantially enhancing the pre-application phase of the regulatory program, including through convening of the parties and utilization of contemporary technology, would be to:

- (1) Encourage and allow the Commission public hearing to focus on the significant outstanding issues regarding the application and staff report;
- (2) Provide the Commission with a defined and structured process to obtain maximally accurate and truthful information about the matter before it, including through focused disputation and elicitation of answers to questions by active parties, staff, and Commissioners on the hearing record;
- (3) Give applicants and other active parties to the proceeding a functional opportunity to present their respective positions, including through inquiries to, and responses from, the other parties; and,
- (4) Create a structured mechanism for the empaneling of experts to provide focused technical information and advice to the hearing process, again subject to questions by the parties.

The application of this recommended procedure to an individual application and staff report before the Commission may require more time than the current staff-driven and often disjointed and otherwise unsatisfactory public hearing process. However, the parallel recommendation of increased Commission (and applicant) reliance on administrative guidance (permit precedential decisions) may be expected to reduce the amount of time devoted on the Commission calendar to often repetitive or very similar permit matters, and thereby overall reduce the amount of Commission public hearing time on permit matters after an initial transition phase.

Recommendations: (71) The Commission should retain the existing preamble to §13066 and should consider even striking the implied variation inherent in the qualifier word "ordinarily".

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(72) The Commission should consider further defining⁷⁹ and implementing the recommended alternative order of proceeding by participants in its public hearing process, for the reasons stated above, in place of the staff-recommended revisions to §13066(a), (b), (c) and (d).

5.2.9.4. §13067. Speakers' Presentations

Commission staff recommends the deletion of this section, and its partial and revised reincorporation with §13068, "Other Speakers".

In subdivision (a), staff recommends continuance of the present practice that the Commission may establish ad hoc time limits for witnesses (speakers) at the start of any hearing, which have ranged from a pro forma low of one (1) minute on major permit applications where large numbers of people signed up to speak, to over twenty (20) minutes in relatively minor matters where only one or two persons testified.

Experience⁸⁰ indicates that the time allocation for testimony within public hearings has gone increasingly far afield from the "full", informed, and "widest" opportunities for public participation in coastal resource governance that is recognized as a public right by §30006. At public hearing, both the delivered substance and Commissioners' reception of testimony by witnesses are often perfunctory and outside the serious role assigned to it by the Coastal Act.

Contrary to staff's recommendation, the point of the public hearing process should be to elicit maximally accurate and truthful substantive information from the public to assist the Commission in rendering the best decision possible, with the widest possible support from all the parties.

We recommend the formal creation of, and substantial support for, an independent Office of Public Advisor to affirmatively assist all members of the public, including applicants, appellants, and other interested persons, to maximize the relevance of their written or oral testimony to the proceeding and issues at hand.

In an application review, hearing, and decision framework that is structured to achieve

⁷⁹ The authors, although students of, and practioners in, the California coastal program since 1973, are not attorneys and defer to learned members of the bar on technical-legal points raised by the recommendations in this memorandum, the purpose of which is to address the structural-functional capacities of the regulatory program within the framework of the Coastal Act and contemporary realities.

⁸⁰ The late Janet Adams, a co-founder of the coastal program in 1972, already called attention to the reduction of the public hearing process from a substantive informational to a pro forma legitimating process already underway in the predecessor Commission's program during a sharp exchange with then-Chairman Mel Lane over the then existing, and now seemingly luxurious, "3 minute rule" in 1975.

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these objectives, the desiderata of relevance and brevity will be achieved through affirmative civic training rather than theatrical performance, respect for the coastal program and imposition of accountability, and the practical demonstration that a broad range of public, private, and NGO participators in coastal affairs can and do make a significant difference.

Recommendations: (73) In lieu of the unsatisfactory mechanism set forth in §13067(a), the Commission should consider a rule that requires active parties, including staff, to submit their requests for time at public hearing prior to publication of the notice for it to the Chairman, who shall allocate reasonable time for presentations, responses, and rebuttals. Such allocation should be published in the hearing notice.

(74) The Commission should immediately create the independent Office of Public Advisor to assist all persons who appear, or wish to participate in, the regulatory program to maximize their understanding and provide for the widest and fullest functional opportunities to effectively take part, and contribute to, the coastal conservation and development decision-making.⁸¹

(75) Provision should be made for a fixed opportunity and time for members of the public who are not active parties to a proceeding to address the Commission on an application and staff report, including through:

- (a) Invitation at the time of recommended electronic posting of the application to all members of the public to submit comments by e-mail to the Clerk of the Commission, who would electronically distribute them to Commissioners and all active parties, including staff, and thereby maximize their effectiveness in the regulatory process;
- (b) Allocation of a minimum of 15 minutes to members of the public at large to address the Commission at public hearing on the

⁸¹ We recommend to the Governor and Legislature that \$500,000 be added to the Commission's FY 1999 Budget to implement this recommendation.

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application and staff report.⁸²

j. Article 10, Field Trips §13069

5.2.10 §13069.

The existing and staff-recommended regulation addresses only Commission field trips to "the site of any proposed project".

In the conduct of its activities, the Commission, however, may wish to visit other locations, including existing public accessways, recreational areas, scenic areas, and environmentally sensitive habitat areas where no coastal development permit application is proposed or pending before the Commission, or monitoring sites of completed projects.

Recommendation: (76) The Commission may wish to amend the first phrase of §13069, to state: "Whenever the commission is to take a field trip to the site of any proposed development project, coastal resource area, or public access or recreational site, the chairperson..."

**k. Article 11, Additional Hearings, Permit Application
Withdrawal, Off-Calendar Items, Amended Applications
§13070-13072 (-13074)**

5.2.11.1. §13070. Continued Hearings

The staff-proposed revision would provide notice of a continued or subsequent hearing pursuant to the unduly limited 10-day and other notice provisions recommended by staff in revised §13063, which are contrary to the full public understanding and widest opportunities for participation clauses of §30006.

Recommendation: (77) The Commission should, in place of the staff recommendation, require full notice of any continued public hearing to all active parties in the proceeding, and to all known interested persons, including local governments and

⁸² This time allocation is intended to be in addition to the time granted to active parties. In the event that a large number of persons appears at public hearing to orally address the Commission, the chairman may, of course, provide for added time or may consider convening a special public hearing forum for the matter by an appointed subcommittee of the Commission. The record of such a delegated special subcommittee public hearing should be transcribed, posted on the Commission's Web-site, and be provided to all Commissioners and active parties to the proceeding, including staff.

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other public agencies with overlapping jurisdiction over the matter, as recommended above.

(78) The Commission should require any party to a proceeding, including any Commissioner, who wishes to continue a hearing on an application to provide notice to all active parties, and the Commission, at least seventy-two (72) hours prior to the scheduled date of hearing.

5.2.11.2. §13071. Withdrawal of Applications

Experience has indicated that the Commission's current practice of allowing applicants to withdraw an application on the day of public hearing, and up the point of roll call on a vote on the application, maximizes applicants' opportunities to work the regulatory program to their advantage relative to oral staff reports, last minute agreements with Commission staff, Commissioner attendance patterns and articulation of positions after the close of hearing, and other factors, while severely disadvantaging public, including citizen, NGO, and local government, participants in the process by denying them prior notice to applicant's withdrawal. That lack of prior notice of intent to withdraw frequently results in wasted public hearing time, which frequently is repeated subsequently, as well as in significant unnecessary expenditure of intervenor's funds.

Recommendation: (79) The Commission should consider requiring any applicant who wishes to request a withdraw an application to file a notice with the Commission Clerk, and provide a copy thereof to all active parties in the proceeding regarding the application, at least seventy-two (72) hours prior to the scheduled date of the hearing on the application.

5.2.11.3. §13072. Procedures for Amended Applications

Late materially amended applications have posed a continuing problem to Commissioners and active or would-be active public participants, if they were aware of the amendment(s), in the coastal regulatory program. Just as there is a proper time for filing a complete application or completing and distributing the staff report on it, to provide an adequate period for public review, analysis, and comment, a fixed deadline and distribution process relative to the public hearing date should be in place for applicant's amendments to applications.

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Recommendation: (80) The Commission should promulgate a rule within §13072(a) that no applicant's new amendment to an application set for public hearing shall be accepted by Commission staff within twenty (20) days prior to the scheduled date of public hearing, and that the applicant shall be required to send a copy of the proposed amendment to all active parties to the proceeding. Amendments proposed in response to the staff report or recommendation, or to intervenors' submittals, would be in order, of course.

(81) The Commission should decline staff's recommended revisions at subdivision (a)(2) and (b) as unnecessary if it adopts recommendation (1), above.

5.2.11.4. §13073. Applicant's Postponement.

Experience has shown that applicants' requests for postponement frequently occur because of (1) lateness in the mailing and delivery of staff reports, and/or (2) the time required to review, analyze, and respond to proposed special conditions or findings in staff reports. The recommendations above about distribution and posting of the staff report thirty (30) days prior to scheduled hearing is intended, in part, to remove a principal ground for applicants' postponements, which would likely leave only two programmatic grounds for postponement requests by applicants:

- (a) Interrogatories and answers between the dates of staff report publication and the public hearing may produce substantial new evidence that affects, or is likely to affect, Commission action on the application, and the applicant requires additional time to analyze the new evidence and respond to it.
- (b) Oral public or expert testimony and questions by Commissioners at public hearing may raise questions, which the applicant may prudently consider to pursue through additional analysis and formal response, prior to Commission action.

Limiting applicant's postponement to these two situations after publication of the staff report would obviate staff's recommended §130739(a) and (b). All required noticing of a postponed hearing should be fully consistent with §30006 and the recommendations above that are based on it, rather than any truncated notice provision as currently recommended by staff.

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Recommendation: (82) The Commission should decline to adopt staff-recommended §13073(a) and (b) in favor of limiting the grounds for applicant's postponement, by right, as proposed above to the two situations where either substantial new evidence or fundamental questions enter the public hearing record after the date of staff report publication.

(83) The Commission should require that notice of postponed public hearing shall be provided by the applicant to all persons who received the initial notice, and shall be to a time and place certain.

5.2.11.5. §13074. Rescheduling.

§13074 would be rendered superfluous if the Commission adopts the rule proposed in Recommendation (2), immediately above.

I. Article 12, Staff Recommendation §13073-13077

5.2.12.1. §13073-13077. Analysis, Evidence, Recommendation, Distribution, Responses

Commission staff proposes to repeal existing regulation §13073, 13074, 13075, 13076, and 13077 in their entirety and incorporate them, respectively, in §13057, 13060, 13057, 13059, and 13060. (Statement of Reasons, pages 19-21.)

However, on closer review, it appears that a key provision in existing §13073(a) is omitted from §13057, to the detriment of a complete record and the ability of active parties in the proceeding to review and respond to it, prior to Commission decision. The proposed revised regulation omits the rule requiring the entering into the administrative record of evidence received or taken by the executive director after public hearing, but before a decision, on an application, as well as the existing rule that "all affected parties shall be given a reasonable opportunity to respond prior to the deadline for preparation and mailing of the staff recommendation."

Experience has identified the occasional failure of staff to place subject evidentiary submittals in the administrative record, as well as the more numerous gaps in staff's affording active parties an opportunity to review, much less respond to, evidentiary submittals received by the Commission shortly before completion of the staff report or articulation of (often revised) staff recommendations. The recommendation that all evidentiary submittals be promptly posted and distributed in printed form should,

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however, substantially cure this latter problem.

Similarly, whereas existing (and recommended by staff to be repealed) §13074 allows that "any interested party may submit written evidence, including rebuttal arguments, to the commission" at any point up to the close of the public hearing, proposed revised §13060(c) by contrast would allow, at the executive director's discretion, an oral summary in lieu of distribution of communications deemed "lengthy", "sizable", or "too late received to copy". (Emphasis added.) Given the importance of written rebuttal comments, they should be conveyed by staff to the Commission in full, rather than in digested form.

Although the provisions of §13075 are stated to be incorporated into §13057, as recommended by staff to be revised, three potentially very important existing provisions that benefit Commission and public understanding, as well as a consistent and efficient coastal program, are proposed to be deleted without identification:

- (a) That the staff report and recommendation "shall include any questions [regarding the proposed development and its Coastal Act consistency] that have not been answered by the applicant or by interested parties [e.g., appellants];
- (b) That the staff report "may include a recommendation that the Commission take a field trip to the site of any proposed project when the executive director judges that this would materially assist it in understanding and voting on the application"; and,
- (c) That the "staff recommendation shall also relate the proposed findings [on a coastal permit application or appeal] to prior decisions of the Commission to assure consistency of the recommendation with decisions of the Commission that, pursuant to Public Resources Code Section 30625(c), are precedents for the issues raised by the application." ⁸³

Whereas existing, but staff-recommended to be repealed, §13077 specifically recognizes, consistent with §30006, that "any person may respond in writing to a staff recommendation and report", consistent with applicable rules governing time and other procedures of evidentiary submission, recommended revised §13060, which the Statement of Reasons identifies as incorporating the provisions of §13077, does not contain any parallel provision.

Recommendations: (84) In reorganizing and relocating §13073, the Commis-

⁸³ Staff-recommended revised regulation §13057(b)(2), as previously noted, limits the consideration of the staff report and recommendation to "a discussion of related previous applications", rather than the Commission's guiding (precedential) decisions on point. As is well understood, the coastal program terms "application" and "Commission decision" are not synonymous.

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sion should retain the existing rule that evidence regarding an application received or taken by the executive director after public hearing, but before preparation of a staff report or a decision by the Commission, if provided to one or more Commissioners or relied upon by staff, shall be required to be entered into the administrative record for the matter. The rule should also continue to provide that all affected parties be given a reasonable opportunity to respond to such new evidence prior to the deadline for preparation and mailing of the staff recommendation.

(85) In reorganizing and relocating §13074, the Commission should retain the rule that written rebuttals to the staff report or any other late evidentiary submittal be provided in full to the Commission.

(86) In reorganizing and relocating §13075, the Commission should retain the three existing rules regarding (a) identification in the staff report of unanswered questions by applicants or other parties, (b) the executive director's ability within the staff report to specifically recommend field trips to the site of a pending coastal permit application, prior to public hearing, and (c) the proposed findings in the staff report relate issues raised by the application to previous applicable guiding (precedential) decisions of the Commission.

(87) The Commission should require that the relocated and reorganized §13077 specifically continue to advise the public that any person may respond in writing to any staff report or recommendation, consistent with applicable rules governing the timing and distribution of written submittals.

**m. Article 13, Commission Review of Staff Recommendation
§13080-13087**

5.2.14.1 §13080-13087. Alternatives for Review of Staff Recommendations; Staff Recommendation included in Application Summary; Verbal Staff Recommendation; Bifurcated Hearing and Staff Recommendation; Presentation of Staff Recommendation and Responses of Interested Parties.

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Staff proposes repealing §13080, 13081, 13082, 13083, and 13083, and, according to the Statement of Reasons, combining and reincorporating them in §13090 (generally), §13070 (continued hearings from §13083), and §13066 (order of proceedings from §13084).

n. Article 14, Commission Voting Procedures §13090-13096

5.2.14.1. §13090. Voting - After Recommendation

§13090(a), in part, introduces the new concept of a "final staff recommendation", perhaps to distinguish it from the "partial staff report" characterized at §13057(d). However, the term is not specifically defined in the regulations and hence ambiguous and likely to introduce new confusion into the coastal program.

§13090(b), in part, introduces the new concept of "the public testimony portion of the public hearing", which suggests that staff contemplates other components of the public hearing that do not involve public testimony. No such components are identified or defined elsewhere in the regulations⁸⁴ and the phrase "of the public testimony portion" therefore appears redundant and therefore unnecessary.

§13090(c)(2)(B) proposes that where staff bifurcates the staff report and staff recommendation into two documents, that "public testimony and other evidence presented at public hearing" and "Commissioner comments" be given what appears to be a less precise and perhaps less attentive "due consideration" in the preparation of the staff recommendation on the application, whereas existing regulations at §13075 - which are proposed by staff for repeal - require with much greater specificity and clarity that the staff recommendation "shall contain recommended written responses to significant environmental points" raised in the public's, public agencies', and Commissioners' evaluation comments regarding the application.

The formulation in §13090(d) ["persons who testified at hearing conducted pursuant to §13066"] suggests that, or renders ambiguous whether, the opportunity will (or may) be denied for an active party with standing based on written testimony to participate at oral hearing on a staff recommendation in a bifurcated staff report/recommendation case. Pursuant to the mandatory "widest opportunity to participate" clause of §30006, the regulation should extend the ability to participate in oral testimony in said situation to parties that have participated at previous hearing on the staff report through written testimony.

Staff-proposed §13090(e), in part, would limit the opportunity to testify on a

⁸⁴ Rebuttal testimony by a party to the proceedings constitutes "public testimony".

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Commission motion that differs from either the application or Commission staff's recommendation with conditions to the applicant, appellant, and the executive director, thereby excluding - contrary to §30006 - all other active parties (e.g., including local governments, other public agencies, NGO's, etc.) to the proceeding in matters where the Commission retains original permit jurisdiction or proceeds de novo.

Recommendations: (88) The regulations should consistently refer to the "staff report" where the document defined in §13057 is intended, and to the "staff recommendation", at whatever point in the process it is given in writing or orally, where the component of the staff report defined in §13057(a)(6) is intended. Unless staff has another reason for creating this concept, the Commission should decline to create the new concept of a "final staff recommendation" as unnecessary to the efficient and clear (understandable) functioning of the regulatory program.

(89) The Commission should delete the phrase "of the public testimony portion" from §13090(b), unless staff has another reason for creating this new concept.

The same recommendation applies to sentence 1 in §13090(c)(2).

(90) The Commission should decline to adopt the "due consideration" clause proposed by staff in §13090(c)(2)(B) and retain the existing rule that Commission staff reports and recommendations contain recommended written responses to significant environmental points raised by the public, public agencies, and Commissioners.

(91) The Commission should clarify §13090(d) to extend the same opportunity for oral testimony on a staff recommendation, in a bifurcated staff report/recommendation case, to parties who participated in writing at hearing on the staff report, as to those parties who testified orally.

(92) The Commission should revise §13090(d) to provide for brief and specific comments by all active parties, including staff, on a Commission motion on an application

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that differs from what has previously been considered in the regulatory proceeding (i.e., applicant's, staff's, or intervenor(s)'s requests or recommendations).

5.2.14.2. §13091. Voting Time and Manner.

Staff recommends repeal of the existing regulation that provides for Commission voting on an application at a meeting following the one at which the public hearing is held.

As recommended above, the Commission, however may wish to consider whether holding two shorter meetings each month may not provide a more efficient method, when compared to the lengthy three- and four day meetings now held once a month, for (1) obtaining public testimony at a first, or preliminary, hearing on the staff report (analysis, findings, and perhaps a tentative recommendation), (2) allowing for Commissioner input prior to preparation of the staff recommendation and such further staff evaluation as may be prudent and necessary, and (3) obtaining a fully considered staff recommendation based on the record as a whole at the second meeting, where testimony would be limited to unresolved points in the staff recommendation.

The argument of a decade ago that the Commission should, on reduced budget grounds, reduce its meeting frequency to week-long gatherings once-a-month, would be met squarely, and appropriately, by including these Commission regulatory costs in the full cost recovery program recommended above. Applicants, if provided with heightened certainty of process and the anticipated reduction in total time required by it, may support its efficiencies and attendant overall cost reductions to them. All parties, including intervenors, would likely benefit from the opportunity to reflect on, and further evaluate evidence, between the hearing on the staff report (analysis) and the staff recommendation.

Recommendation: (93) The Commission should consider returning to a shortened biweekly meeting schedule to consider applications (and other matters) and therefore should retain the opportunity, by regulation, to bifurcate hearings on the staff report and the staff recommendations, and to vote at a subsequent meeting on the application/staff recommendation.

5.2.14.3. §13092. Effect of Vote Under Various Conditions.

Staff's proposed revision to §13092(a) would deem a Commission vote on an application to "include the terms proposed in the project description as modified by the

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applicant at the hearing and the conditions and findings proposed in the staff report as modified by staff at the hearing." (Emphasis added.)

Experience has repeatedly indicated significant confusion or uncertainty among both the public and Commissioners about the exact contents of such modifications, which frequently are made orally and in some haste. The lack of clear understanding created by this process creates a clear inconsistency with the right to "public understanding" of coastal program decision-making recognized in §30006. The remedy for this problem may be found in Commission staff's, like many applicants and other parties before the Commission, bringing to, staffing and/or making available at hearing, a portable computer and printer/copier/projection screen that virtually instantaneously produces and displays any modifications in written form for the entire hearing.⁸⁵

Staff-proposed §13092(b) would allow "any commissioner", which pursuant to §30301(a), (b), (c), and (d) and §30301.5 includes four non-voting ex officio Commissioners, to make a motion to "add, delete, or modify" proposed terms, conditions, or findings relative to an application. The Coastal Act and Robert's Rules of Order are silent on whether a non-voting ex officio member can make a motion regarding an application in the regulatory process. We urge the Commission to expressly consider this rule, which was not previously addressed in the Commission's regulations.

Recommendation: (94) The Commission should clarify §13092(a) to require that all substantive modifications be prepared, distributed, and displayed in written form prior to any vote thereon by the Commission.

(95) The Commission should determine, whether under color of the Coastal Act, non-voting ex officio members of the Commission are or should be permitted to move to add, delete, or modify proposed terms, conditions, or findings regarding an application in the regulatory process.

5.2.14.4. §13093. Straw Votes.

The Commission repealed the regulation allowing for non-binding "straw" votes in 1980, but the repealed heading, and notes to authority and statutory reference continue to clutter the Commission's body of regulations.

Recommendation: (96) The Commission should expunge all repealed

⁸⁵ Such equipment was already in successful use during the early 1990's in US EPA's San Francisco Bay-Delta estuary management program.

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regulatory sections, headings, or citations from its body of regulations to eliminate clutter and avoid confusion.

5.2.14.5. §13094. Voting Procedures.

Experienced Commission chairs have, in the interest of meeting efficiency and economy of time, relied on application of previous roll calls during the same meeting day to permit applications before the body to avoid unnecessary repetition and thereby expedite the order of business. §13094(a) should be amended to reflect that existing Commission procedure.

During a typical Commission meeting in 1996-1998, the Commission has been scheduled to take ±60-90 roll call votes, and sometimes more, depending on the number of substantive amendments that may be proposed to pending applications and other matters during its deliberations. Assuming that 60 seconds are consumed by each roll call, the Commission may⁸⁶ use 1 to 1.5 hours per month to tally its membership, which clearly could be used more productively, given available modern machinery to tally and record votes, to afford additional time for public testimony, Commissioners' questions and deliberations, or regular brief recesses during otherwise long meeting days.

Recommendations: (97) The Commission should amend §13094(a) to provide that following establishment of a roll call on an application during the Commission meeting day, the chairman, with the consent of the Commission, may order the application of the previous roll call to other votes on applications before the Commission during that meeting day.

(98) The Commission should consider obtaining modern portable electronic vote tallying, display, and recording equipment.

5.2.14.6. §13095. Voting by Members Absent from Hearing.

The Commission's present, or proposed revised, rule on Commissioner(s)'s familiarization with the administrative record, where he or she has been absent from all or part of the oral public hearing, does not provide for a constant mechanism whereby the Commission(s) may become familiar with the proceeding the he/she/they has/have missed. Optimally, Commissioners would not leave the meeting room during a public hearing, as they do now because of a lack of structured recesses during the

⁸⁶ Chairman Areias has reduced that amount of time by an estimated third.

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meeting day. Given the practical limitations on a Commissioner's ability to watch even a small-screen replay of the missed (part of) the proceeding, if it were provided by staff using readily available mini-cam recorders, while also continuing to participate in the then on-going public hearing or other deliberation, it would appear preferable that Commissioners remain in the hearing room during the entirety of a proceeding, or else abstain from voting on a matter when their absence is compelling and unavoidable. Commissioners who miss an entire hearing, on which a vote may be scheduled for a subsequent meeting, should automatically be provided with a copy of the audio-visual tape of that hearing to familiarize themselves with it.

Recommendations: (99) The Commission should consider amending §13095 to provide that Commissioners who have left the public hearing room during a proceeding should refrain from voting on the matter.

(100) The Commission should revise its conduct of meeting rules to provide for one or more recesses during the meeting day, consistent with State of California Labor Law or comparable law governing public employees.

(101) The Commission should enhance and universally apply its combined audio-video recording of all matters before the Commission, provide a copy of the tape for any public hearing to any Commissioner who has missed it, and consider up-loading the tape for the entire Commission meeting to the Commission's Web-site when high speed communications lines become available for it in many California communities later in 1998.

5.2.14.7. §13096. Commission Findings.

Staff proposed revisions to §13096(a) require, including by unarticulated cross-reference to §30604 and the California Environmental Quality Act, findings of fact and conclusions of law regarding the consistency of any coastal development permit application with all applicable policies of Chapter 3, or with a certified LCP, where one exists (pursuant to §30604(b)).

The latter omission is material, since experience indicates that Commission staff from time to time has appeared to exclude, or disregard, the certified LCP as the applicable standard for review and findings for coastal permit applications and decisions.

Experience with the formulation of findings in the coastal regulatory program indicates

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a substantial operational reluctance of Commission staff, from time to time, to prepare accurately revised findings to reflect Commission decisions that, in their facts, reasoning, or conclusions, venture outside or extend beyond, or contrary to, the staff's recommendation. As the Commission's record since c. 1980 shows, revised staff findings are especially subject to error and dispute. The problem with findings is further compounded by the Commission's ill-considered abandonment of the previous practice whereby full and detailed minutes of hearings were prepared and distributed in a timely fashion to Commissioners and the public.⁸⁷

Proposed revised §13096(b) appears insufficient for several reasons, which the Commission is invited to address before finalizing and acting on this important rule:

First, (as recommended above) where applicants, appellants, other active parties to a proceeding on an application dispute factual evidence or reasoning contained in a staff report, or provide site-specific evidence or other significant environmental comment as part of their written or other submittal(s) within the applicable procedural and evidentiary rules of the Commission, the staff recommendation should be required to reflect and address them, and the Commission's reliance on them (if it occurs), in proposed staff findings on the application.

Second, where the executive director empanels experts to advise the Commission on a pending application, the staff findings should be required to specifically reflect that advice, as well as any interrogatories and answers provided by the applicant and intervenors during the regulatory process.

Third, where rebuttal testimony is offered at public hearing on the application, or additional testimony is provided to the staff recommendation, the findings should address such testimony.

Fourth, where active parties, or Commissioners, specifically disagree with a proposed finding of fact or law by Commission staff on an application, or a recommended decision, and wish consideration by the Commission of alternative findings, they should be required to submit, ten (10) days prior to hearing, draft alternative findings to the executive director, each Commissioner, and all active parties in the matter.⁸⁸ Commission staff and all active parties should be required to confer no less than five (5) days prior to the date of hearing to agree, to the maximum extent practicable, on

⁸⁷ Short of retaining the transcription services of the Commission's excellent court stenographer, the record of Commission public hearings has, unfortunately, become inaccessible to the public and many applicants of limited means. Audio tapes of Commission meetings have, for a variety of equipment, poor meeting venue sound quality, and lack of proper or attentive use of equipment (such as off-microphone statements or questions), depending on circumstances been of substandard and uneven quality.

⁸⁸ This, in turn, requires that draft findings proposed by staff be served on Commissioners, applicants, and intervenors sufficiently far in advance to allow review and preparation of any alternative findings.

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consensus findings of fact and law regarding the application and recommended decision. Consensus findings should be immediately posted on the Commission's Web-site, be served on each Commissioner by expedited delivery or e-mail, and be served on each active party and known interested person by expedited delivery or e-mail.

Fifth, all active parties, including staff, should be afforded a specified amount of time at public hearing to summarize their recommended findings and to answer questions by Commissioners.

Sixth, where the Commission declines to adopt, in whole or part, staff's recommendation, including any findings of fact or law in it or in the staff report, the prevailing side should prepare draft revised findings of fact and law in cooperation with Commission legal staff. Prevailing Commissioner(s) should, orally or in writing, state the basis (-es) for their action(s) in sufficient detail to allow preparation of revised findings. Revised findings shall be noticed, distributed (including through posting on the Commission's Web-site) and scheduled for Commission hearing and action no later than sixty (60) days following the date of Commission decision on the application.

Recommendations: (102) As already recommended above, the Commission should specify the content of cross-referenced substantive rules, as here with regard to the standards for review and findings for coastal permits before and after LCP certification.

(103) For the reasons stated above, the Commission should decline to adopt staff's recommended revised §13096(b) and consider adoption of the six alternative rules proposed above.

(104) For the reasons stated in Part (6), above, the Commission should decline to adopt sentences 1 and 2 in staff's recommended §13096(c), but retain the third sentence.

o. Article 15, Consent Calendar §13100-13103

5.2.15.1. §13100. Consent Calendar.

As experience shows, when this regulation is applied in conjunction with the substantive unchangeability rule for staff-proposed permit conditions on consent

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calendar items in §13102 (sentence 2), it generally renders staff the absolute master of items on consent, notwithstanding that a staff-proposed special condition may be ill-considered in light of the record as a whole, ineffective, or unlawful. At present, the only - undesirable - remedy is for the item to be pulled off the consent calendar for rescheduling to a subsequent meeting's regular public hearing or consent calendar. (See, §13102.)

A fairer and more efficient procedure for staff, the applicant, and the Commission would be to require Commission staff to confer with the applicant about its intended recommendation, and any special conditions proposed therein, at least five (5) days prior to the deadline for mailing (posting) of staff reports/recommendations for the hearing on which the matter is scheduled to be considered on the consent calendar. Any active party to the proceeding should, consistent with recommendations above, also receive a copy thereof.

Recommendation: (105) The Commission should amend §13100 to clarify the second phrase to provide for a mandatory conference, at least five (5) days before the date of staff report mailing, between Commission staff and the applicant about any recommended special condition for an item on the consent calendar.

5.2.15.2. §13101. Consent Calendar Procedures

In the context of the framework for pre-application review and cooperation recommended above by the authors of this memorandum, it would appear desirable to fast-track any application that staff deems qualified for consent calendar scheduling, and where posting and noticing of the proposed application raises no substantial public controversy within a specified period of time (e.g., twenty (20) days), for Commission action on the next available Commission meeting calendar.

To effectively monitor the implementation of consent calendar items, including their potentially otherwise unforeseen cumulative effects on coastal resources and public access to and along the shoreline, a one year and five year post-decision monitoring and reporting program by applicants and staff should be conducted.

Recommendation: (106) The Commission should adopt a staff fast-track schedule for applications where the recommended pre-filing coordination and review determines the application to be qualified for consent calendar scheduling and no substantial public

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controversy is raised within twenty days following electronic posting and noticing of the pendency of the application.

(107) The Commission should adopt a rule to require the monitoring, at one and five year intervals, of the implementation, including any unforeseen cumulative effects, of any development approved on the consent calendar, and biannual (every 6 months') public reporting thereon.

5.2.15.3. §13102. Consent Calendar Items: Conditions

Please see the recommendation by the authors, based on experience, regarding §13101, in relevant part.

5.2.15.4. §13103. Public Hearings on Consent Calendar.

By not formalizing an opportunity for public participation and input prior to Commission public hearing on the consent calendar, or requiring timely advance notice of objection based on specific Coastal Act or LCP policies, the proposed regulation is likely to continue the unfortunate experience witnessed all too often where a neighbor or other member of the public comes to plead with the Commission as an administrative forum of last resort after various local government panels have been exhausted to no avail. The preamble statements of legislative intent make it rather clear that the Coastal Commission was not established to function as a board of neighborhood and minutiae review.

The Commission is invited to consider:

- (a) the immediate streamlining of the consent calendar procedure by
 - (1) requiring early notice of both the pendency of an application that may qualify for consent, and (2) notice of intended opposition to the approval and issuance of a coastal permit in consent, which would constitute the requisite qualification to appear at hearing; and,
- (b) directing staff to perform a study of coastal permits approved on the consent calendar since 1988, including as to any unforeseen cumulative effects, and in cooperation with affected local governments, to determine whether the Commission should process an urban land exclusion for any specified area pursuant to, and consistent with §30610.5.

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The purpose of the latter study would be to identify, based on the factual record, whether even the reduced cost, time, and staff burdens imposed by consent calendar coastal permit processing may be avoided, consistent with the Coastal Act.⁸⁹ One consequence of such institutional resource reallocation would be, potentially, to free limited Commission staff resources to higher Coastal Act priority tasks.

Recommendations:

(108) The Commission should consider revising its Consent calendar hearing procedure to require (a) full notice of the pendency of an application that may qualify for consent calendar processing, and (b) persons to file a substantive notice of intended opposition prior to the scheduled public hearing date on the consent calendar with the Clerk of the Commission and to provide substantive notice of it on the applicant, to obtain standing to testify at the public hearing.

(109) The Commission should direct staff to prepare a ten-year study, in cooperation with local governments, of coastal permits approved on consent, and report thereon no later than October 15, 1998, including the extent to which urban land area exclusions pursuant to §30610.5 would reduce private and public permit processing costs and what terms and conditions may be necessary and prudent to protect coastal resources and public access if such areas were excluded from the permit requirement.

p. Article 16,⁹⁰ Permit Revocation §13104-13108.5

Commission staff in its proposed revisions to the regulations does not address the matter of permit revocation.

q. Article 17,⁹¹ Reapplication §13109

Commission staff in its proposed revisions to the regulations does not address the matter of permit reapplication here.

⁸⁹ §30610.5(b) specifically provides that urban land area exclusions shall be subject to specific terms and conditions imposed by the Commission.

⁹⁰ This existing article of Commission regulations is not addressed in staff's revisions.

⁹¹ This existing article of Commission regulations is not addressed in staff's revisions.

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r. Article 18, Reconsideration §13109.1-13109.6

5.2.19.1. §13109.2. Initiation of Proceedings.

Subdivision (a) requires an applicant who wishes to file for reconsideration of a Commission action (on an application, or Commission terms and conditions of approval (or findings for denial)), to do so within thirty (30) days following the Commission's vote, notwithstanding that Commission staff may not prepare and provide a record of decision within that time.

The guiding statutory provision occurs at §30627(b)(2), which requires the reconsideration to be filed within 30 days of the decision by the Commission. Where the Commission votes up or down on a clear-cut approval or denial there is no issue. However, where the Commission takes an action different from the staff recommendation, alters or imposes new conditions of approval that are not available to the applicant in writing at the day of hearing, or relies on oral evidence that require(s) revised findings, the applicant clearly lacks a finite record of decision on the basis of which to frame a substantive, rather than pro forma, request for reconsideration.

In subdivision (a), the staff-proposed revision would replace the current plain requirement that a request for reconsideration of an application, or Commission terms or conditions of approval, be filed within a short time period following initial Commission action with the executive director, whose location is finite and well-known, with the ambiguous term "appropriate district office". The regulation does not define the caveat "appropriate", which may depend on the interpretation or institutional bureaucratic reorganization of, and by, staff, a condition that a permit applicant cannot reasonably be expected to know or fathom.

Recommendation: (110) The Commission should revise §13109.2(a) to provide that the 30-day period within which an applicant may file a request for reconsideration shall toll on the date following the day on which he or she receives, by registered or certified mail (or expedited delivery), a complete record of decision from the Commission with regard to the matter. Such record of decision should, at a minimum, contain the Commission-adopted staff report, any approved revised findings, and adopted minutes or other comparable certification of Commission action on the application.

(111) For clarity and certainty of process, the Commission

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should delete reference to "the appropriate district office" in 13109.2(a) and instead require the request to be "in writing and be received by the executive director at the Commission office at which the application was filed within thirty (30) days following the date on which the applicant received the record of Commission decision regarding the application."

5.2.19.2. §13109.4. Grounds for Reconsideration.

Contrary to the plain requirement in §30627 (a) and (b) for the Commission to promulgate regulations to provide procedures to clarify the grounds for Commission reconsideration of a previous coastal permit decision pursuant to §30627(b)(3), §13109.4 merely contains a cross-reference to the statutory section in general, which appears designed to frustrate and minimize applicants' understanding of Commission procedures in this vital substantive regard.

Recommendation: (112) The Commission should work with legal staff and interested parties to prepare a cogent clarification of the "relevant new evidence" and "error of fact and law" grounds for requesting reconsideration in §30627(b)(3), and incorporating them in a draft regulation that is made available for public review and comment consistent with applicable law.

5.2.19.3. §13109.5. Hearing on Reconsideration: Distribution of Preliminary Recommendation.

On its face inconsistent with the informational requirements established by §30006, subdivision (a) provides for executive director notice of the Commission's hearing on the reconsideration request pursuant to the truncated requirements of staff-proposed §13063, but then limits the requirement for distribution of the executive director's report and preliminary recommendation on the request to the commission, but not the applicant, active parties at permit review and hearing, or other known interested parties. This exclusion of the applicant, active parties in the application review, and known interested parties, including public agencies with overlapping jurisdiction, is especially egregious given that §30627(d), in relevant part, treats any Commission-granted reconsideration as a new application. Similarly, it is difficult to understand how the "applicant and all aggrieved parties"²² can be expected to participate in any intelligent manner at the hearing provided by §13109.5(b) if they receive no notice or a copy of the staff recommendation.

²² Whatever that may mean in this case.

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In addition, Commission staff's proposal in §13109.5(c) is equally unfathomable, although for other reasons. As recommended for revision, it provides that any Commission-approved request for reconsideration, whether of a previous denial or involving terms and conditions (that may affect public access, recreational areas and opportunities, environmentally sensitive habitat, critical public infrastructure, cumulative impact considerations, or other priority Coastal Act objective) be processed as an administrative permit pursuant to the regulations at §13145-13168, with all of the truncated noticing, review, and amendment procedures that process provides!⁹³

Recommendations: (113) The Commission should revise §13109.5(a) to require notice and distribution of the request for reconsideration, staff recommendation, and scheduled time-certain date for public hearing to the applicant, all active parties at application review, and all known interested persons, including local governments with overlapping jurisdiction.

(114) The Commission should decline to adopt staff's recommendation for the first two sentences in §13109.5 and provide instead a rule that requires:

- (a) That the application de novo upon the Commission's granting a request for reconsideration be classified, noticed, heard, and decided according to the Commission's procedures for regular hearing permits, provided that
 - (i) a panel of technical experts be created to advise the Commission regarding any new evidence presented by the applicant or other intervenors;
 - (ii) Commission chief counsel advise the Commission specifically with respect to all matters of fact and law raised by the application; and,
 - (iii) the local government with jurisdiction over the proposed development be specifically invited by the chairman to intervene as an active party in the Commission's proceeding.

⁹³ Commission staff's recommendation that no new fee shall be charged to process this application may be small solace to both the applicant and other interested parties.

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5.3 Subchapter 2,⁸³ Appeals to the Commission §13110-13120

Commission staff does not address these rules and procedures, which are fundamental to the continuing implementation of state oversight responsibility of coastal permitting pursuant to certified LCP's and PMP's, as well as of pre-LCP regulatory assumption by local governments, under the Act.

Recommendation: (115) We petition the Commission to initiate a rulemaking proceeding regarding Subchapter 2, §13110-13120.

- (a) The authority for this request is contained in Gov't Code §11340.6, "Petition for Adoption and Repeal", and in Coastal Act §30333 (regulations, generally) and §30620.6 (procedures for permit appeals).
- (b) The substance, nature, and reason(s) for the request are the following:
 - (1) Commission staff in its proposed revisions provides for new formal appeals from determinations of Commission staff to the Commission, but fails to recommend finite procedures, either within this subchapter, or another, to specify the entire appellate process and assure equal protection.⁸⁴ Applicants and members of the public, as well as Commissioners, may be adversely affected by the lack of requisite finite rules to govern this new appellate process, if it is otherwise created per staff's recommendation.
 - (2) The provision in existing §13110, by which the executive director is required to "mail [received] notice" of local government final decision only to Coastal Commissioners, and then only within three (3) working days, does not adequately implement the "full

⁸³ This existing subchapter of Commission regulations is not addressed in staff's revisions.

⁸⁴ This matter is addressed here in the event that the Commission concurs with staff's proposal for new intra-Commission appeals. As noted above, we recommend against Commission adoption of staff's proposal.

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understanding" clause of §30006 in that:

- (i) It relies on outdated and slow technology (snail mail), when posting any and all notices of local government permit action⁹⁶ on the Commission's Web-site would afford a significant additional opportunity for broad public understanding, including by applicants, as to the status of their applications within the coastal program;⁹⁷ and
- (ii) Direct distribution of the notice of final local action, when received by Commission staff, should be made to the applicant(s), active parties to the local government proceeding (i.e., persons with standing pursuant to §30801,⁹⁸) as well as Commissioners, to implement the "full understanding" and "widest participation" clauses of §30006.

In addition, this subdivision, as it exists at present, does not implement, or give definitional guidance for implementation §30603(d), as amended to require local government notification of the Commission within seven (7) calendar days of, variously, "taking an action" and/or "its final action".

On their face, given local government permitting proce-

⁹⁶ Here, local coastal permit decisions within the delineated appellate zone, where they may be appealed by parties with standing, or two Commissioners from on high, to the Commission for review as to whether the local decision raises one or more "substantial issues" of statewide significance under the Act, and, in the event that the Commission so finds, for de novo Commission review and action. As a practical matter, however, the Commission's procedures to adequately implement §30006 should be to post all local agency decisions under color of certified LCP's (and other plans) on the Commission's web-site to maximize direct public accessibility, while minimizing processing and handling costs for the public, NGO, and private sectors.

⁹⁷ Experience has shown that applicants, as well as other interested persons, may have substantial difficulty in tracking the permit regulatory process during the especially important transition from local decision to notice thereof to the Commission, including where an appeal may be possible or in the offing. It also appears that Commission tracking and oversight of local decisions that do not involve appealable developments has varied significantly over time between and among administrative regions, bioregions, and individual local and other public agencies.

⁹⁸ The standing rule is addressed in §13006, which merely cross-references the cited statutory provision, and thus is yet one more example of a substantively non-functional Commission regulation.

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dures that involve, variously, actions by hearing officers, zoning boards, Planning Commissions, and City Councils or Boards of Supervisors, the lack of parallel construction within the statute creates ambiguity that a regulation which harmonizes different related provisions should render clear and practicable.

- (3) The last sentence of §13110 is ambiguous as to its referent where it establishes the commencement of the 10-day appeal period from the unspecified "receipt of notice".
- (4) In addition, the last sentence of §13110 leaves unspecified the actual procedure to be followed by Commission staff in setting the 10-day appeal period and expeditiously providing the applicant, local government, all other participants in the local coastal permit process with the notice of appeal period.⁹⁹
- (5) In §13111(a), the key term "local government equivalent" to local government's decision on a coastal permit is undefined and thereby renders the meaning, and operative applicability, of this provision ambiguous.
- (6) Based on the reference provided in the note to the regulation, its procedures apply to appeals from local government exercising coastal permitting jurisdiction prior to, as well as following, certification of the LCP, pursuant to substantively different provisions of the Act.

The lack of separate procedures to govern these two very different processes in terms of coastal program standards of review and appealability, have from time to time caused erroneous application of the rules by staff in permit cases. To avoid continued confusion and regularity uncertainty, the Com-

⁹⁹ Commission staff has devised a form for this purpose, which should be included in the regulatory process review, including, e.g., to provide for a clear and finite opportunity for local governments to specify, at an early and practical opportunity, its "information requests and requirements" pursuant to the last, unnumbered, provision of §13111(a).

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mission should request Counsel to prepare accurate separate procedures to implement the appealability standards pursuant to §30602¹⁰⁰ and of 30625(a) as it applies to post-LCP or PMP certification permit decisions by local governments and the ports, respectively.

- (7) §13111(a) contains a significant ambiguity relative to the governing §30603¹⁰¹ with regard to the local government action against which an appeal may be filed with the Commission.

Whereas the statute, in §30603(a)(1)-(4),¹⁰² limits appeals to "approvals" by cities or counties¹⁰³ under color of certified LCP's, the regulation allows for appeal of "a" local government decision without similar limitation.

As a practical matter, Commission staff in some administrative regions has accepted and processed appeals by applicants whose development proposals were in relevant part denied at local government through imposition of conditions that also resulted in approval of other project components. Commission staff has relied in these cases on the construct that "a" development was approved locally, which in its opinion allows (-ed) an appeal of a specifically denied part and effective reconsideration by the Commission de novo of local government's decision.

The question raised by staff's implementation of §13111(a) is whether the Commission, under color of the Act, may extend the appellate process established by §30603 to said range of applicants where their application, in relevant specific part, was denied by local government? We believe that staff's practice

¹⁰⁰ The reference at Coastal Act §30625(a) to a "subdivision (a) of Section 30602" appears to be erroneous, since it is not shown in the Commission's published edition of the Coastal Act.

¹⁰¹ Which the note to the regulation for some reason does not cite as substantive reference.

¹⁰² §30603(a)(5) expressly authorizes, including by elucidation in §30603(b)(2), appeals from both approvals and denials of major public works or major energy facility projects at local government.

¹⁰³ By definition at §30100.5, "county" includes the City and County of San Francisco.

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exceeds the statute and regularity guidance thereon is therefore required.

- (8) §13111(a) repeats the provision in §30625(a) that "any two (Coastal) Commissioners" may appeal an appealable action of local government, or a port, but fails to illuminate this important procedure, which Commission staff has utilized numerous times to place a locally approved development before the Commission for de novo review and decision.¹⁰⁴ Important clarification of this provision may include:

- (i) The extent to which the two Commissioners should be required during the local environmental or coastal development permit review process(es) to afford the local government substantive notice of their concerns about the consistency of the proposed development with the applicable certified LCP, such that local government may address and resolve them, as appropriate, including to avoid or reduce the length and cost of sequential coastal permit process.¹⁰⁵
- (ii) The extent to which Commission staff, which in most instances is the moving party behind appeals "by two Commissioners", should be required during the local environmental or coastal permit review process(es) to afford the local government substantive notice of their concerns about the consistency of the proposed development with the applicable certified LCP, such that local government may address and resolve them, as appropriate, including to avoid or reduce the length and

¹⁰⁴ An important consequence of Coastal Commission decisions on permit appeals is that the development enters the continuing jurisdictional province of the Commission for any coastal development permit amendments during the life of the project. We also note that on at least one occasion, the Commission found no substantial issue was raised by the appeal authorized by two Commissioners on behalf of staff's request. Previously, some Commissioners apparently provided signed blank appeal forms for use by staff.

¹⁰⁵ This affirmative informational role may, if it has not occurred as part of the formal Commission process (as we recommend above), include noticing the local decision-makers of applicable Commission precedential decisions pursuant to §30625(c).

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cost of sequential coastal permit process.

- (9) §13111(a) also contains the following terms of art which, to be clear at the point of application and review of a filing for adequacy with applicable procedures, should be defined:
- (i) Is “date of local government action” at §13111(a)(2) the same as date of “final local government decision”, as used in §13111(a)?
 - (ii) What constitutes a sufficient “description of the development” as used in §13111(a)(3)? (Emphasis provided.)
 - (iii) Does the list of names and addresses of “all persons” who “spoke or left [their] names¹⁰⁶ at any public hearing on the project”, as that phrase is used in §13111(a)(5), include testimony pursuant to other statutes, including CEQA or NEPA?
 - (iv) What is the meaning of “where such information is available” in §13111(a)(5)? Who decides? Must the request by appellant to obtain this information from local government be in writing to constitute a “reasonably made effort”?
 - (v) What is the meaning, in §13111(a)(9), of the phrase “summary of the significant questions raised by the appeal”?

In light of the abundant experience of the coastal program in this area, the Commission should consider clarification and specification of the term “significant questions” within the policy framework of the Act, including with reference to precedential decisions by the Commission that apply and interpret Chapter 3 (and, for Ports, Chapter 8) policies.

¹⁰⁶ The construction of this regulation lacks parallel grammatical structure.

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- (10) Commission staff has promulgated a mandatory "appeal form" to implement §13111, which the Commission should review, approve, and include within the published body of regulations, as well as on the Commission's Web-site.¹⁰⁷
- (11) §13111(b) requires that the completed appeal "must be received in the Commission district office with jurisdiction over the local government" prior to the close of the noticed appeal period. It raises the following questions of specificity and application:
- (i) What is the definition of "Commission district office with jurisdiction over the local government" and how is a prospective appellant to know based on the regulation?
 - (ii) What is the definition of the term "received"?

In some of its administrative offices, the Commission has utilized, from time to time, a private mail pick-up service vis-a-vis the United States Post Office, which has delayed delivery of mailed appeal forms to Commission staff beyond the appeal period.

Given the brevity of the appeal period, especially when the complexity and sometime inaccessibility of local government, the speed of snail mail, and other impediments to delivery in an 1,100 mile-long coastal zone are considered, consideration should be given to amending the regulation to allow filing of an appeal document, as other documents, with the Commission by electronic means within the appeal period, promptly followed by a conformed paper copy that is served subject to formal proof of delivery.

- (12) §13111(c) lacks a precise requirement as to the time period within which an appellant must serve a conformed copy of the statement of appeal with the

¹⁰⁷ As a result of a 1992 rulemaking amendment, the Commission includes at least one other forms in its body of regulations. See Subchapter 7, Appendix A, "Statement of Defense Form".

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applicant, local government, active parties at local government to the permit proceeding, and other known interested persons in the matter. To afford fundamental due process to all of these parties, which experience indicates may to-date be significantly celebrated in the breach, the subdivision should be amended to require service on the same day, and by the same means, as when the appeal is submitted to the Commission.

- (13) Key terms ("unwarranted failure", "may be grounds for dismissal") in §13111(c) are undefined and therefore lack basic implementation guidance for applicants, appellants, and the Commission, which, experience indicates, may result in uneven or no application of this rule.

If the Commission staff deems clear and consistent practical applicability of this provision to be unnecessary through a proposed amendment to the regulation, staff should recommend it for repeal.

- (14) Since promulgation in 1981 of the current body of Commission regulations that governs appeals, the Legislature has amended §30620(d) and 30621(b), to require the Commission executive director to determine whether an appeal is "patently frivolous", to require payment by the appellant of a \$300 appeal fee to have it "filed", and to deem non-performance by the executive director in making the determination to mean that the appeal is not patently frivolous. The statutory sections contain several very short (five (5) day) time periods during which specified actions by Commission staff and the appellant must occur, which, together with the ambiguity of the key operative term, require clarification and specification in regulation to render them understandable and functional.
- (15) §13112, in part, requires local government, within five (5) working days of being noticed of the pendency of a permit appeal, to deliver the local

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administrative record for the permit to the Commission. Experience shows that local governments frequently, for whatever reason(s), do not meet this requirement, which in turn triggers the extension of hearing provision contained in the last sentence of this regulation. The applicant bears the cost and time burdens of such bureaucratic delay.

- (16) §13113 provides that the grounds for an appeal of a local government decision to the Commission "shall be limited to those specified in Public Resources Code Section 30603(b) and (c)." In addition to being non-substantive, the regulation is incorrect: §30603(c), as published by the Commission, addresses solely thresholds of finality of permit actions.
- (17) §13114 limits commencement of Commission de novo review on appeal to a point in time following when the local government decision "has become final". The term "final" is undefined here, which creates a significant gap in clear and finite procedures, on which applicants and appellants can rely for substantive appellate review by the Commission and its staff, with attendant time delays and costs incurred.
- (18) The uncertainty created in §13114 is continued, and increased, through the undefined and highly ambiguous "practicality" test set forth in §13115(a) for reaching the threshold hearing, for both appellant(s) and applicant(s), as to whether the appeal raises any substantial issue of development approval conformity with the certified LCP, or PMP. Experience indicates that for some projects, practical time is elusive, with attendant costs to voluntary and involuntary coastal program participants.
- (19) §13115(a) nonsubstantively identifies the standard for the executive director's recommendation regarding whether an appeal raises a question of substantial issue as being within §30625(b), but with respect to each of three classes within it, the programmatically vexing qualitative term "substantial issue" is left undefined.

Experience indicates both that (a) Commission staff has

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both recommended, and not recommended, substantial issue in substantially similar cases pursuant to §30625(b)(2) and (3), and (b) Commission staff has recommended substantial issue for grounds specifically identified as being outside those alleged in the appeal.

Clarification is therefore necessary to assure fair and equal treatment, including through a finite and Coastal Act-consistent definition that focuses on issues and resources of (bio)regional or statewide, rather than neighborhood or local importance.

- (20) §13115(b) and (c), which are essentially unchanged since the predecessor Commission's operation under Proposition 20,¹⁰⁸ are structured to presume a finding by the Commission of substantial issue on appeal from a local government and hence *de novo* permit review, including through a severe limitation on the ability of the appellant and the applicant at hearing (which the regulation limits to the Commission's "asking questions" and practice, outside regulations, provides 1-3 minutes of oral argument).¹⁰⁹
- (21) §13116 allows appellant withdrawal of an appeal up until the commencement of the final roll call by the Commission on the appeal. This regulation, which reportedly has inspired classical economic activity between applicants and appellants, is without substantive policy referent.¹¹⁰ In addition, Commission staff advice from time to time has contradicted the regulation when the Commission has been advised by Counsel that once an appeal is filed with the Commission, it becomes the property of the Commission to dispose as it deems appropriate. Clarification is needed to provide a unified rule that implements the statute.
- (22) §13117 contains a terminological inconsistency that may prevent an otherwise entitled participant in the appellate

¹⁰⁸ When appeals to the State Commission were limited by the initiative measure to decisions of the largely independent six regional commissions.

¹⁰⁹ For a number of Commissioners in a decision-making role, oral argument before the Commission has apparently been the extent of articulated familiarity with the record on some appeals, which renders written testimony prior to hearing of limited effect.

¹¹⁰ §30620.6, which the regulation cites as both authority and reference, does not on its face provide for the process provided in regulation.

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process from being able to participate at oral hearing(s) before the Commission. The existing regulation unnecessarily limits such participation, in relevant part, to "persons who opposed the application before the local government (or their representatives)". (Emphasis added.)

As a practical matter, persons, including NGO's and other public agencies, who speak in opposition to a development, including accumulated conditions or possible alternatives, and who identify potential adverse project effects on coastal resources, or public access thereto, during the local permit review process typically do not address the "application", which they in many cases have probably not even seen.

However, the right to participation in the oral process should not be dependent on whether a participant during local review expresses "opposition to the application", but rather whether said party has substantively addressed or questioned the development, including as it may evolve during local review prior to final local action.¹¹¹

On its face, this provision appears inconsistent with the "widest opportunity" for participation clause in §30006, as well as contemporary regulatory behavior, considered as a whole. The Commission should decline to be a party to abrogating the public's right to orally participate at hearing before the Commission because CEQA or NEPA successfully accomplish their informational and analytic goals.

Separately, the limitation on who may participate orally in the appeal process, which under Commission rules becomes a new proceeding if and when substantial issue is found, is inconsistent with the right to maximum participation in coastal development decision-making provided in §30006. For instance, the present rule, as written, would preclude the Commission from hearing the timely oral

¹¹¹ For example, a project may change between the time of application and final local action so that it evokes public opposition on the record in response to those changes that did not exist in response to the project's initial application submittal. Similarly, a developer's application may not elicit any reaction, but release of a draft Environmental Impact Report that identifies significant adverse effects on the environment, including from cumulative impact and alternatives analyses that transcend the application, may very quickly change the regulatory climate for the project, including through public testimony at local hearing.

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testimony of an expert witness in a de novo permit hearing on appeal, which is contrary to efficient coastal governance and reason.

- (23) The cross-reference in the last sentence of §13117 to the distribution of written communications pursuant to existing §13061 is rendered impossible if the Commission accepts, and promulgates staff's proposed repeal of that section.
- (24) The evidence rule on appeal in §13118 substantively references only the administrative record at local government, including that no transcription of local hearings will be provided. All other questions regarding evidence on appellate hearing and review are left unaddressed and hence ambiguous. Some of those issues, which the Commission should address in rulemaking specific to appeals - in addition to generally applicable matters of accuracy and veracity of testimony addressed in Recommendations 66 ff. - are:
- (i) The local government whose decision is appealed should be requested or required by the Commission, pursuant to a specific rule (to be promulgated), to submit a brief on the specific LCP and Coastal Act public access-recreational policy¹¹² consistency of the locally approved development.¹¹³
 - (ii) Statements at oral hearing on appeals have included unverifiable hearsay, wished-for and invented "fact" or law, if not irrelevant balderdash. As recommended and requested above, the Commission should commence a rulemaking proceeding on the requirement for sworn (or affirmed) testimony and limited (written) interrogatories to aid accuracy and veracity.
 - (iii) The record before the Commission on appeal of local permit decisions should include the complete

¹¹² Pursuant to §30604(c).

¹¹³ Some enlightened local governments have so intervened from time to time to concisely present the local administrative record; the Commission's permit decision making process would likely benefit from its consistent provision of information.

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(accurate) certified Local Coastal Program,¹¹⁴ including technical studies and expert testimony developed in the course of its preparation, amendment, or periodic comprehensive updating, as provided by the Act and other regulations of the Commission. Applicable precedential decisions of the Commission should similarly be required by regulation to be in the record on appeal before the Commission.

- (25) §13119 accurately references substantive standards of review for Commission *de novo* action on an appealed development, but fails to state what they are: (a) the certified LCP policies, and (b) the access and recreational policies of the Coastal Act Chapter 3.

Experience has indicated that, from time to time, Commission staff reports extend outside of those specified policies to include other Chapter 3 standards as the basis for analysis and/or recommendation on appeal, which is inconsistent with the statute. Articulation of the standards is therefore recommended to assist public understanding and consistent application.

- (26) The executive director has, from time to time, opined that Commission staff need not comply with time limitations set forth in the Act or regulations, as in §13120 with regard to notice to the local government, applicant, and appellant(s) of the action taken by the Commission on appeal, including findings or revised findings, where there is no penalty to the Commission or staff, and has acted accordingly.

The existing regulation provides for such notice within ten (10) working days of "final" Commission action on the appeal, which is clearly feasible where the Commission

¹¹⁴ Evidence indicates that a number of certified LCP's may, after up to 17 years, be in physical tatters that make understanding and implementation ad hoc and therefore difficult. We recommend that the Governor and Legislature fund the Coastal Commission to create an accurate inventory, including on CD-ROM, of all certified LCP's, including Commission reports, decisions, jurisdictional maps, access and resource inventories, etc., and other materials in the public record with regard to them, and make them available to local government and the public. Where there are no effectively certified LCP's, but approved land use plans, implementation measures, and/or guiding Commission permit decisions, we recommend that the Commission publish, after review, "virtual LCP's" to guide applicants, the public, special districts and other agencies, and the non-performing local governments.

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adopts staff's recommendation. To avoid the frequently lengthy delay in the Commission's adopting revised findings where the recommendation of staff, in whole or part, was not adopted by the Commission, this rule should be amended to provide for summary notice of the Commission's decision within said ten days' time, with adopted Commission findings to follow consistent with §13096, as recommended to be further revised.

- (27) Decisions of the Commission on appeal should be posted on the Commission's Web-site promptly after they are made and when findings are adopted to assist local governments, applicants, and other interested persons in benefiting from the guidance mandate of §30625(c) and the Commission to achieve consistency with the "full understanding" clause of §30006.

5.4 Subchapter 3,¹¹⁵ Proposition 20 Coastal Permits

This section was repealed in 1981. The Commission may wish to consider whether this subchapter should, in part, be reinstated to manage, consistent with all applicable laws:

- (a) The unsettled and uncertain state of various offers to dedicate or otherwise convey interests in public accessways, as a condition of permit approval pursuant to the 1972 Coastal Zone Conservation Act, to which the Commission is the successor in interest,¹¹⁶ and
- (b) Any on-going requirements, as conditions of approval of coastal development permits issued by the predecessor Commissions,¹¹⁷ for monitoring or other performance to achieve, maintain, and document approval and/or condition compliance.¹¹⁸

¹¹⁵ This subchapter was repealed in 1981.

¹¹⁶ §30331.

¹¹⁷ The State Commission, established pursuant to (former) Pub. Res. Code §27200 and the six regional commissions, pursuant to §27201(a), North Coast Regional Commission; 27201(b), North Central Coast regional Commission; 27201(c), Central Coast Regional Commission; 27201(d), South Central Coast Regional Commission; 27201(e), South Coast Regional Commission; and 27201(f) San Diego Coast Regional Commission.

¹¹⁸ The authors of this memorandum are unaware whether, or that, the Commission has maintained such a fundamental programmatic data base to bridge the informational gap between decision, on appeal or otherwise, with implementation.

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To do otherwise may result in the public's loss of requisite lawful mitigation measures on which the Commission and program participants relied to achieve development consistency with the 1972 Act.

Recommendation: (116) The Commission should consider reinstating regulations governing coastal permits issued pursuant to Proposition 20 where they they were conditioned to require applicants to perform access and other mitigation measures, and applicants obtained the benefit(s) of the issued permits.

5.5 Subchapter 4, Emergency Permits

The only apparent recommended change by Commission staff to the regulations in this subchapter occurs at §13138, "Method of Application" and at 13144, "Waiver of Emergency Permit Requirements", in both which application "by facsimile [and telephone in the latter] during business hours" is proposed to be allowed.

We commend Commission staff for allowed use here of facsimile and telephone communications technology, which have been generally available in high-tech California since the mid-1980's and mid-1940's, respectively. Given that emergencies occur without regard to the business day of State agencies, we urge Commission consideration of the following recommendation.

Recommendation: (117) The Commission should further amend these regulations to:

- (a) Allow applications in cases of emergency to also be made by electronic mail to the (recommended) Commission staff- designated emergency coordinator;¹¹⁹ and
- (b) Establish an emergency hot-line telephone number that is in manual or automated service twenty-four (24) hours a day, seven (7) days a week, throughout the year, on which voice or facsimile applications can be received and automatically logged by the Commission without regard to solar or lunar position.

¹¹⁹ A recommended staff position, with different individuals assigned to it based on various factors, including Office of Emergency Services projections of likely emergencies.

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5.6 Subchapter 5, Administrative Permits

Commission staff recommends no changes to the existing body of regulations at §13145-13149 that governs administrative permits issued by the Commission pursuant to §30624.

Experience indicates that the Commission should consider the following aspects of the administrative regulatory program, in its initial and frequently amended permit phases, which generally involve a significantly reduced level of Commission staff review, public notice and opportunities for participation, and Commission review than with "public hearing" items.

Recommendations: (118)

- (a) Since the threshold monetary (\$100,000) and other standards by which an application is considered for administrative processing, pursuant to §13146, are principally, if not solely, on applicant's unverified representations, the Commission should request that information provided in the application is sworn to be accurate and truthful, subject to penalties for committing perjury.¹²⁰
- (b) §13146 cross-references §30624, but does not define or otherwise elucidate its key operative terms, which are also not otherwise defined in the Act or regulations, including "improvements", "existing structure", "any single family dwelling",¹²¹ "any development of dwelling units or less [i.e., "fewer"]", "incorporated area", "development not require demolition", "any other developments not in excess of \$100,000", and "any developments specifically authorized as a principally permitted use and proposed in an area for which the land use portion of the applicable local coastal program has been certified". The meaning of these terms is not part of the contemporary California vocabulary and, to be consistently and effectively implemented, require specification.
- (c) Notwithstanding the inclusive public noticing and

¹²⁰ This recommendation is proposed for all CDP applications.

¹²¹ This term was previously defined at §13150.5, which was inexplicably repealed in 1978.

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informational requirements in §30006, §13149 in its present form provides for a severely truncated notice-by-posting requirement to be performed by the applicant, augmented by notice to interested persons known to the executive director.

The Commission should address in this rulemaking whether, the premise of the type (e.g., any single family home), size, or cost of a proposed development in a city as the basis for whether full notice is provided is not less relevant to the applicable procedural Coastal Act standards than its specific location, e.g., relative to environmentally sensitive areas, public recreational areas, etc.

Similarly, the wording of the 5th class of development, where it may qualify as a principal permitted use in counties, requires specification of the term "area", preferably based on some set of Coastal Act policy-related facts. The conjunctive "and" renders the meaning of "area" ambiguous as to whether it modifies "development specifically authorized as a principal permitted use", which comes before it in this awkwardly written statutory phrase, or is synonymous with the jurisdictional geographical scope of the approved land use plan.

- (d) Existing §13153, which staff does not propose for amendment, provides for unspecified time of mailing, to Commissioners and other requesters, by the executive director of staff reports and recommendations for items on the administrative calendar, as well that copies be made available at the meeting. §30624 does not authorize any reduction in either public notice or distribution of these documents, and the regulation in its note omits any substantive policy reference. Experience has indicated that requesters have significant difficulties in obtaining a copy of these staff reports either by mail or at meeting. The Commission should expressly amend this regulation to provide standard distribution of notices and staff reports/recommendations to bring this program

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component into compliance with the applicable provisions of §30006.

5.7 Subchapter 6, Permits

a. Article 1, Format §13155-13156

5.7.1 §13155. Reference to Regional Commissions

This regulation was repealed in 1981, shortly after the legislative sunset for the regional commissions.

5.7.2 §13156. Contents of Permits

In §13156(e), Commission staff proposes to revise the existing regulation to require that any coastal development permit issued by the Commission "binds all future owners". Given that a substantial number of permits in the Commission's retained jurisdiction are for specified uses during finite periods of time, consideration should be given to refining the breadth of this subdivision to better reflect the facts of development and nexus (pl.) to regulatory impositions.

With regard to §13156(g), which governs the start of the time period for commencement of development following Commission approval of (vote on) a permit, the Commission should amend the regulation to set the date for when the effective permit is issued, rather than the date on which the Commission decides the matter. Frequently, applicants' satisfaction of conditions precedent to permit issuance may take months. Compliance with coastal program mandates should not be penalized by reduction in available time to start lawful development.

- Recommendations:**
- (119) (a) The Commission should consider amending the binding clause in §13156(e) to reflect the scope, including time period, of development.
 - (b) To ensure full knowledge of permit terms and conditions, all issued ("final") permits should be required to be recorded with the County Recorder against all parcels or lots affected by the permitted development.

- (120) The two year time period in which a permittee may commence development in reliance on the coastal permit

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should commence with the point of issuance of the permit, rather than the date of approval, where the permit provides for any special conditions precedent to issuance.

b. Article 2, Receipt and Acknowledgment §13158

5.7.3. §13158(e). Notice of Receipt and Acknowledgment

The sequencing for permit decision, applicant's compliance with conditions precedent to achieving an effective permit, and permit issuance and acknowledgment recommended by staff in this new subdivision effectuates the purposes of a clear and Coastal Act-consistent permit regulatory program. However, the wording of this subdivision is unequal to its substantive excellence and should be revised for clarity and avoidance of stray phrases and repetitive words that may confuse meaning.

Recommendation: (121) §13158(e) should especially be rewritten in plain and understandable English.

c. Article 3, Permit Issuance §13160-13162

5.7.4. §13161. Distribution of Copies of Permits

The distribution procedures set forth in existing §13161 are ambiguous.

Recommendation: (122) The regulation should be amended to provide that, in addition to the applicant (permittee) and local government with jurisdiction, a copy of the permit should be sent to any other person or public agency that requests it. In addition, the permit should be posted on the Commission's Web-site to further enhance compliance for permit life-cycle compliance with the public notice and participation provisions of §30006.

d. Article 4, Permit Contents: Disputes §13163

5.7.5. §13163(a). Disputes over Contents of Permits

Use of the word "feel" to describe a permittee's (potential) assertion that a permit issued by Commission staff does not accurately reflect the Commission's decision is

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(probably) demeaning and certainly lacks requisite clarity to facilitate regulatory implementation, since a perfectly neutral and objective person, without show of passion or feeling(s), may assert such inconsistency based on objective and undisputed fact.

Recommendation: (123) §13163(a) should therefore be amended to:

- (a) Substitute a more neutral word for "feels" and "questions", such as "asserts" and "assertions";
- (b) Provide for noticing, including emergency noticing, if necessary, to place the matter on the Commission's next meeting agenda.
- (c) Consideration should also be given to requesting the aggrieved permittee to put any assertions of inconsistency between the Commission's action and the issued permit in writing, with an assurance of immediate distribution, with or without staff response, to all Commissioners, since time is likely to be of the essence for the permittee at this point.

e. Article 5, Permit Amendments §13164-13168

5.7.6. §13165. Amendments to Administrative Permits

Commission staff proposes to leave the existing regulation, which provides for treatment of amendments to previous administratively-processed permits according to the same administrative permit procedures.

We request Commission rulemaking regarding this regulation, for the following reasons:

- (a) The existing regulation contains no time limit during which an amendment to an administratively processed permit may be tendered, and thus leaves unaddressed the question of whether there have been any materially changed circumstances with regard to either coastal resources or public access thereto either from director cumulative effects by the development.
- (b) The existing regulation fails to clearly provide whether the amendment

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itself must meet one or more of the five classes in §30624 to qualify as an administrative matter, and whether the cumulative development of the initial application and the proposed amendment are to be considered in applying the regulation, and to what effect.

- (c) The existing regulation does not address the matter, identified in practice, of applicant(s) utilizing the administrative permit process to obtain relatively low-level review of a development and then, through a combination of requests for extension and redefinition of the project, through amendments that remain on the administrative calendar and receive extremely scant noticing or analysis, to incrementally expand and/or relocate the development, with attendant potentially significant adverse effects on coastal resources and access thereto.

Recommendation: (124) The Commission should consider and adopt additional rules to address the notice, standing to qualify, review, and amendment of administrative permits.

5.7.7. §13166. Amendments to Other Permits

Staff proposes a substantial revision of the generally applicable permit amendment process, including through creation of a new intra-Commission appellate procedure and lodging of substantially increased discretionary decision-making in staff, with limitations on notice to the public and opportunities by the interested and affected public and Commissioner to effectively participate in this important component of the permitting process.

- Recommendation:** (125) The Commission should decline to adopt the staff-recommended procedure, which is complex, places additional burdens on applicants, unduly limits notice, and reduces Commission decision-making authority, in favor of a streamlined permit amendment process that:
- (a) Retains existing regulatory provisions that the amendment process is unavailable to reduce, avoid for a period of time, or eliminate, conditions of Commission permit approval;
 - (b) Clearly defines what constitutes an "immaterial amendment" and does not leave it to varying interpretation on a case-by-case basis;
 - (c) Allows electronic filing of applications to amend a final permit, but prohibits amendment applications

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- until conditions precedent to permit issuance are met;
- (d) Applies the Commission's standard (and recommended enhanced) noticing, pre-application consultative, and other procedural permit standards;
 - (e) Provides for expedited issuance of nonsubstantive amendment applications based on performance criteria established by the Commission through precedential decision(s).

5.7.8. §13168. Application Fee

This regulation is both duplicative of §13055 and non-sequential (there is no §13067, apparently).

Recommendation: (125) §13168 should be repealed and the body of regulations, as here, should be renumbered to establish a clear sequential order of regulations to assist public understanding pursuant to §30006.

Article 6, Extension of Permits §13169

5.7.9. §13169. Permit Extensions

Staff in §13169(a) proposes to retain an existing reference to "regional commission", whereas in other parts of the regulations it proposes to strike such references. Uniformity is indicated to avoid confusion among participants.

§13169(a) limits permit extensions to "an extension of time not to exceed an additional one year period." For many years, the Commission and staff construed this rule to allow only one one-year extension of a "granted" permit, but in at least some instances since the mid-1980's, the Commission's and staff practice has been to allow repeated one-year extensions. The Commission should clarify the rule, including whether the term "grant" differs from "final" or "issued", as used in connection with "permit", to avoid ambiguity and uneven implementation.

§13169(a)(1) proposes to replace the settled, and appropriate, Commission rule that a permit, to be amended, must be final and issued, with the significantly reduced threshold standard that it be "approved". As indicated above, the revision would substantially reduce the ability of the Commission to effectuate the conservation and development standards of the program, while likely substantially increasing

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unnecessary Commission staff paperwork (which may explain why staff proposes the significant increase in the amendment application fee at §13055).

Recommendation: (126) The Commission should review and revise the body of regulations to establish uniform treatment of previous coastal program components, e.g., regional commissions. Where references are retained to them, the regulation should concisely set forth the procedural nexus for it.

(127) The Commission should clearly state the number and length of time available for extensions to issued permits.

(128) The Commission should decline to adopt staff's recommendation to lower the permit status standard precedent to amendment processing.

5.8 Subchapter 7, Enforcement and Violation of Permits

Commission staff does not address this subchapter in the present rulemaking, notwithstanding the plain facts that the Commission's enforcement procedures are substantially different in practice from those provided in (or previously repealed) §13171-13174 or from the amended applicable statutory sections in the Act.

6. CHAPTER 6. EXCLUSION FROM PERMIT REQUIREMENTS

6.1. Urban Land Exclusions

6.1.1. §13234. Termination upon Adoption of Local Coastal Program

Commission regulations, pursuant to §30610.5, establish procedures for exclusions from the coastal development permit requirement in urban land areas, subject to specified criteria to protect coastal resources and public access to and along the coast, at §13215-13231, that afford a significant opportunity for regulatory program reduction. A substantially similar "urban land exclusion" procedure¹²² was previously provided in Proposition 20, the 1972 Coastal Zone Conservation Act (§27104(c)).

¹²² The Legislature in 1976 reduced the build-out threshold for an area to qualify for urban exclusion from 80% in Proposition 20 to 50% in the new Coastal Act in a clear effort to broaden its applicability.

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The urban land exclusion has reduced the regulatory burden placed on infill development within such areas and would, if judiciously applied, constitute a significant programmatic enhancement both within specified areas¹²³ that remain, for various reasons, within the Commission's permitting jurisdiction

Unfortunately, and without citation to, or basis in, either authority or reference to a section of the Coastal Act, the Commission in §13234 purports to terminate urban land exclusions after certification of an LCP. In practice, the Commission has also denied the request of local government to implement such exclusion after LCP certification. Legislative Counsel has rendered an opinion contrary to the Commission regulation.

Recommendations: (129) The Commission should repeal §13234 for lack of requisite authority and reference in statute.

(130) The Commission should promulgate such additional rules and procedures it deems necessary, after consultation with local governments and other interested persons, to effectuate the full implementation of the urban land exclusion process pursuant to the Coastal Act, including to reduce unnecessary regulatory burdens and costs by establishing a clear, statutorily consistent, and effective urban exclusion program, and we petition it to do so.

¹²³ §30610.5 excludes tide and submerged lands, beaches, lots immediately adjacent to the shoreline, and all public trust lands from the class of areas where urban exclusions from the coastal permit requirement are available.



CALIFORNIA COASTAL COMMISSION15 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200**Tu 10d****MEMORANDUM**

June 19, 1998

TO: Coastal Commissioners

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel
Ann Cheddar, Staff Counsel
Amy Roach, Staff Counsel *amc*

SUBJECT: **Adoption of Proposed Revisions to Portions of
Chapters 5 and 6 of the Commission's Permit Regulations**

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt proposed amendments to the coastal development permit regulations (Chapters 5 and 6 of Title 14 of the California Code of Regulations) as set forth in Exhibit 1 to this staff report and as modified in Sections IV and V of this staff report. At its June 8, 1998 hearing, the Commission considered the revisions set forth in Exhibit 1, with several nonsubstantial changes to those revisions that staff had identified in its staff report dated May 21, 1998. At the same hearing, staff recommended additional changes to the proposed amendments, several of which were nonsubstantial and several of which triggered the need for an additional 15-day public notice and comment period prior to adoption. The Commission indicated its intent to adopt the proposed revisions as set forth in Exhibit 1, with the changes described in the May 21, 1998 staff report and with the additional changes suggested by staff at the June 8 hearing. The Commission directed staff to circulate the required 15-day notice and schedule the adoption hearing for the July agenda.

Since the June 8, 1998 hearing, staff has identified several additional changes that are also necessary to clarify certain of the proposed revisions. The majority of these changes are nonsubstantive changes to improve grammar and clarity. However, two of the changes are minor substantive changes. These minor substantive changes were included within the required 15-day notice. Sections IV and V of this staff report contain all suggested changes to the proposed revisions as set forth in Exhibit 1. Section IV identifies the changes that triggered the need for a 15-day comment period. Section V identifies the changes that are purely nonsubstantial or grammatical and therefore do not require any additional notice prior to adoption. Staff has mailed notice of a 15-day comment period. The notice is attached as Exhibit 2. The 15-day comment period will be complete as of the date of the July adoption hearing. Staff recommends that the

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Commission adopt the proposed revisions to Chapters 5 and 6 as set forth in Exhibit 1 and as modified in this staff report.

II. MOTION

We recommend that the Commission vote to adopt the proposed amendments to its permit regulations as set forth in Exhibit 1 and as modified in this staff report. The motion and resolution are:

Motion:

I move that the Commission adopt the proposed amendments to Chapters 5 and 6 of the Commission's regulations as set forth in Exhibit 1 and as further modified by the staff report.

Staff recommends a YES vote. A majority of the appointed Commissioners is required to pass the motion. Approval of the motion results in adoption of the amendments as set forth in Exhibit 1 and as modified in this staff report, and adoption of the resolution of approval.

Resolution:

The Commission hereby adopts amendments to Chapters 5 and 6 of the Commission's regulations as proposed in Exhibit 1 and as further modified by this staff report. 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 affected private persons than the proposed action.

III. BACKGROUND

At its January 13, 1998 hearing, the Commission considered text of proposed amendments to portions of Chapters 5 and 6 of its regulations and instructed staff to carry out the various rulemaking procedures that must be satisfied prior to adoption of the amendments. Accordingly, staff undertook the steps required by the Administrative Procedure Act (APA) (Government Code § 11340 *et. seq.*). Those steps included publishing a notice of intent to adopt regulatory amendments in the California Notice Register on February 20, 1998.

Staff also mailed notice of the Commission's intent to adopt the proposed amendments to interested persons as required by the APA, and prepared the various other documents required to be made available concurrently with the proposed amendments. Staff initially scheduled a public hearing for adoption of the proposed amendments on April 9, 1998. The Commission postponed that hearing to June. The staff report for the June hearing, which is dated May 21, 1998 included a

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response to the three written comments that had been received as of that date. On June 4, 1998, staff received a package containing over 130 written comments from Norbert and Stephanie Dall. The majority of these comments addressed the Commission's regulations generally and thus did not specifically address staff's proposed revisions. Staff responded to those comments that specifically addressed the proposed amendments at the June 8, 1998 hearing. Staff also suggested several additional changes to the proposed amendments, some of which were in response to the relevant comments from the Dalls.

At the conclusion of the June 8 hearing, the Commission indicated that it intended to adopt the proposed amendments with the changes that were included in the May 21, 1998 staff report and with the several additional changes that were suggested by staff at the June 8 hearing. In addition, since the June 8, 1998 hearing, staff has identified several additional changes that are necessary to ensure the proposed revisions are written as clearly as possible. These additional changes are either nonsubstantial or minor substantive changes.

The APA limits the Commission's ability to adopt proposed amendments that are different from those that have been made available for the 45-day notice and comment period (which are those set forth in Exhibit 1). The law allows the Commission to adopt the proposed amendments with revisions that are "solely grammatical" or "nonsubstantial." (Government Code § 11346.8(c)). However, substantive revisions to the amendments that are minor (i.e., "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action") must be made available for an additional public comment period of 15 days. Substantive changes that are major must be republished in the Notice Register and made available for an additional public comment period of 45 days.

All of the minor changes made at or after the June 8 hearing have been circulated for an additional 15-day comment period as required. The 15-day comment period will conclude at the July adoption hearing. The remaining step that the Commission must complete before adopting the proposed amendments is to consider any comments received in the 15-day comment period. This step can be completed at the Commission's July hearing. Once this step has been completed, the Commission can adopt the proposed amendments.

After Commission adoption of amendments, the amendments must be submitted to the Office of Administrative Law (OAL) for review and approval.¹ If the amendments are approved by OAL, they will become legally effective 30 days after they are filed with the Secretary of State.

¹ The Office of Administrative Law has 30-working days to review the amendments under the APA. If the Office of Administrative Law does not approve the amendments under the APA, it could return them for further Commission action, which could trigger additional public notice and comment periods.

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IV. SUMMARY OF PROPOSED AMENDMENTS

As we have stated in prior staff reports, the proposed amendments consist largely of limited modifications to existing coastal development permit regulations. The amendments would reorganize sections governing procedures for staff processing of permits and for Commission action on permits in order to provide more understandable, streamlined processes. For example, sections covering treatment of written public comments that are currently scattered throughout the regulations would be combined into one section. Similarly, various sections addressing Commission review of staff recommendations would be combined into one section governing the Commission's vote on staff recommendations. In addition, redundant procedures would be eliminated. For example, the regulations regarding staff's preparation of application summaries would be incorporated into the regulations regarding preparation of staff reports.

The majority of the regulations governing applicant and permittee requirements and permit exclusions would be amended to clarify a number of ambiguities that have become apparent during implementation of the regulations. For example, the revisions would clarify that permit amendments are subject to the same information filing requirements as permit applications, and that approved permits can be extended even if they have not been issued. Clarification of the ambiguities would make the regulations easier for applicants to understand and would save staff time. Several of the proposed revisions introduce new streamlining measures that would save time for applicants. For example, currently, minor amendment and extension applications that qualify for administrative approval are required to be referred to the Commission for hearing if a member of the public objects to administrative approval of the application. The revisions would allow the Executive Director to approve such applications administratively despite receipt of an objection if the Executive Director concludes, subject to Commission review, that the objection does not raise valid Coastal Act issues.

The proposed amendments do not include changes to regulations governing: vested rights, urban land exclusions, administrative permits, de minimis waivers, categorical exclusions, minor adjustments to the coastal zone boundary, revocation of permits, and appeal of locally issued coastal development permits. The staff is in the process of developing proposed changes to regulations governing revocation and appeals. Such changes would be presented to the Commission at a future date for purposes of commencing a separate rulemaking proceeding.²

² The Commission has already adopted amendments to portions of Chapter 5: Subchapter 8 (cease and desist orders) and Subchapter 9 (restoration orders); OAL has approved those changes effective February 1998. The Commission has also recently adopted amendments to portions of Chapters 1-3 (General Provisions, Meetings, and Officers and Staff) of the Commission's regulations. These amendments were submitted to OAL for their review and approval.

V. Minor "15-Day Notice" Modifications to Proposed Amendments

At or subsequent to the June 8, 1998 hearing, staff identified changes to the proposed amendments that triggered the need for an additional 15-day comment period. These changes affect procedural requirements but they are sufficiently related to the original proposed amendments that the public was on notice that they might occur. These changes are identified below. Newly proposed language appears in ***bold italic underline***. Language which would be newly deleted appears in ***bold italic strikeout***. Language originally proposed for deletion which is now proposed to be retained appears in ***bold italic***. Language originally proposed to be added which is now proposed for deletion appears in ***bold italic strikeout***.

A. **Changes to Proposed Amendment to Section 13054.**

- 1) **Revise proposed amendment to section 13054 so that the amendment of the term "parcel" is made consistently throughout the section and to clarify that the Executive Director's authority to waive the requirement to provide stamped envelopes extends only to envelopes addressed to persons identified in subsections (a)(1) and (2).**

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site. Notification Requirements.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for notice to adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartments or condominium and each residence within a condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of and all parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s), the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited.

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___ This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above. ~~parcels described above.~~ Separate stamped envelopes shall be addressed to "owner," ~~and to "occupant,"~~ or the name of the interested person, as applicable. ~~except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel.~~ The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement for addresses identified under subsections (a)(1) and (2) above and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations, ~~upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file.~~

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

(~~b~~d) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also ~~and~~ as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to ~~so post the completed notice form and sign the~~ declaration of posting, the executive director of the commission shall refuse to file the application, ~~or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.~~

(~~e~~e) Pursuant to sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

2) Summary of Reason for Changes to Proposed Amendment to Section 13054

As indicated in the initial statement of reasons for the amendments, the revisions to section 13054 are intended to clarify that the term "parcel" as used in this section refers to real property of record, not an assessor's tax parcel. The amendments as initially drafted clarified the term "parcel" in subsection (a)(1) but did not include a parallel change in subsection (a)(2). The above revision makes the parallel change in subsection (a)(2). The revision within subsection (b) is necessary in light of the changes made at the June 8 hearing to section 13063. As explained below, the changes to that section revise the proposed amendments so as to allow the executive director to substitute newspaper notice for direct mailed notice only for neighboring property owners and residents. Section 13054 requires applicants to provide stamped envelopes not only for neighboring landowners and residents but also for people who the applicant knows are interested, such as people who testified at local level hearings. Under the changes to section 13063, the executive director is required to send direct mailed notice to persons the applicant knows to be interested. Therefore, section 13054 should be revised to clarify that the Executive Director cannot waive the requirement to provide envelopes for such persons.

B. **Changes to Proposed Amendment to Section 13063.**

- 1) **Revise proposed amendment to section 13063 regarding distribution of notice as follows so that only property owners and occupants within 100 feet of the perimeter of the parcel of real property of record may receive substitute newspaper notice rather than direct mailed notice:**

§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a). The notice of shall contain the following elements:

- (1) ~~the filing of the application pursuant to Section 13056;~~ (2) ~~the~~ number assigned to the application;
- (3) ~~a~~ description of the development and its proposed location;
- (4) ~~the~~ date, time and place at which the application will be heard by the commission;

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~~(54) The general procedure of the commission concerning hearings and action on applications and;~~

~~(65) The direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.~~

(6) A statement that staff reports will be distributed as set forth in section 13059.

~~(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:~~

~~(b) In lieu of providing mailed notice to persons specified in section 13054(a)(1)-(2) as required by subsection (a) above, the executive director may direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written mailed notice if the executive director determines:~~

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

2) Summary of Reason for Changes to Proposed Amendment to Section 13063

The suggested revisions to section 13063 of the Commission's regulations include the ability of the executive director, in specific circumstances, to direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project rather than mail individual notice to all known interested persons. As further revised, proposed section 13063 would instruct that only the two categories of known interested persons identified in subsections 13054(a)(1) and (2), i.e., property owners and occupants within 100 feet of the perimeter of the parcel of real property of record, may qualify for the above-identified substitute notice. The applicant, the affected local government, all persons who request notice, those persons who testify at the local level and all other known interested persons would always receive individually mailed notice.

C. Changes to Proposed Amendment to Section 13090.

- 1) **Revise proposed amendment to section 13090 regarding a Commission vote as indicated below to: (a) add missing words to subsection (a); (b) eliminate an unnecessary reference to the word "final"; (c) conform all references to the "public testimony portion of the public hearing"; (d) replace the word "verbal" with the word "oral"; and (e) reorganize subsection (c) to eliminate unnecessary language and make the subsection easier to understand.**

§ 13090. Voting--After Recommendation.

The commission shall not vote upon an application until it has received a staff recommendation under one of the three alternative procedures set forth in Section 13081-13083.

(a) A vote on an application may be taken only at a properly noticed public hearing after *the* commission *has* received the *final* staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

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(1) If the commission is prepared to vote immediately upon conclusion of the *public testimony portion of the* public hearing, the executive director shall provide an *verbal-oral* recommendation and summary of proposed findings.

(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a *final* staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) *give due consideration* respond to:

(i) ~~(1)~~ testimony and other evidence presented at the public hearing, and

(ii) ~~(2)~~ comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report.

(3) At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner as provided for staff reports in section 13066. ~~(d) Under either of the two alternative procedures described in subsection (e),~~ Immediately following the presentation of the staff recommendation, *the Commission shall obtain public testimony in the manner the persons who testified at the hearing conducted pursuant to section 13066 or their representatives shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that* provided for in section 13066.

~~(d)(e)~~ Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1, and 30622, Public Resources Code.

2) Summary of Reason for Changes to Proposed Amendment to Section 13090

The existing provisions of section 13090 limit the ability of the Commission to vote on an application until after it has received a staff recommendation. Under both the existing and proposed regulation, a staff recommendation may be provided by the executive director in writing

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in the staff report, orally upon conclusion of the public testimony portion of the public hearing, or at a subsequent hearing. As further revised, the proposed revisions to section 13090(c) clarify that following the staff recommendation, Commission shall again obtain public testimony from those persons identified in section 13066 only if the Commission puts the vote over to a subsequent hearing. The Commission need not again obtain public testimony if the Commission votes at the same meeting public testimony has already been obtained. The additional revisions would also conform all references to the "public testimony portion of the public hearing in proposed subsections (b) and (c). Finally, the additional revisions would: (a) add missing words to subsection (a); (b) eliminate an undefined reference to the word "final" in subsection (a) and (c); (c) replace the word "verbal" with the word "oral" in subsection (c); and (d) replace the phrase "give due consideration" with the phrase "respond." These additional revisions would eliminate ambiguity and improve the clarity of proposed section 13090.

D. Changes to Proposed Amendment to Section 13109.5

- 1) Revise proposed amendment to section 13109.5 regarding the hearing on reconsideration requests to eliminate a proposed change in a cross-reference:**

§ 13109.5. Hearing on Reconsideration.

(a) ~~The executive director shall schedule a hearing on the reconsideration request At the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. to the applicant and all persons the executive director has reason to know would be interested in the permit reconsideration, t~~The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original ~~regional commission or~~ commission decision shall be afforded a reasonable time to address the merits of the request.

(c) ~~The commission shall vote on the request at the same meeting.~~

(d) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, ~~it shall be considered a new permit application and the application shall be processed as a new application in accordance with Ssections 13050-13120 and Ssections 1315613145-13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006
30621 and 30627, Public Resources Code.

2) Summary of Reason for Change to Proposed Amendment to Section 13109.5

The change to proposed section 13109.5 would eliminate an incorrect cross-reference contained within the proposed regulation. As further revised to eliminate the proposed incorrect change to cross-references, the revised reference would return to the language of the existing regulation.

E. Changes to Proposed Amendment to Section 13166.

- 1) Revise proposed amendment to section 13166 to clarify the definition of the term "material amendment" in subsection (b), insert a nonsubstantial clarifying edit to subsection (a)(1), and eliminate repetitiveness in subsection (c).

§ 13166. Amendments to Permits Other Than Administrative Permits.

~~(a) Applications for amendments to previously approved developments shall be filed with the commission.~~ (1) The executive director shall reject a ~~An application for an amendment to an approved permit shall be rejected if he or she determines that in the opinion of the executive director,~~ the proposed amendment would lessen or avoid the intended effect of an ~~partially~~ approved or ~~conditionally approved~~ permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. If timely submitted, the executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

~~(2b) For those applications accepted, if the executive director shall determines that whether or not a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources or and public access to and along the shoreline, the amendment shall be deemed is a material amendment touching to the permit, permit. Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of~~

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the procedures set forth in this section shall be posted at the project site and mailed to all ~~persons~~ parties the executive director has reason to know may be interested in the application.

(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing/publishing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of objection to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

~~(3c) If the executive director determines that the proposed amendment is a material change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission in accordance with the procedures of Subchapter 1, after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.~~

(4) ~~Unless the proposed amendment has been found to be immaterial, t~~The commission shall ***approve the amendment if it finds, determine*** by a majority vote of the membership present, ~~whether the proposed~~ ***development with the proposed amendment is consistent with the requirements policies of Chapter 3 of the California Coastal Act or a certified local coastal program if applicable.*** ~~of 1976. The commission shall approve the amendment if it finds that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject~~

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to reasonable conditions. The decision shall be accompanied by findings in accordance with section 13096.

(bd) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(ee) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code section 30609.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609, and 30620, Public Resources Code.

2) Summary of Reason for Changes to Proposed Amendment to Section 13166

As stated in the initial statement of reasons for this rulemaking, the amendments to section 13166 are intended to define the term "material amendment" as those amendments that have the potential for adverse impacts on coastal resources or public access. This definition parallels the Coastal Act standard for granting of de minimis waivers from permit requirements. The proposed amendments were inadvertently written to define "material amendment" as one that has the potential for adverse impacts to coastal resources and public access rather than coastal resources or public access. The revision corrects this inadvertent error. Subsection 13166(a)(1) is also revised to clarify that an appeal of the executive director's decision to reject an amendment application will only be considered if submitted within 10 days. The revisions as initially drafted stated this but addition of the words "if timely submitted" makes the language even clearer. The revisions to subsection 13166(c) simply improve the readability of the section without changing substantive requirements. The amendments as initially drafted were intended to clarify the standard for Commission approval of amendments while retaining the structure of the subsection. However, upon further review, it appears that retaining the structure of subsection is unnecessary and results in repetition. Therefore, revisions are proposed to eliminate the repetition without affecting the standard for approval of amendments.

VI. Nonsubstantial/Grammatical Modifications to Proposed Amendments.

Staff has identified several nonsubstantial changes that should be made to the proposed amendments. These are based in part upon written comments received from the public. These changes do not affect the substance of the proposed amendments -- they do not change requirements applicable to the Commission or the regulated community. Therefore, they can be adopted by the Commission without triggering the need to recirculate the proposed amendments

for additional public notice and comment. The modifications are identified below. For clarification, the modifications are divided into those identified in the May 21, 1998 staff report (subpart A below) and those that were made at or after the June 8, 1998 (subpart B below). Newly proposed language appears in ***bold italic underline***. Language which would be newly deleted appears in ***bold italic strikeout***. Language originally proposed for deletion which is now proposed to be retained appears in ***bold italic***. Language originally proposed to be added which is now proposed for deletion appears in ***bold italic strikeout***.

A. Modifications Previously Identified in May 21, 1998 Staff Report

- 1) Revise proposed amendment to Section 13055(g) as follows so that it is easier to understand:

(g) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if an application is filed as an administrative calendar application but subsequently scheduled for another calendar by the executive director or removed from the administrative calendar by the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the applicant shall pay the difference between the administrative calendar fee and the regular fee. The regular fee is the fee determined pursuant to sections (a)(2)-(15), (b)-(f) above. The ~~Such~~ additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require that requires payment of the additional fee prior to issuance of the permit.

- 2) Add word "calendar" to proposed amendment to section 13056(d) as reflected below so that all such references are uniform:

(d) An applicant may appeal to the commission A a determination by the executive director that an application form is incomplete may be appealed to the commission for its determination as to whether the permit application may be filed. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination. The executive director shall cause a date of receipt stamp to

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~~be affixed to all applications for permits on the date they are so received and a stamp of the date of filing on the date they are so filed.~~

- 3) Revise proposed amendment to Section 13067(c) by separately numbering the requirements for ease of the reader as reflected below:**

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or large materials may satisfy this requirement by: (1) submitting accurate reproductions or photographs of the models or other large materials and by (2) agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

- 4) Revise proposed amendment to Section 13158(e) as follows, so that it is easier to understand:**

(e) A permit shall not be issued pursuant to section 13158(c) unless the applicant has satisfied all prior to issuance conditions. Prior to issuance conditions are those conditions that are identified in the permit as conditions that must be complied with prior to issuance of the permit. No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall notify ~~send~~ the permit applicant ~~a notice of commission approval that identifies~~ of those conditions that ~~have been designated as prior to issuance conditions, must be satisfied before the permit can be issued for acknowledgment.~~

- 5) To reflect a legislative renumbering within section 21080.5 of the California Environmental Quality Act ("CEQA"), change the CEQA citation in section 13162 as follows:**

§ 13162. Notice of Permits.

Notice of the ~~commission approval~~issuance of a permit shall also be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code section 21080.5(b)(~~2~~)(E).

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- 6) Replace the phrases: "the Coastal Act of 1976," "the California Coastal Act," and "the California Coastal Act of 1976" with the phrase: "the Coastal Act" in all sections that are proposed to be amended.
- 7) Revise the format of proposed amendment to Section 13055(fees) to set forth permit application fees in a tabular form.

B. Modifications Made At or After the June 8, 1998 Hearing

- 1) Make the proposed amendment to section 13053(e) more specific by inserting the relevant subsection of Government Code Section 65941 as follows:

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c)

- 2) Revise amendment to § 13055(a)(12) to eliminate the term "standard" because it is unnecessary.

(a) Permit filing and processing fees, ~~to be paid by check or money order at the time of the filing of the permit application,~~ shall be as follows:

....

(123) Two hundred dollars (\$200) for a "de minimis" waiver of a coastal development permit application pursuant to section 30624.7 of the Coastal Act and for a "standard" waiver pursuant to sections 13250(c) and 13253(c) of these regulations. . . .

- 3) Revise proposed amendment to subsections (a)(1) and (2) of Section 13056 regarding the filing of permit applications to eliminate unnecessary words and make those subsections easier to understand:

(a) A permit application shall be submitted on the form or format issued pursuant to Sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to Section 13055, shall be deemed 'filed' after having been received and found in proper order by the executive director of the commission. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:

- (1) A date of receipt reflecting the date they are ~~or were~~ received; and
- (2) A date of filing reflecting the date it is ~~or was~~ filed.

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- 4) **Revise proposed amendment to subsection (b) and (c) of Section 13056.1 regarding reapplication so that the subsections are easier to understand:**

§ 13109 13056.1. Reapplication

~~(b) The executive director shall reject the application for filing when~~ If the executive director ~~has~~ determined~~s~~ that an application is for "substantially the same" development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, ~~the executive director shall reject the application for filing.~~

~~(c) Where~~ If the executive director ~~has~~ determined~~s~~ that ~~the~~ an application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

- 5) **Revise proposed amendment to Section 13057 to: (a) more clearly reflect that the staff report will be in writing; (b) correct the citation to CEQA in section 13057(c)(2) which has been renumbered; and (c) add a missing word to subsection (c)(5):**

§ 13057. Contents Preparation of Staff Reports

(a) The executive director shall prepare a staff *written* report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the California Coastal Act of 1976;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the California Coastal Act of 1976;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976;

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(6) Staff's recommendation, including specific ~~written~~ findings, prepared in accordance with subsection (c).

...

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific ~~written~~ findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976 including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific ~~written~~ findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(~~B~~)(A) of the Public Resources Code.

(3) ~~Written~~ Responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that *the* development will be in accordance with the Coastal Act.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607, and 30620, Public Resources Code.

- 6) Revise proposed amendment to Section 13072(b) regarding amended applications to make the section easier to understand and to reference "the" public hearing rather than "a" public hearing, consistent with subsection (a):**

§ 13072. Procedures for Amended Application.

(b) If at ~~a~~ *the* public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the commission may vote on the amended application at that public hearing *where if*:

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(1) Adequate public notice has already been provided and

(2) The proposed amended project was adequately reviewed during ~~a~~ the public hearing.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

- 7) Revise proposed amendment to Section 13103 regarding hearings on consent calendar items so that the section is easier to understand:**

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners ~~object to any item on the consent calendar and request that such an item be processed individually as a separate application, scheduled for public hearing on the regular permit calendar, such the item shall be removed from the consent calendar and shall thenceforth be processed as a single application.~~ If any item is removed from the consent calendar, the public hearing on said the item shall ~~ordinarily be deemed~~ continued until it can be scheduled ~~for an individual public hearing on the regular permit calendar.~~

- 8) Revise proposed amendment to section 13109.2 regarding initiation of reconsideration proceedings to clarify in subsection (a) which district office the reconsideration request should be directed to and to add a missing word in subsection (b):**

(a) Any time within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the ~~regional~~ commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the ~~executive director of the commission~~ appropriate district office at which the original permit application was filed within 30 days of the final vote.

(b) The executive director shall prepare a staff report with a recommendation on the merits of the request for reconsideration. The staff report shall analyze whether the request satisfies the grounds for reconsideration provided in Public Resources Code section 30627. The staff report shall be distributed to the persons and in the manner provided for in section 13059.

VII. MATERIALS AVAILABLE FOR REVIEW UPON REQUEST

The following documents concerning the proposed amendments are available upon request (by contacting Jeff Staben at (415) 904-5220):

- 1) Staff Report dated May 21, 1998, containing copies of, and staff responses to, comments received prior to May 21, 1998,
- 2) Notice of the Commission's Intent to Amend Portions of Chapters 5 and 6 of the Commission's Regulations.
- 3) Initial Statement of Reasons for proposed revisions to portions of Chapters 5 and 6 of the Commission's regulations.
- 4) "Testimony on Commission Staff-Proposed Revisions and Petition for Rulemaking," submitted by Norbert and Stephanie Dall, dated May 30, 1998 (received in the Commission's offices on June 4, 1998)



EXHIBIT 1



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	13051	Reference to Regional Commission (no change)
	13051.5	Reference to Executive Director (no change)

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Article 5 Determination Concerning Filing

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	<u>13056.1</u>	<u>Reapplication</u> (Moved here and rewritten from section 13109 of Article 17)

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Section	13057	Contents <u>Preparation of Staff Reports</u> (Now combines 13057, 13073 & 13075)
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	13059	<u>Distribution of Staff Reports</u> (Rewritten combining 13059 & 13076)

Article 7 Public Comments on Applications

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	13061	Treatment of Similar Communications (Moved to new 13060)

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APPLICATION NO. CCC's
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Article 9 Oral Hearing Procedures

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13065 Evidence Rules (no change)
13066 Order of Proceedings (Rewritten combining 13066, 13083, 13084)
13067 Speaker's Presentations (Rewritten combining 13067 & 13068)
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Article 10 Field Trips

Section 13069 Field Trips--Procedures (no change)

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13072 Procedures for Amended Application
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13074 Rescheduling (Moved here from 13087)

Article 12 ~~Preparation of Staff Recommendation~~

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~~13074 Submission of Additional Written Evidence (Moved to new 13060)~~
~~13075 Final Staff Recommendation (Moved to new 13057)~~
~~13076 Distribution of Final Staff Recommendation (Moved to new 13059)~~
~~13077 Written Response to Staff Recommendation (Moved to new 13060)~~

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Section ~~13080 Alternatives for Review of Staff Recommendation (Moved to new 13090)~~
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Article 4 Withdrawal and Reapplication

Section	13258	Withdrawal of Boundary Adjustment Request
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CALIFORNIA COASTAL COMMISSION

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**TEXT OF PROPOSED CHANGES TO THE
CALIFORNIA CODE OF REGULATIONS
TITLE 14, DIVISION 5.5, CALIFORNIA COASTAL COMMISSION
CHAPTERS 5 AND 6 COASTAL DEVELOPMENT PERMITS ISSUED BY
COASTAL COMMISSION**

(Note: Those subchapters within Chapters 5 and 6 that do not contain proposed amendments are omitted. Additions are shown in underline and deletions are shown in ~~strikeout~~.)

Chapter 5. Coastal Development Permits Issued by Coastal Commissions

§ 13050. Scope of Chapter.

Except as specifically provided by any subdivision hereof the provisions of this chapter shall govern all coastal development permit applications required under Public Resources Code, section 30601, and under Public Resources Code, section 30600 where a local government has not exercised its option to administer permits as provided in sections 13301-13327 of these regulations.

§ 13050.5. Permit Jurisdiction over Portions of a Development Not Within the Coastal Zone.

Except for the following circumstances a coastal development permit shall only be required for a development or those portions of a development actually located within the coastal zone:

(a) In the case of any division of land, a permit shall be required only for any lots or parcels created which require any new lot lines or portions of new lot lines in the coastal zone: in such instance, commission review shall be confined to only those lots or portions of lots located within the coastal zone.

(b) In the case of any development involving a structure or similar integrated physical construction, a permit shall be required for any such structure or construction which is partially in and partially out of the coastal zone.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Division 20, Public Resources Code.

§ 13051. Reference to Regional Commission.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

§ 13051.5. Reference to Executive Director.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

Subchapter 1. Regular Permits

Article 1. When Local Applications Must Be Made First

§ 13052. When Required.

When development for which a permit is required pursuant to Public Resources Code, section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in section 13053. An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

- (a) Tentative map approval;
- (b) Planned residential development approval;
- (c) Special or conditional use permit approval;
- (d) Zoning change approval;
- (e) All required variances, except minor variances for which a permit requirement could be established only upon a review of the detailed working drawings;
- (f) Approval of a general site plan including such matters as delineation of roads and public easement(s) for shoreline access;
- (g) A final Environmental Impact Report or a negative declaration, as required, including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency;
- (h) Approval of dredging and filling of any water areas;
- (i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances;
- (j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;
- (k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations.

Note: Authority cited: Section 30333, Public Resources Code. Reference: ~~Sections 30333 and~~ 30620, Public Resources Code; Section 65941, Government Code.

§ 13053. Where Preliminary Approvals Are Not Required.

(a) The executive director may waive the requirement for preliminary approval by other federal, state or local governmental agencies for good cause, including but not limited to:

(1) The project is for a public purpose;

(2) The impact upon coastal zone resources could be a major factor in the decision of that state or local agency to approve, disapprove, or modify the development;

(3) Further action would be required by other state or local agencies if the coastal commission requires any substantial changes in the location or design of the development;

(4) The state or local agency has specifically requested the coastal commission to consider the application before it makes a decision or, in a manner consistent with the applicable law, refuses to consider the development for approval until the coastal commission acts, or

(5) A draft Environmental Impact Report upon the development has been completed by another state or local governmental agency and the time for any comments thereon has passed, and it, along with any comments received, has been submitted to the commission at the time of the application.

(b) Where a joint development permit application and public hearing procedure system has been adopted by the commission and another agency pursuant to Public Resources Code section 30337, the requirements of section 13052 shall be modified accordingly by the commission at the time of its approval of the joint application and hearing system.

(c) The executive director may waive the requirements of section 13052 for developments governed by Public Resources Code, section 30606.

(d) The executive director of the commission may waive the requirement for preliminary approval based on the criteria of section 13053(a) for those developments involving uses of more than local importance as defined in section 13513.

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30305~~ and 30620, Public Resources Code; Section 65941, Government Code.

Article 2. Application for Permit

§ 13053.4. Single Permit Application.

(a) To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept for filing a second application for development which is the subject of a permit application already pending before the commission. This section shall not limit the right of an applicant to amend a pending application for a permit in accordance with the provisions of section 13072.

~~(b) The executive director shall not accept for filing an application for an amendment to a permit until such permit becomes final.~~

(eb) The executive director shall not accept for filing an application for development on a lot or parcel or portion thereof which is the subject of a pending proposal for an adjustment to the boundary of the coastal zone pursuant to Public Resources Code section 30103(b).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

§ 13053.5. Application Form and Information Requirements.

The permit application form shall require at least the following items:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the California Coastal Act of 1976, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

~~(d) In addition to full size drawings, maps, photographs, and other exhibits drawn to scale the applicant shall furnish to the Commission, at the time of submission of the application, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to distribute submit exhibits of a larger size, enough copies reasonably required for distribution to those persons on the Commission's mailing lists and for inspection by the public in the Commission office. A reasonable number of additional copies may, at the discretion of the Executive Director, be required.~~

(e) Any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas.

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601.5 and 30620, Public Resources Code.

§ 13053.6. Amendment of Application Form.

The executive director of the commission may, from time to time, as he or she deems necessary, amend the format of the application form, provided, however, that any significant change in the type of information requested must be approved by the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 3. Applicant's Notice Requirements

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site. Notification Requirements.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for notice to adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartments or condominium and each residence within a condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of and all parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s), the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited.

___ This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above, parcels described above. Separate stamped envelopes shall be addressed to "owner," and to "occupant," or the name of the interested person, as applicable, except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel. The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this

requirement and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations, upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file.

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

~~(bd) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to so post the completed notice form and sign the declaration of posting, the executive director of the commission shall refuse to file the application, or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.~~

~~(ee) Pursuant to sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 4. Schedule of Fees for Filing and Processing Permit Applications

§ 13055. Fees.

~~(a) Permit filing and processing fees, to be paid by check or money order at the time of the filing of the permit application, shall be as follows:~~

~~(1) Two hundred dollars (\$200) for any development qualifying for an administrative or emergency permit, except single-family residences.~~

~~(2) Two hundred fifty dollars (\$250) for a single-family residence that is 1500 square feet or less, or for any development of a type or in a location such that it would ordinarily be scheduled for the consent calendar; provided, however, that the fee shall be five hundred dollars (\$500) for a single family residence that is between 1501 square feet and 5000 square feet, and provided further that the fee shall be one thousand dollars (\$1,000) for a single family residence over 5000 square feet. Any residential project which includes more than 75 cubic yards of grading shall also be subject to an additional two hundred dollars (\$200) fee, plus five dollars (\$5) per 1000 cubic yards for grading in excess of 75 cubic yards.~~

~~(3) Six hundred dollars (\$600) for lot line adjustments, or for divisions of land where there are single-family residences already built and only one new lot is created by the division or for multi-family units up to four (4) units, or for any other development not otherwise covered herein with a development cost of less than one hundred thousand dollars (\$100,000).~~

~~(4) Two thousand dollars (\$2,000) or one hundred twenty dollars (\$120) per unit, whichever is greater, but not to exceed twenty thousand dollars (\$20,000) for multi-unit residential development greater than four (4)~~

units, ~~or for any other development not otherwise covered herein with a development cost of more than one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000).~~

(5) All residential projects (whether single or multi-unit) that include more than 75 cubic yards of grading shall be subject to an additional fee of two hundred dollars (\$200). This fee does not apply to residential projects that qualify for an administrative permits.

(6) For office, commercial, convention, or industrial development:

(i) Five hundred dollars (\$500) for development of 1000 gross square feet or less.

(ii) Two thousand dollars (\$2,000) for office, commercial, convention or industrial development of less than more than 1000 but less than 10,001 gross ~~10,000~~ gross square feet.

(~~5~~iii) Four thousand dollars (\$4,000) for office, commercial, convention or industrial development of more than 10,000 but less than 25,000~~1~~ gross square feet, ~~or for any other development not otherwise covered herein with a development cost of more than five hundred thousand dollars (\$500,000) but less than one million two hundred fifty thousand dollars (\$1,250,000).~~

(~~6~~iv) Eight thousand dollars (\$8,000) for office, commercial, convention or industrial development of more than 25,000 but less than 50,000~~1~~ gross square feet, ~~or for any other development not otherwise covered herein with a development cost of more than one million two hundred fifty thousand dollars (\$1,250,000) but less than two million five hundred thousand dollars (\$2,500,000).~~

(~~7~~v) Twelve thousand dollars (\$12,000) for office, commercial, convention or industrial development of more than 50,000 but less than 100,000~~1~~ gross square feet, ~~or for any other development not covered otherwise herein with a development cost of more than two million five hundred thousand dollars (\$2,500,000) but less than five million dollars (\$5,000,000).~~

(~~8~~vi) Twenty thousand dollars (\$20,000) for office, commercial, convention or industrial development of more than 100,000~~1~~ gross square feet or more, ~~for any other development cost of more than five million dollars (\$5,000,000) and for any~~

(7) Twenty thousand dollars (\$20,000) for major energy production and fuel processing facilities, including but not limited to, the construction or major modification of offshore petroleum production facilities, tanker terminals and mooring facilities, generating plants, petroleum refineries, LNG gassification facilities and the like.

(8) For changes in intensity of use; for office, commercial, convention or industrial development that does not have a quantifiable square footage; and for all other development not identified above, the fee shall be:

(i) Six hundred dollars (\$600) if the development cost is up to and including \$100,000.

(ii) Two thousand dollars (\$2,000) if the development cost is more than \$100,000 but less than \$500,001.

(iii) Four thousand dollars (\$4,000) if the development cost is more than \$500,000 but less than \$1,250,001.

(iv) Eight thousand dollars (\$8,000) if the development cost is more than \$1,250,000 but less than \$2,500,001.

(v) Twelve thousand dollars (\$12,000) if the development cost is more than \$2,500,000 but less than \$5,000,001, and

(vi) Twenty thousand dollars (\$20,000) if the development cost is \$5,000,001 or more.

~~(99) Two hundred dollars (\$200) for immaterial minor amendments to coastal development permits, and fifty percent (50%) of the original permit fee that would currently apply to the permitted development for development for material amendments to coastal development permits.~~

(10) Two hundred dollars (\$200) for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow-up coastal development permit.

~~(101) Two hundred dollars (\$200) for extensions and reconsiderations of coastal development permits for single family dwellings.~~

~~(112) Four hundred dollars (\$400) for extensions and reconsiderations of all other coastal development permits.~~

~~(123) Two hundred dollars (\$200) for a "de minimis" waiver of a coastal development permit application pursuant to section 30624.7 of the Coastal Act and for a "standard" waiver pursuant to sections 13250(c) and 13253(c) of these regulations.~~

~~(13) Two hundred (\$200) for assignments of coastal development permits.~~

~~(14) One hundred dollars (\$100) for a second continuance and any subsequent continuance requested by the applicant and approved by the Commission. There is no fee charged for the first continuance requested by the applicant.~~

~~(15) Five hundred dollars (\$500) for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be two hundred dollars (\$200).~~

(b) Fees for after-the-fact permits shall be doubled unless such added increases are waived by the Executive Director when it is determined that the permit could be processed by staff without significant additional review time resulting from the processing of the violation.

(c) Where a development consists of land division, each lot shall be considered as one single-family residence for the purpose of calculating the application fee. ~~If an such application may includes both subdivision and the construction of a single family residences, at no additional fee, if proposed together with the land division the fee shall be based upon the construction of the proposed residences with no additional fee for the subdivision.~~ Conversion to condominiums shall be considered a division of the land.

(d) Except as provided in subsection (c) above, if different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for such application exceed twenty thousand dollars (\$20,000).

(d) ~~The application fee shall be determined from the type and size of the proposed development, except that where there is conflict over the applicable fee, the executive director may use the project cost to determine the fee.~~

(e) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in its consideration of the permit application, including the costs of providing public notice.

(f) The executive director shall waive the application fee where requested by resolution of the commission.

(g) The required fee shall be paid in full at the time an application is filed. However, if an application is filed as an administrative calendar application but subsequently scheduled for another calendar by the executive director or removed from the administrative calendar by the commission, the applicant shall pay the difference between the administrative calendar fee and the regular fee. Such additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit that requires payment of the fee prior to issuance of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 5. Determination Concerning Filing

§ 13056. Filing.

~~(a) A permit application shall be submitted on the form or format issued pursuant to Sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to Section 13055, shall be deemed 'filed' after having been received and found in proper order by the executive director of the commission. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:~~

(1) A date of receipt reflecting the date they are or were received; and

(2) A date of filing reflecting the date it is or was filed.

~~(b) Said review shall be completed within a reasonable time, but unless there are unusual circumstances, no later than five (5) days. The executive director shall make the filing determination in writing within ten working days, if feasible, but in no event later than thirty (30) calendar working days after the date it is received in the offices of the commission during the its normal working hours of said office. The executive director shall mail the filing determination to the applicant.~~

(c) If the executive director finds the application incomplete, he or she shall specify those parts of the application which are incomplete, and describe the specific materials needed to complete the application. Not later than 30 calendar days after receipt of the requested materials, the executive director shall determine whether the submittal of the requested materials is complete and transmit that determination in writing to the applicant.

(d) An applicant may appeal to the commission. A determination by the executive director that an application form is incomplete may be appealed to the commission for its determination as to whether the permit application may be filed. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) days and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination. The executive director shall cause a date of receipt stamp to be affixed to all applications for permits on the date they are so received and a stamp of the date of filing on the date they are so filed.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30505~~ and 30620, Public Resources Code; Section 65943, Government Code.

§ 13109 13056.1. Reapplication

(a) Following a withdrawal of or a final decision upon an application for a coastal development permit, no applicant or the applicant's successor in interest to an applicant may reapply to the commission for a development permit for substantially the same development for a period of six (6) months from the date of the prior withdrawal or final decision. The executive director shall decide ~~Whether~~ an application is for "substantially the same" development as that which was withdrawn or upon which a final determination has been rendered shall be decided by the executive director of the commission within (5) working days from receipt of such application the filing determination period set forth in section 13056. Where the executive director is unable to make such decision, the executive director may refer the re-application to the commission for its decision as to whether the application is substantially the same. Elimination of conditions required for a permit shall not be considered a substantial change for purposes of determining whether an application is substantially the same. Until such a determination is made, the reapplication shall not be deemed "filed" within the meaning of Public Resources Code, Section 30621. Any project which has been denied by a regional commission or the commission and which may be submitted as a new permit application under the guidelines set forth above, may be considered by the commission without requiring that the revised project has received preliminary approval under Section 13052 from the local government entity or entities which originally approved the project. The commission may require that the revised project be subjected to informal review by appropriate local government entities prior to commission review. The six month waiting period provided in this section may be waived by the commission for good cause.

(b) The executive director shall reject the application for filing when the executive director has determined that an application is for "substantially the same" development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months.

(c) Where the executive director has determined that the application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

(d) The applicant or the successor in interest to an applicant may appeal to the commission the determination of the executive director in the manner provided in section 13056. The commission may vote to overturn the determination of the executive director. Otherwise the executive director's determination shall stand.

(e) The commission or the executive director may waive the six-month waiting period provided in this section for good cause.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

§ 13057. Contents Preparation of Staff Reports

~~(a) The executive director shall prepare and reproduce a summary of each application officially filed except as provided for administrative permits in Section 13153. The summary shall be brief and understandable, and shall fairly present a description of the significant features of the proposed development, using the applicant's words wherever appropriate. The application summary shall be illustrated with the maps or drawings and shall contain either the Environmental Impact Report or the Environmental Impact Statement prepared for the development, if such a report was prepared, or a summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission. Staff comments shall also be included in the summary concerning (1) questions of fact, (2) the applicable policies of the California Coastal Act of 1976, (3) related previous application, (4) any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976, (5) public comment on the application, (6) written response to significant environmental points raised by members of the public or other public agencies, (7) prior decisions of the commission that, pursuant to the provisions of Public Resources Code Section 30625(c) may be a precedent(s) for the issues raised by the application and (8) other relevant matters. The staff comments shall be clearly labeled to distinguish them from the comments of the applicant and interested persons. The summary may include a tentative staff recommendation as to whether a permit should be granted or denied. If a tentative staff recommendation is included in the application summary, it shall conform to the requirements of Sections 13073-13077.~~

(a) The executive director shall prepare a staff report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the California Coastal Act of 1976;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the California Coastal Act of 1976;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976;

(6) Staff's recommendation, including specific written findings, prepared in accordance with subsection (c).

(b) The staff report shall also include as applicable:

(1) A copy or summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission, or if no such report was prepared, any negative declaration or finding of no significant impact;

(2) A discussion of related previous applications;

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific written findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976 including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific written findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(i) of the Public Resources Code.

(3) Written responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that development will be in accordance with the Coastal Act.

(d) Notwithstanding the requirement of subsection (a)(6) hereof, with respect to any application, the executive director may elect to prepare first a partial staff report that does not contain the recommendation required by subsection (c)(4) and (c)(5) where he or she determines that public comment and commission discussion would facilitate preparation of such recommendation. The executive director shall comply with all other procedures applicable to staff reports including procedures for the distribution of staff reports and for the noticing of hearings.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607, and 30620, Public Resources Code.

§ 13058. Consolidation of Staff Reports; Consolidation of Public Hearings.

Where two or more applications are legally or factually related, the executive director may prepare a consolidated staff report. Either the commission or the executive director may consolidate a public hearing where such consolidation would facilitate or enhance the commission's ability to review the developments for consistency with the requirements of the California Coastal Act of 1976. two or more applications which are legally or factually related for purposes of preparation of staff documents and/or public hearing unless a party thereto makes a sufficient showing to the commission that the consolidation would restrict or otherwise inhibit the commission's ability to review the developments for consistency with the requirements of the California Coastal Act of 1976. Any such consolidation of permit applications shall conform to the requirements of

~~Public Resources Code, Section 30621.~~ A separate vote shall be taken for each application if requested by the applicant.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620~~ 30621, Public Resources Code.

§ 13059. Distribution of Staff Reports.

~~The application summary, executive director shall distribute the staff report by mail to all members of the commission, to the applicants, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to the proposed development, and to all persons who specifically requested it. and With respect to all other persons known or thought by the executive director to have a particular interest in the application, including those specified in section 13054(a), the executive director shall provide notice pursuant to section 13063 or 13015 that the staff report shall be distributed only to those persons who request it. Staff reports shall be distributed~~ within a reasonable time to assure adequate notification ~~to all interested parties~~ prior to the scheduled public hearing. The ~~application summary~~ staff report may either accompany the meeting notice required by ~~S~~section 13015 or may be distributed separately. The commission may require any person who desires copies of ~~application summaries~~ staff reports to provide a self-addressed stamped envelope for each desired mailing; ~~where extensive duplicating or mailing costs are involved,~~ ~~t~~The commission may also require that interested persons provide reimbursement for such duplicating costs.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30006, 30620 and 30621~~, Public Resources Code; Section 6257, Government Code.

Article 7. Public Comments on Applications

§ 13060. Distribution of Written Comments on Applications and Staff Reports.

~~The executive director shall reproduce and distribute to all commission members, the text or summary of all relevant communications concerning applications that are received in the commission offices prior to the commission's public hearing and thereafter at any time prior to the vote. Such communications shall be available at the commission office for review by any person during normal working hours.~~

Written communications on applications and staff reports shall be distributed in accordance with the following procedures:

(a) Except as stated in subsection (c) below, the executive director shall distribute to all commission members the text or a summary of all relevant communications which are received prior to the close of the public testimony portion of the public hearing.

(b) Written communications must be received by the executive director in the appropriate district office prior to the day of the hearing or in the hearing room on the day of the public hearing. The executive director does not accept responsibility for the cost or delivery of written communications to the hearing room.

(c) The executive director may summarize communications orally rather than distribute the communications to each commission member if the executive director receives lengthy communications, a sizable number of similar communications, or communications received too late to provide copies to the commission.

(d) Written communications shall be available at the commission office for review by any person during normal working hours.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code, Section 6257, Government Code.

§ 13061. Treatment of Similar Communications.

~~When a sizable number of similar communications is received, the texts need not be reproduced but the commission shall be informed of the substance of the communications; such communications shall be made available at the commission office for inspection by any person during normal working hours.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

Article 8. Hearing Dates

§ 13062. Scheduling.

The executive director of the commission shall set each application filed for public hearing no later than the 49th day following the date on which the application is filed. All dates for public hearing shall be set with a view toward allowing adequate public dissemination of the information contained in the application prior to the time of the hearing, and toward allowing public participation and attendance at the hearing while affording applicants expeditious consideration of their permit applications.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

§ 13063. Distribution of Notice.

~~(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, and to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a). The notice of shall contain the following elements:~~

- ~~(1) the filing of the application pursuant to Section 13056;~~ (2) ~~the~~ number assigned to the application;
- ~~(32) a~~ description of the development and its proposed location;
- ~~(43) the~~ date, time and place at which the application will be heard by the commission;
- ~~(54) the~~ general procedure of the commission concerning hearings and action on applications and;

~~(65) the direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.~~

(6) A statement that staff reports will be distributed as set forth in section 13059.

(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

Article 9. Oral Hearing Procedures

§ 13064. Conduct of Hearing.

The commission's public hearing on a permit matter shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13065. Evidence Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the chairperson of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13066. Order of Proceedings.

The commission's public hearing on a permit application shall ordinarily, unless the chairperson directs otherwise, proceed in the following order:

~~(1) Identification of the application; a summary of the application, its accompanying documents and other documents and materials submitted at the request of the applicant, interested persons or the staff, and staff comments thereon, and a summary of the correspondence received by the executive director, relating to the application;~~

~~(2) Presentation by or on behalf of the applicant, if the applicant wishes to expand upon material contained in the application summary;~~

~~(3) Other speakers for the application;~~

~~(4) Speakers against the application;~~

~~(5) Other speakers concerning the application;~~

~~(6) Rebuttal by applicant and appellant subject to the discretion of the commission pursuant to Section 30333.1 or if the vote is not to be scheduled for a subsequent meeting permitting time for rebuttal in writing;~~

~~(7) Motion to close the public hearing (or to continue it to a subsequent meeting).~~

~~(b) Questions by commissioners will be in order at any time following any party's presentation, subject to time limitation.~~

~~(c) All proceedings with regard to permits shall be recorded as provided in Sections 13026 and 13027.~~

(a) The executive director shall make a presentation to the commission identifying the application, describing the project, and summarizing the staff recommendation, including the proposed findings, proposed conditions, and written correspondence received prior to the public hearing.

(b) The public testimony portion of the public hearing shall proceed in the following order:

(1) Persons or their representatives desiring to state their views on the application shall have the opportunity to do so as follows:

(A) The applicant;

(B) Other persons supporting the application;

(C) Persons opposing the application;

(D) Other persons.

(2) The chairperson may allow rebuttal testimony by the applicant in accordance with Public Resources Code section 30333.1(a).

(3) The executive director may respond to and comment, as appropriate, on the testimony presented by any previous speaker.

(4) The chairperson may close the public testimony portion of the public hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(c) Questions by commissioners will be in order at any time following any person's presentation.

(d) At the conclusion of the public testimony portion of the public hearing, the executive director may propose to change the staff recommendation or the commission may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the executive director shall have an opportunity to comment briefly and specifically on any proposed change.

(e) The commission shall vote on a permit application in accordance with section 13090.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and 30333.1, Public Resources Code.

§ 13067. Speaker's Presentations.

~~Speakers' presentations shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate. The commission may establish reasonable time limits for presentation(s); such time limits shall be made known to all affected parties prior to any hearing. Where speakers use or submit to the commission visual or other materials, such materials shall become part of the application file and identified and maintained as such. Speakers may substitute reproductions of models or other large materials but shall agree to make the originals available upon request of the executive director.~~

(a) Speakers' presentations shall be to the point and shall be as brief as possible. The commission may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The chairperson may require individuals to consolidate their comments to avoid repetition.

(b) In order for audio, visual or audio-visual materials to be considered by the commission, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or other large materials may satisfy this requirement by submitting accurate reproductions or photographs of the models or other large materials and by agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13068. Other Speakers.

~~(a) Subject to paragraph (b) of this section, and to the chairperson's right to accept a motion to conclude the taking of oral testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak on an application shall be heard.~~

~~(b) Remarks shall be brief and to the point, and shall not duplicate those of previous speakers.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.~~

Article 10. Field Trips

§ 13069. Field Trips--Procedures.

Whenever the commission is to take a field trip to the site of any proposed project, the chairperson shall decide, and the executive director shall provide public notice of the time, location and intended scope of the field trip.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 11. Additional Hearings, Withdrawal and Off-Calendar Items, Amended Applications

§ 13070. Continued Hearings.

A public hearing on an application may be completed in one commission meeting. However, the commission may vote to continue the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed to the persons and in the manner provided for in section 13063.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

§ 13071. Withdrawal of Application.

(a) At any time before the commission commences calling the roll for a vote on an application, an applicant may withdraw the application.

(b) Withdrawal must be in writing or stated on the record and does not require commission concurrence. Withdrawal shall be permanent except that the applicant may file a new application for the same development subject to the requirements of ~~§sections~~ Sections 13056 and 13409 13056.1.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and ~~30621~~30620, Public Resources Code.

§ 13072. Procedures for Amended Application.

~~(a) If an application for a permit for a proposed project is amended in any material manner, a public hearing must be held on the amended application, unless the executive director determines that the subject matter of the proposed amendment was reviewed adequately at a prior public hearing.~~

~~(b) If prior to a the public hearing at which on an application, is scheduled to be heard an applicant wishes to amend its permit the application in a manner which the executive director determines is material, the executive director shall prepare a staff report pursuant to section 13057 and the commission shall vote on the amended application only if:~~

~~(1) The applicant shall agree in writing to extend the final date for public hearing not more than 49 days from the date of such amendment or~~

(2) If the applicant does not agree to such an extension, the commission shall vote on the application as originally filed. The executive director determines that staff does not need additional time to prepare the staff report or provide notice to the public.

(b) If at a public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the commission may vote on the amended application at that public hearing where:

(1) Adequate public notice has already been provided and

(2) The proposed amended project was adequately reviewed during a public hearing.

(c) Conditions recommended by the executive director or imposed by previous commission action shall not be considered an amendment to the application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

§ 13085 13073. Applicant's Postponement.

(a) In addition to the procedures set forth in Section 13071 the applicant may request the commission to postpone consideration of the application pursuant to this section. Where the an applicant for a coastal development permit determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. The applicant's right to postpone shall be exercised prior to commencement of the public testimony portion of the public hearing. Such a request shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application.

(b) An applicant's request for postponement, not made as a matter of right pursuant to Section 13085 13073(a), shall be granted at the commission's discretion. The request may be made in writing or in person at the commission meeting prior to the presentation provided for in Section 13084(b). The executive director shall establish procedures for notification, to the extent feasible, to notify all persons the executive director knows to be interested in the application of the postponement. The commission shall not grant a request for postponement under this subdivision unless it determines that sufficient time remains under applicable deadlines for its action on the application.

(c) Any request for postponement pursuant to subsections (a) or (b) shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application. Where a request for postponement is granted pursuant to subsections (a) or (b), the applicant shall provide another set of stamped, addressed envelopes consistent with the requirements of section 13054.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620 and 30621, Public Resources Code.

§ 13087 13074. Rescheduling

Where consideration of an application is postponed ~~at the request of the applicant~~, the executive director shall, to the extent feasible, schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application. Notice of the rescheduled hearing shall be distributed to the persons and in the manner provided for in section 13063.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

Article 12. Preparation of Staff Recommendation

§ 13073. Staff Analysis.

~~(a) If the vote on an application is scheduled for a later meeting that the oral hearing on the application, the executive director shall promptly perform whatever inquiries, investigations, research, conferences, and discussions are required to resolve issues presented by the application and to enable preparation of a staff recommendation for the vote. If further evidence is taken or received by the executive director, such evidences shall be made available in the administrative record of the application at the commission's office and all affected parties shall be given a reasonable opportunity to respond prior to the deadline for preparation and mailing of the staff recommendation.~~

~~(b) The executive director may request of the applicant any additional information necessary to perform the responsibilities set forth in subsection (a), and may report to the commission any failure to comply with such request, including the relationship of the requested information to the findings required by the California Coastal Act of 1976.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

§ 13074. Submission of Additional Written Evidence.

~~At any point before or after the oral hearing on a permit application, up until the time the public hearing is closed by the commission, any interested party may submit written evidence including rebuttal arguments, to the commission. Rebuttal information shall ordinarily be submitted to the executive director prior to the deadline for preparing staff recommendations.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.~~

§ 13075. Final Staff Recommendation.

~~The executive director's final recommendation shall include specific written findings, including a statement of facts and legal conclusions, as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976, including, but not limited to, the requirements of Public Resources Code, Section 30604.~~

~~The staff recommendation shall include any questions that have not been answered by the applicant or by interested parties and may include a recommendation that the commission take a field trip to the site of any~~

proposed project when the executive director judges that this would materially assist in understanding and voting on the application. The staff recommendation shall be written except as provided in Section 13082.

The staff recommendation shall contain recommended written responses to significant environmental points raised during the evaluation in a manner consistent with the requirements of the California Environmental Quality Act. The staff recommendation shall also relate the proposed findings to prior decisions of the commission in order to assure consistency of the recommendation with decisions of the commission that, pursuant to the provisions of Public Resources Code Section 30625(e) are precedents for the issues raised by the application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30604 & 30625, Public Resources Code.

§ 13076. Distribution of Final Staff Recommendation.

The staff recommendation shall be distributed to the persons and in the manner provided in Section 13059 for application summaries.

Note: Authority and reference cited: Section 30333, Public Resources Code.

§ 13077. Written Response to Staff Recommendation.

Any person may respond in writing to the staff recommendation subject to the requirements of Sections 13074 and 13084.

Note: Authority and reference cited: Section 30333, Public Resources Code.

**Article 13
Commission Review of Staff Recommendation**

§ 13080. Alternatives for Review of Staff Recommendation.

Any vote on an application may be taken only at a properly noticed public hearing and shall proceed under one of the three alternatives set forth in Sections 13081-13083.

Note: Authority and reference cited: Section 30333, Public Resources Code.

§ 13081. Staff Recommendation Included in Application Summary.

If the staff report and tentative recommendation described in Section 13057 is complete and has been distributed prior to the public hearing, and if adequate public notice has been given, the commission may vote upon an application at the same meeting during which the public hearing on the application is held. The parties shall be afforded the opportunity for rebuttal to any information presented at the public hearing in the manner set forth in Section 13084 before the commission proceeds to vote on the application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

~~§ 13082. Verbal Staff Recommendation upon Conclusion of Public Hearing.~~

~~(a) If the application summary does not include a staff recommendation, but the commission is prepared to vote immediately upon conclusion of the public hearing, the executive director shall provide a verbal recommendation and summary of proposed findings and the applicant and interested parties shall be afforded an opportunity to respond to the recommendation in the manner set forth in Section 13084 before the commission proceeds to vote on the application.~~

~~Note: Authority and reference cited: Sections 30331 & 30333, Public Resources Code.~~

~~§ 13083. Consideration of Staff Recommendation at a Meeting Subsequent to the Oral Hearing~~

~~Upon conclusion of the oral hearing, the commission may put the vote on the application over to a subsequent meeting, but no later than 21 days following the conclusion of the public hearing unless the applicant in writing waives any right to a decision within that time limit. Notice of such hearing shall be given in the manner and to the persons provided in Section 13059 except that those persons notified pursuant to Section 13054(a) need not be notified under this section unless they specifically request such notice.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

~~§ 13084. Procedures for Presentation of Staff Recommendation and Responses of Interested Parties.~~

~~(a) The executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner provided for application summaries in Section 13066.~~

~~(b) Immediately following the presentation of the executive director's recommendation, the parties who testified at the hearing conducted pursuant to Section 13066 or their representative(s) shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that provided for in Section 13066.~~

~~(c) At the discretion of the chairperson, the applicant or other parties may present rebuttal materials prior to the vote if the chairperson determines that the materials are primarily visual in nature, or, if the materials are in written form, that the written materials are merely rebuttal arguments and do not constitute new evidence.~~

~~(d) Where the commission moves to vote on an application with conditions different from those proposed by the applicant in the application or by the staff recommendation pursuant to subsection (a) above, the parties who responded to the staff recommendation under subsection (b) above, shall have an opportunity to state their views on the conditions briefly and specifically. The order of presentation shall be as provided in subsection (b).~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code.~~

Article 14. Voting Procedure

§ 13090. Voting--After Recommendation.

~~The commission shall not vote upon an application until it has received a staff recommendation under one of the three alternative procedures set forth in Section 13081-13083.~~

(a) A vote on an application may be taken only at a properly noticed public hearing after commission received the final staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

(1) If the commission is prepared to vote immediately upon conclusion of the public hearing, the executive director shall provide a verbal recommendation and summary of proposed findings.

(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a final staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) give due consideration to

(1) testimony and other evidence presented at the public hearing, and

(2) comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report. At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner provided for staff reports in section 13066.

(d) Under either of the two alternative procedures described in subsection (c), immediately following the presentation of the staff recommendation, the persons who testified at the hearing conducted pursuant to section 13066 or their representatives shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that provided for in section 13066.

(d)(e) Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1, and 30622, Public Resources Code.

§ 13091. ~~Voting Time and Manner.~~

~~The commission should normally vote on a permit application at the next regular commission meeting following the public hearing concerning the permit application unless the commission elects to follow one of the two procedures set forth in Sections 13081-13082.~~

~~Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.~~

§ 13092. Effect of Vote Under Various Conditions.

(a) ~~Votes by a the commission shall only be on the affirmative question of whether the permit should be granted; i.e., a "yes" vote shall be to grant a permit (with or without conditions) and a "no" vote to deny. Unless a motion is adopted pursuant to subsection (b), a motion to grant the permit shall be deemed to include the terms proposed in the project description as modified by the applicant at the hearing and the conditions and findings proposed in the staff report as modified by staff at the hearing.~~

(b) ~~Any condition to a permit proposed by a commissioner may move to add, delete or modify proposed terms, conditions or findings. Such a motion shall be voted upon only by made in the affirmative vote.~~

(c) ~~A majority of members present is sufficient to carry a motion to require or delete proposed terms, conditions or findings.~~

(d) ~~Unless otherwise specified at the time of the vote, the action taken shall be deemed to have been taken on the basis of the reasons set forth in the staff recommendation. In other words, if consistent with the staff recommendation and not otherwise modified, the vote of the commission shall be deemed to adopt the findings and conclusions recommended by the staff.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13093. Straw Votes.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13094. Voting Procedures.

(a) Voting upon permit applications shall be by roll call, with the chairperson being polled last.

(b) Members may vote "yes" or "no" or may abstain from voting, but an abstention shall not be deemed a "yes" vote.

(c) Any member may change his or her vote prior to the tally having been announced by the chairperson, but not thereafter.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13095. Voting by Members Absent from Hearing.

A member, or ~~his or her~~ alternate, who has been absent from all or part of the hearing may vote on any application; provided ~~he or she~~ the member or alternate has familiarized himself or herself with the presentation evidence presented at the hearing where on the application was considered, ~~and with pertinent materials relating to the application submitted to the commission~~ and has so declared prior to the vote. In the absence of a challenge raised by an interested party, inadvertent failure to make such a declaration prior to the vote shall not invalidate the vote of a member, or ~~his or her~~ alternate.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13096. Commission Findings.

(a) All decisions of the commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code, ~~§section~~ 30604, and Public Resources Code ~~§section~~ 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315.1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30006, 30315.1, and 30333, 30604, and 30621, Public Resources Code.

Article 15. Consent Calendar Procedures

§ 13100. Consent Calendar.

New ~~p~~Permit applications which, as submitted or as recommended to be conditioned, in the opinion of the executive director ~~of a commission, are de minimis~~ do not raise significant issues with respect to the purposes and objectives of the California Coastal Act of 1976, may be scheduled for one public hearing during which all such items will be taken up as a single matter. This procedure shall be known as the Consent Calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620-30621~~, Public Resources Code.

§ 13101. Procedures for Consent Calendar.

Unless otherwise provided in this Article, The procedures prescribed set forth in Chapter 5 of these regulations pertaining to permit applications, including application summaries staff reports, staff recommendations, resolutions, and voting, etc., shall apply to the Consent Calendar procedure, except that ~~All included items shall be considered by the commission as if they constituted a single permit application. The public shall have the right to present testimony and evidence concerning any item on the Consent Calendar. Application summaries and tentative staff recommendations for applications placed on the consent calendar may be comprised of a brief but fair and accurate description of the proposed development and its location and a description of any proposed conditions. A factual finding may be made for similar projects located in the same geographic area and may be incorporated by reference in each application summary governed by the findings.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620~~ 30621, Public Resources Code.

§ 13102. Conditions to of Consent Calendar Items.

The executive director may include recommended conditions in ~~agenda descriptions of staff reports for~~ consent calendar items which shall then be deemed approved by the commission if the item is not removed by the commission from the consent calendar. No condition of approval of any consent calendar item may be added, deleted or substantially modified after the staff report has been mailed to the public unless the commission removes the item to the regular calendar or schedules the revised item for a subsequent consent calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections ~~30607 and 30621~~ 30620, Public Resources Code.

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners ~~object to any item on the consent calendar and request that such an item be processed individually as a separate application, scheduled for public hearing on the regular permit calendar, such the~~ item shall be removed from the consent calendar ~~and shall thenceforth be processed as a single application.~~ If any item is removed from the consent calendar, the public hearing ~~on said item shall ordinarily be deemed~~ continued until it can be scheduled for ~~an individual~~ public hearing on the regular permit calendar.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section ~~30620~~ 30621, Public Resources Code.

Article 18. Reconsideration

§ 13109.1. Scope of Article.

The provisions of this article shall govern proceedings for reconsideration of terms or conditions of a coastal development permit granted or of a denial of a coastal development permit by the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30305 & 30627, Public Resources Code.

§ 13109.2. Initiation of Proceedings.

(a) Any time within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the ~~regional~~ commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the ~~executive director of the commission~~ appropriate district office within 30 days of the final vote.

(b) The executive director shall prepare a staff report with a recommendation on the merits of the request for reconsideration. The staff report shall analyze whether the request satisfies the grounds for reconsideration provided in Public Resources Code section 30627. The staff report shall be distributed to the persons in the manner provided for in section 13059.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

§ 13109.3. Suspension of Appeal.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

Repealed

§ 13109.4. Grounds for Reconsideration.

Grounds for reconsideration of a permit action shall be as provided in Public Resources Code Section 30627.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

§ 13109.5. Hearing on Reconsideration.

(a) The executive director shall schedule a hearing on the reconsideration request ~~At the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. to the applicant and all persons the executive director has reason to know would be interested in the permit reconsideration.~~ The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original ~~regional commission or~~ commission decision shall be afforded a reasonable time to address the merits of the request.

(c) ~~The commission shall vote on the request at the same meeting.~~

(d) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, ~~it shall be considered a new permit application and the application shall be processed as a new application~~ in accordance with ~~Sections 13050-13120 and Sections 13156-13145-~~13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 30621 and 30627, Public Resources Code.

§ 13109.6. Finality of Regional Ccommission Decision.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

Repealed

Subchapter 4. Permits for an Approval of Emergency Work

Article 1. General

§ 13136. Scope of Subchapter.

This Subchapter governs procedures for processing applications for permits to perform work to resolve problems resulting from a situation falling within the definition of "emergency" in section 13009 and pursuant to the provisions of Public Resources Code section 30624 for which the Commission has jurisdiction pursuant to section 30519(b).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13137. Immediate Action Required.

It is recognized that in some instances a person or public agency performing a public service may need to undertake work to protect life and public property, or to maintain public services before the provisions of the Subchapter can be fully complied with. Where such persons or agencies are authorized to proceed without a permit pursuant to Public Resources Code, section 30611, they shall comply with the requirements of Public Resources Code section 30611 and to the maximum extent feasible, with the provisions of this Subchapter.

Article 2. Applications

§ 13138. Method of Application.

Applications in cases of emergencies shall be made to the executive director of the commission by letter or facsimile during business hours if time allows, and by telephone or in person if times does not allow.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13139. Necessary Information.

The information to be reported during the emergency, if it is possible to do so, or to be reported fully in any case after the emergency as required in Public Resources Code section 30611, shall include the following:

- (a) The nature of the emergency;
- (b) The cause of the emergency, insofar as this can be established;
- (c) The location of the emergency;
- (d) The remedial, protective, or preventive work required to deal with the emergency; and
- (e) The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 3. Procedures

§ 13140. Verification of Emergency.

The executive director of the commission shall verify the facts, including the existence and nature of the emergency, insofar as time allows.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13141. Consultation with Executive Director of the Commission.

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

§ 13142. Criteria for Granting Permit.

The executive director shall provide public notice of the proposed emergency action required by Public Resources Code section 30624, with the extent and type of notice determined on the basis of the nature of the

emergency itself. The executive director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the executive director finds that:

- (a) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits, or for ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13143. Report to the Commission.

(a) The executive director shall report in writing to the local government having jurisdiction over the project site and to the commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.

(b) All emergency permits issued after the mailing for the meeting shall be briefly described by the executive director at the meeting and the written report required by subparagraph (a) shall be distributed prior to the next succeeding meeting.

(c) The report of the executive director shall be informational only; the decision to issue an emergency permit is solely at the discretion of the executive director of the commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 4. Emergency Actions Without a Permit

§ 13144. Waiver of Emergency Permit Requirements.

Any person wishing to take an emergency action pursuant to the requirements of Public Resources Code section 30611 shall notify the executive director of the commission by facsimile or telephone during business hours~~telegram~~ of the type and location of the emergency action taken within three (3) days of the disaster or the discovery of the danger. Within seven (7) days of taking such action, the person who notified the executive director shall send a written statement of the reasons why the action was taken and verification that the action complied with the expenditure limits set forth in Public Resources Code section 30611. At the next commission meeting following the receipt of the written report, the executive director shall summarize all emergency actions taken and shall report to the commission any emergency action that, in his or her opinion, does not comply with the requirements of Public Resources Code section 30611 and shall recommend appropriate action. For the purposes of this section, any immediate, temporary actions taken by the California Department of Fish and Game which are required to protect the nesting areas of the California least tern, an endangered species under the California Fish and Game Code, sections 2050-2055 and Title 14 of the

California Administrative Code, section 670.5, and the Federal Endangered Species Act of 1973, shall be deemed to be in compliance with Public Resources Code section 30611.

Note: Authority cited: Sections ~~30331~~ and 30333, Public Resources Code. Reference: ~~Division 20, Section 30611~~, Public Resources Code.

Subchapter 5. Procedures for Administrative Permits

Article 1. General

§ 13145. Scope of Subchapter.

This subchapter governs special procedures for processing applications for permits pursuant to the requirements of Public Resources Code section 30624.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Article 2. Application for Administrative Permits

§ 13146. Applicant's Statement.

The permit application form provided for in section 13053.5 shall allow the applicant an opportunity to state that in his or her opinion the work applied for falls within the criteria established by Public Resources Code, section 30624.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 306240 and 30624, Public Resources Code.

§ 13147. Applications Not Thought to Be Administrative.

If the commission receives an application that is asserted to be for improvements or other development within the criteria established pursuant to Public Resources Code section 30624 and by this subchapter and if the executive director finds that the application does not qualify as such, he or she shall notify the applicant that a regular permit application is required as provided in Subchapter 1 of this chapter. The executive director, with the concurrence of the applicant, may accept the application for filing as a regular permit pursuant to section 13056 and shall adjust the application fees accordingly.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13148. Copies of Application.

An application asserted to be within the criteria established by Public Resources Code section 30624 shall be furnished to the commission initially in one (1) copy, together with one copy of whatever maps and drawings are reasonably required to describe the proposal. A reasonable number of additional copies may, at the discretion of the executive director, be required.

Note: Authority cited: Section 30333, Public Resources Code §. Reference: Section 30624, Public Resources Code.

§ 13149. Notice.

The applicant shall post notice at the project site as required by section 13054(b) and provide any additional notice to the public that the executive director deems appropriate. The executive director shall notify any persons known to be interested in the proposed development.

Article 3. Criteria for Granting Administrative Permits

§ 13150. Criteria and Content of Permits.

(a) The executive director may approve or modify an application for improvements or other development governed by this subchapter on the same grounds that the commission may approve an ordinary application and may include reasonable terms and conditions required for the development to conform with the policies of the California Coastal Act of 1976.

(b) Permits issued for such developments shall be governed by the provisions of sections 13156 and 13158 concerning the format, receipt, and acknowledgment of permits, except that references to "Commission Resolution" shall be deemed to refer to the executive director's determination. A permit issued pursuant to Public Resources Code section 30624 shall contain a statement that it will not become effective until completion of the commission review of the permit pursuant to section 13153.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13150.5. Criteria for Single Family Dwellings.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

Repealed

§ 13151. Refusal to Grant - Notice to Applicant.

If the executive director determines not to grant an administrative permit based on a properly filed application under this Subchapter, the executive director shall promptly mail written notice to this effect to the applicant with an explanation of the reasons for this determination.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13152. Application to Commission.

In situations described in sections 13147 and 13151 the applicant may proceed to file an application as provided in section 13056.

Note: Authority cited: Section 30333, Public Resources Code §. Reference: Sections 30305 and 30624, Public Resources Code.

Article 4. Reports on Administrative Permits

§ 13153. Reports on Administrative Permits.

The executive director shall report in writing to the commission at each meeting the permits approved under this Subchapter up until the time of the mailing for the meeting, with sufficient description of the work authorized to allow the commission to understand the development proposed to be undertaken. Copies of this report shall be available at the meeting and shall have been mailed to the commission and to all those persons wishing to receive such notification at the time of the regular mailing for the meeting. Any such permits approved following the deadline for the mailing shall be included in the report for the next succeeding meeting. If 1/3 of the appointed membership of the commission so request, the issuance of an administrative permit governed by Public Resources Code section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a permit application under Subchapter 1 of this chapter, subject to the provisions for hearing and appeal set forth in Subchapters 1 and 2 of the chapter.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 5. Appeals

Note: Authority cited: Sections 30331 and 30333, Public Resources Code.

Repealed

Subchapter 6. Permits

Article 1. Format of Permits

§ 13155. Reference to Regional Commission.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Repealed

§ 13156. Contents of Permits.

Permits shall be issued in a form signed by the executive director, and shall include:

- (a) A statement setting out the reasons for the commission approval of the permit;
- (b) Any other language or drawings, in full or incorporated by reference, that are consistent with the decision, and required to clarify or facilitate carrying out the intent of the commission;
- (c) Any conditions approved by the commission;
- (d) Such standard provisions as shall have been approved by resolution of the commission;
- (e) A statement that the permit runs with the land and binds all future owners of the property ~~may not be assigned except as provided in Section 13170;~~

(f) A statement that the permit shall not become effective until the commission receipt of acknowledgment as provided in Section 13158;

(g) The time for commencement of the approved development project except that where the commission on original hearing or on appeal has not imposed any specific time for commencement of development construction pursuant to a permit, the time for commencement shall be two years from the date of the commission vote upon the application. Each permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 306200, Public Resources Code.

Article 2. Notice of Receipt and Acknowledgment

§ 13158. Notice of Receipt and Acknowledgment.

(a) Development shall not commence until an approved permit becomes effective.

(ab) No approved permit shall become effective until a copy of the permit has been returned to the commission, upon which copy all permittees or agent(s) authorized pursuant to Section 13053(c) have acknowledged that they have received a copy of the permit and have accepted its contents.

(bc) Each permit approved by the commission shall be issued to the applicant with contain a blank acknowledgment to be signed by each permittee.

(ed) The acknowledgment should be returned within ten (10) working days following issuance of the permit, ~~but in any case prior to commencement of construction. If the acknowledgment has not been returned within the time for commencement of construction under Section 13156(g), the executive director shall not accept any application for extension of the permit.~~

(e) No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall send the permit applicant a notice of commission approval that identifies those conditions that must be satisfied before the permit can be issued for acknowledgment.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 306200 and 30607, Public Resources Code.

Article 3. Time for Issuing Permits and Distribution

§ 13160. Issuance of Permits.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Repealed

§ 13161. Distribution of Permit Copies.

Copies of permits shall be sent to the permittee(s), to the local government with jurisdiction over the area in which the proposed development is to be located and to any person who requires or would be interested in such a copy in the opinion of the executive director. Copies of relevant project plans shall be transmitted to the local government where feasible.

Note: Authority cited: Section 30333, Public Resources Code.

§ 13162. Notice of Permits.

Notice of the commission approvalissuance of a permit shall ~~also~~ be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code section 21080.5(b)(v).

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

Article 4. Disputes over Contents of Permits

§ 13163. Disputes over Contents of Permits.

(a) Any permittee who feels that the permit issued does not correctly embody the action of the commission shall immediately so inform the executive director. Any such questions that cannot be resolved by consultation between the permittee and the executive director shall promptly be referred by the executive director to the commission for decision.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

Article 5. Amendments to Permits

§ 13164. Applications for Amendments.

Applications for amendments to permits shall be made in writing. Such applications are subject to the requirements for filing and processing permit applications set forth in Subchapter 1 of these regulations. ~~and shall include an adequate description of the proposed amendment, including maps or drawings where appropriate.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600 and 30620, Public Resources Code.

§ 13165. Amendments to Administrative Permits.

(a) Amendments to administrative permits may be approved by the executive director upon the same criteria and subject to the same reporting requirement and procedures, including public notice and appeals to the commission, as provided for the original issuance of such administrative permits in sections 13145-13153.

(b) If any proposed amendment would, in the opinion of the executive director, increase the cost of the proposed development to an amount over the amounts specified by Public Resources Code, section 30624 the application shall thereafter be treated in the manner prescribed by section 13166.

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) ~~Applications for amendments to previously approved developments shall be filed with the commission.~~ (1) ~~The executive director shall reject a~~ An application for an amendment to an approved permit shall be rejected if he or she determines that in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of an partially-approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

(2b) For those applications accepted, ~~if the executive director shall determines that whether or not a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources and public access to and along the shoreline, the amendment shall be deemed is a material amendment to exchange to the permit.~~ Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all ~~persons~~ parties the executive director has reason to know may be interested in the application.

(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing/publishing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of object to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

(3c) ~~If the executive director determines that the proposed amendment is a material change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission in accordance with the procedures of Subchapter 1, after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.~~

(4) ~~Unless the proposed amendment has been found to be immaterial,~~ The commission shall determine by a majority vote of the membership present whether the proposed development with the proposed amendment is consistent with the requirements policies of Chapter 3 of the California Coastal Act or a certified local coastal program if applicable. of 1976. The commission shall approve the amendment if it finds that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject to reasonable conditions. The decision shall be accompanied by findings in accordance with section 13096.

(bd) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(ee) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code section 30609.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609, and 30620, Public Resources Code.

§ 13168. Application Fee.

All applications for amendments to permits shall be accompanied by the fee specified in section 13055 of these regulations, subject to a twenty five (\$25) dollar fee. ~~If the amendment is determined to be material, fees shall be charged in accord with Section 13055 as for a new application except that the executive director of the regional commission may reduce the fees in accord with the staff work involved.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

Article 6. Extension of Permits

§ 13169. Extension of Permits.

(a) Prior to the time that commencement of ~~development~~ construction under a permit granted by either the regional commission or the commission must occur under the terms of the permit or Section 13156, the applicant may, ~~upon payment of a fifty dollar (\$50) fee (or a twenty five dollar (\$25) fee in the case of extension of permits for single family residences)~~ apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The executive director shall not accept the application unless it shall be accompanied by all of the following:

(1) evidence of an approved, valid, unexpired permit, acknowledged pursuant to Section 13158 and

(2) evidence of the applicant's continued legal interest in the property involved in the permit,

(3) the fee specified in section 13055 of these regulations, and

(4) stamped envelopes addressed to each person specified in section 13054 of these regulations and each person who testified, orally or in writing at prior permit hearing(s).

(4b) For those applications accepted, the executive director shall determine whether or not there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the California Coastal Act or with a certified local coastal program, if applicable, of 1976. If the executive director determines that there are no changed circumstances that may affect consistency of the proposed development, he or she shall mail-is consistent, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all parties the executive director has reason to know may be interested in the application including all persons identified in section 13054 of these regulations and all persons parties who participated in the initial previous permit hearings. The applicant shall post such notice at the project site within three (3) days of the executive director's mailing of the notice to interested parties. The executive director shall also report the determination to the commission to provide the commission with an opportunity to object to the executive director's determination. If no written objection is received at the commission office within ten (10) working days of publishing notice, the time for commencement of development determination of consistency shall be extended for one year from the expiration date of the permit if both of the following occur:

(1) no written objection to the executive director's determination is received within 10 working days after mailing notice, and

(2) three commissioners do not object to the executive director's determination, conclusive.

(c) If the executive director receives a written objection to his or her determination but concludes that the objection does not identify changed circumstances that may affect the consistency of the development with the Coastal Act or a certified local coastal program, if applicable, the executive director shall report this conclusion to the commission at the same time that the executive director reports the determination to the commission in accordance with subsection (b) above. The executive director shall provide a copy of the letter(s) of objection to the commission with the report. If three commissioners object to the extension on grounds that there may be changed circumstances that affect consistency, the executive director shall schedule the extension for hearing(s) in accordance with subsection (d) below. If three commissioners do not object to the extension, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(2d) If the executive director receives an objection to his or her determination and concludes that the objection identifies changed circumstances that may affect the consistency of the development or if the executive director determines that due to changed circumstances the proposed development may not be consistent or if objection is made to the executive director's determination of consistency, the application shall be scheduled for a hearing on whether there are changed circumstances that affect consistency, reported to the commission. The executive director shall provide notice of such hearing after notice to any person(s) the executive director has reason to know would be interested in the matter. The executive director shall prepare a include in such report for the hearing that describes a description of any pertinent changes in conditions or circumstances relating to each requested permit extension.

(1) If three (3) commissioners determine that there are changed circumstances that affect consistency of the development object to an extension on the grounds that the proposed development may not be consistent with Chapter 3 policies of the California Coastal Act or with a certified local coastal program if applicable, of 1976, the extension shall be denied and the development application shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations, as though it were a new application. However, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances.

(2) If no such determination is made by three commissioners objection is raised, the time for commencement of development shall be extended for one year from the expiration date of the permit. executive director shall issue the extension authorized by this section.

(e) Any extensions applied for prior to the expiration of the permit shall automatically extend the time for commencement of development expiration date of the permit until such time as the commission has acted upon the extension request; provided, however, that the applicant shall not undertake development during if construction has not commenced at the time the application for extension is made, construction may not commence during the period of automatic extension provided in this section.

(bf) The procedures specified in this section shall apply to extensions of all permits which were previously approved by the commission, including those approved on appeal, on the consent calendar and or as administrative permits, unless the commission adopts expedited procedures for extensions to such permits.

Note: Authority cited: Section 30333, Public Utilities Resources Code. Reference: Sections 30620.6, and 3062400; and 30604, Public Resources Code.

Article 7. TransferAssignment of Permits

§ 13170. TransferAssignment of Permits.

(a) Any person may request that the commission records be revised to reflect that he or she has assumed the rights and obligations of a coastal development permit by acquiring property on which development has been approved, initiated, or completed pursuant to a permit by submission of who has obtained, pursuant to the California Coastal Act of 1976 and these regulations, a permit to perform a development may assign such permit to another person subject to the following requirements:

(1) submission of a \$25 application fee;

(2) an affidavit executed by the landowner assignee attesting to the landowner's assignee's acknowledgment of agreement to comply with the terms and conditions of the permit;

(3) evidence of the landowner's assignee's legal interest in the real property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit; and

(4) the original permittee's request to assign all rights to undertake the development to the assignee, and

(5) a copy of the original permit showing that it has not expired.

(b) The applicant for assignment shall submit the above documents to the executive director of the commission together with a completed application form provided by the executive director. The assignment

~~shall be effective u~~Upon the executive director's written approval of the documentation submitted, ~~the~~. The executive director's review shall ordinarily be completed within ten (10) working days of the receipt of a completed application for assignment. The completed application form and supporting documentation shall become part of the project file maintained by the applicable commission.

~~(c) No person other than the permittee may perform or undertake development under the permit without assignment of the permit under this section.~~

~~Note: Authority and reference cited: Section 30333, Public Resources Code. Authority cited: Section 30333, Public Resources Code. Reference: Section 30600, Public Resources Code.~~

Chapter 6. Exclusions from Permit Requirements

Subchapter 6. Existing Single-Family Residences

§ 13250. ~~Improvements~~ Additions to Existing Single-Family Residences.

(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to a residence;

(2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and

(3) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

(1) Improvements to a single-family structure ~~if the structure or improvement is located: on a beach, in a wetland, or seaward of the mean high tide line,; in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or in an area designated for protection as a small scale neighborhood by resolution of the commission or a regional commission after public hearing; where the residence or proposed improvement would encroach~~ within 50 feet of the edge of a coastal bluff.

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas; ~~of natural vegetation designated by resolution of the commission or regional commission after public hearing as significant natural habitat;~~

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an

improvement to the structure had previously been undertaken pursuant to Public Resources Code section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

(5) In areas which the commission or a regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

(6) Any improvement addition to a single-family residence where the development permit issued for the original structure by the commission, ~~or regional commission,~~ or local government indicated that any future improvements additions would require a development permit.

(c) In any particular case, even though an ~~repair or~~ improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of ~~a permit filing an application;~~ provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed ~~no repair or~~ improvement shall not may be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(a), Public Resources Code.

Subchapter 7. Repair and Maintenance Activities That Require a Permit

§ 13252. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, ~~or bluff,~~ or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the California Coastal Act of 1976, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structures similar protective work under one ownership is not repair and maintenance under section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(c) Notwithstanding the above provisions, the executive director of the commission shall have the discretion to exempt from this section ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation road ways.

(d) Pursuant to this section, the commission may issue a permit for on-going maintenance activities for a term in excess of the two year term provided by these regulations.

(e) In any particular case, even though a method of repair and maintenance is identified in subsection (a) above, the executive director may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three

(3) commissioners object to the waiver, the proposed repair and maintenance shall not be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(d), Public Resources Code.

Subchapter 7.5. Improvements to Structures, Other than Single-Family Residences and Public Works Facilities That Require Permits

§ 13253. Improvements That Require Permits.

(a) For purposes of Public Resources Code section 30610(b) where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

- (1) All fixtures and other structures directly attached to the structure.
- (2) Landscaping on the lot.

(b) Pursuant to Public Resources Code section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvements to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or where the structure or proposed improvement would encroach within 50 feet of the edge of a coastal bluff;

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland wetland or stream; sand dune, or within 100 feet of the edge of a coastal bluff; in a highly scenic area, or in an environmentally sensitive habitat area; or stream or in areas of natural vegetation designated by resolution of the commission or regional commission as significant natural habitat;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

(5) In areas which the commission or regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

(6) Any improvement to a structure where the coastal development permit issued for the original structure by the commission, ~~or regional commission, or local government~~ indicated that any future improvements would require a development permit;

(7) Any improvement to a structure which changes the intensity of use of the structure;

(8) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

(c) In any particular case, even though ~~the proposed a repair or~~ improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of ~~a permit filing an application~~; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, ~~the proposed no repair or improvement shall not may~~ be undertaken without a permit.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(b), Public Resources Code.

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EXHIBIT 2

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

**(Prepared for 15-day comment period commencing
 June 19, 1998 and ending July 7, 1998.)**

Pursuant to the requirement of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the California Coastal Commission is providing notice of changes made to proposed amendments to Coastal Commission permit regulation sections 13054, 13063, 13090, 13109.5 and 13166. These regulations are contained in Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations, and were the subject of a regulatory hearing on June 8, 1998.

A written comment period has been established commencing on June 19, 1998 and terminating on July 7, 1998. **A public hearing is scheduled as part of the Commission's regular meeting on Tuesday, July 7, 1998, at the Hyatt Regency, No. 5 Embarcadero Center, in San Francisco, CA (415) 788-1234.** The meeting will commence at 9:00 AM, however, the hearing on this matter may not be the first agenda item to be heard. Interested persons may comment orally about the proposed changes at the hearing or may **submit written comments concerning the proposed changes to the CALIFORNIA COASTAL COMMISSION, LEGAL DIVISION, 45 FREMONT ST., STE. 2000, SAN FRANCISCO, CA 94105-2219** before 4 p.m. on the day before the hearing. Written comments may also be submitted to the Commission on the day of the hearing at the meeting prior to the Commission's consideration of the matter. It is requested, but not required, that written comments be mailed so that they are received no later than three (3) working days prior to the date of the public hearing. It is requested, but not required, that persons who submit written comments to the Commission at the hearing provide twenty (20) copies of such comments. This will ensure that each commissioner will receive a copy.

All comments received as stated above, which pertain to the indicated changes, will be reviewed and responded to by the Commission's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text which appear in **bold italic underline**, **~~bold italic strikeout~~**, ***bold italic***, and **~~bold italic strikeout~~**.

Any inquiries concerning the proposed amendments should be directed to Ann Cheddar or Amy Roach, by mail at the same address or by telephone at (415) 904-5220.

EXHIBIT NO.	2
APPLICATION NO.	
15-Day Notice	
Ch. 5 & 6 Rulemaking	

The California Coastal Commission has prepared the proposed revisions to the proposed amendments to its regulations and has available all of the information upon which its proposal is based.

The following documents concerning the proposed amendments are available upon request at the California Coastal Commission office at 45 Fremont Street, Suite 2000, San Francisco, California, 94105 or by telephoning Jeff Staben at (415) 904-5220:

- 1) Staff Report dated May 21, 1998, containing copies of, and staff responses to, comments received prior to May 21, 1998,
- 2) Notice of the Commission's Intent to Amend Portions of Chapters 5 and 6 of the Commission's Regulations.
- 3) Initial Statement of Reasons for proposed revisions to portions of Chapters 5 and 6 of the Commission's regulations.
- 4) "Testimony on Commission Staff-Proposed Revisions and Petition for Rulemaking," submitted by Norbert and Stephanie Dall, dated May 30, 1998 (received in the Commission's offices on June 4, 1998)

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CALIFORNIA COASTAL COMMISSION

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



(Newly proposed language appears in ***bold italic underline***.
Language which would be newly deleted appears in ***bold italic strikeout***.
Language originally proposed for deletion which is now proposed to be retained appears in ***bold italic***. Language originally proposed to be added which is now proposed for deletion appears in ***bold italic strikeout***.)

**CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES
DIVISION 5.5. CALIFORNIA COASTAL COMMISSION
CHAPTER 5. COASTAL DEVELOPMENT PERMITS ISSUED
BY COMMISSION
SUBCHAPTER 1. REGULAR PERMITS**

1) Revise proposed amendment to section 13054 as follows:

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site. Notification Requirements.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for notice to adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartments or condominium and each residence within a condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of and all parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s), the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited.

___ This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all ~~addresses on the list prepared pursuant to subsection (a) above, parcels described above.~~ Separate stamped envelopes shall be addressed to "owner," ~~and to "occupant," or the name of the interested person, as applicable, except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel.~~ The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement for addresses identified under subsections (a)(1) and (2) above and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations, ~~upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file.~~

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

(bd) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public ~~which is also~~ and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to ~~so~~ ~~post the completed notice form and sign the declaration of posting,~~ the executive director of the commission shall refuse to file the application, ~~or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.~~

(ce) Pursuant to sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

2) Revise proposed amendment to section 13063 as follows:

§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a). The notice of shall contain the following elements:

(1) ~~the filing of the application pursuant to Section 13056;~~ (2) ~~the number assigned to the application;~~

(3) ~~a~~ description of the development and its proposed location;

(4) ~~the~~ date, time and place at which the application will be heard by the commission;

(5) ~~the~~ general procedure of the commission concerning hearings and action on applications and;

(6) ~~the~~ direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.

(6) A statement that staff reports will be distributed as set forth in section 13059.

~~(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:~~

(b) In lieu of providing mailed notice to persons specified in section 13054(a)(1)-(2) as required by subsection (a) above, the executive director may direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written mailed notice if the executive director determines:

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

3) Revise proposed amendment to section 13090 as follows:

§ 13090. Voting--After Recommendation.

The commission shall not vote upon an application until it has received a staff recommendation under one of the three alternative procedures set forth in Section 13081-13083.

(a) A vote on an application may be taken only at a properly noticed public hearing after *the* commission *has* received the *final* staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

(1) If the commission is prepared to vote immediately upon conclusion of the *public testimony portion of the* public hearing, the executive director shall provide an *verbal oral* recommendation and summary of proposed findings.

(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a *final* staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) give due consideration respond to:

(i) ~~(1)~~ testimony and other evidence presented at the public hearing, and

(ii) ~~(2)~~ comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report.

(3) At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner as provided for staff reports in section 13066. ~~(d) Under either of the two alternative procedures described in subsection (c),~~ Immediately following the presentation of the staff recommendation, the Commission shall obtain public testimony in the manner the persons who testified at the hearing conducted pursuant to section 13066 or their representatives shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that provided for in section 13066.

~~(d)(e)~~ Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1, and 30622, Public Resources Code.

4) Revise proposed amendment to section 13109.5 as follows:

§ 13109.5. Hearing on Reconsideration.

(a) The executive director shall schedule a hearing on the reconsideration request At the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. to the applicant and all persons the executive director has reason to know would be interested in the permit reconsideration, ~~†~~The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original regional commission or commission decision shall be afforded a reasonable time to address the merits of the request.

(c) ~~The commission shall vote on the request at the same meeting.~~

(d) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, ~~it shall be considered a new permit application and the application shall be processed as a new application~~ in accordance with ~~S~~sections 13050-13120 and ~~S~~sections ~~13156~~~~13145~~-13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 30621 and 30627, Public Resources Code.

5) Revise proposed amendment to section 13166 as follows:

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) ~~Applications for amendments to previously approved developments shall be filed with the commission.~~ (1) ~~The executive director shall reject a~~An application for an amendment to an approved permit ~~shall be rejected if he or she determines that in the opinion of the executive director,~~ the proposed amendment would lessen or avoid the intended effect of an ~~partially approved or conditionally approved~~ permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. If timely submitted, the executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

(2b) For those applications accepted, if the executive director shall determines that whether or not a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources or and public access to and along the shoreline, the amendment shall be deemed is a material amendment touching to the permit permit. Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all persons parties the executive director has reason to know may be interested in the application.

(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing publishing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of objection to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

~~(3c) If the executive director determines that the proposed amendment is a material, change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission in accordance with the procedures of Subchapter 1, after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.~~

(4) ~~Unless the proposed amendment has been found to be immaterial, t~~The commission shall ***approve the amendment if it finds, determine*** by a majority vote of the membership present, ~~*whether the proposed development with the proposed amendment is consistent with the requirements*~~ ***policies of Chapter 3 of the California Coastal Act or a certified local coastal program if applicable,*** of 1976. ~~*The commission shall approve the amendment if it finds*~~ that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject to reasonable conditions. The decision shall be accompanied by findings in accordance with section 13096.

(b~~d~~) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(ee) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code section 30609.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609, and 30620, Public Resources Code.

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CALIFORNIA COASTAL COMMISSION

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



TU-10d

MEMORANDUM

TO: Coastal Commissioners

FROM: Ralph Faust, Chief Counsel
Ann Cheddar, Staff Counsel
Amy Roach, Staff Counsel *AR*

SUBJECT: Materials Pertaining to July Meeting Agenda, Tuesday, **Item 10d**:
Proposed Amendments to Portions of Chapters 5 and 6 of
Coastal Commission Regulations

DATE: June 22, 1998

A staff report pertaining to the above matter was mailed to you in the Commission packet on Friday, June 19. Enclosed are background documents that may be helpful to you in your review of the staff report. These are:

- 1) Staff Report dated May 21, 1998, containing copies of, and staff responses to, comments received prior to May 21, 1998,
 - 2) "Testimony on Commission Staff-Proposed Revisions and Petition for Rulemaking," submitted by Norbert and Stephanie Dall, dated May 30, 1998 (received in the Commission's offices on June 4, 1998)
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