Chapter 10. Federal Consistency*~~Determination~~*
Subchapter 1. Commission Procedures for Consistency
Certifications*~~Determinations~~*for Outer Continental Shelf
(OCS) Exploration, Development or Production
Plans and for OCS Related Federal Permits.

13660. Definitions. (a) The term "applicant" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional or local government, or any entity of such Federal, State, regional or local government, who submits to the USGS Area Supervisor (or other designee of the Secretary of Interior) after August 31, 1978, an OCS Plan*~~which describes in detail activities requiring a Federal license or permit~~.*

(b) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. §1331 et. seq.), and the regulations under that Act, which describes in detail activities requiring a Federal license or permit.

(c) The term "USGS Area Supervisor" means the Pacific Area Oil and Gas Supervisor, United States Geological Survey, Department of the Interior.

(d) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

(e) The term "Executive Director" means the Executive Director of the California Coastal Commission.

(f) The term "California Coastal*~~Zone~~*Management Program" (CCMP) means the program approved by the Department of Commerce pursuant to the Coastal Zone Management Act (16 USC Section 1451 et.seq.).

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NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference cited: Section 30008~~(c)~~, Public Resources Code. Federal law: 16 USC Section 1451 et. seq.; 15 CFR Part 930 et. seq. as adopted June 25, 1979, 44 FR 37143.

13660.1. Preliminary Consultation. (a) As soon as possible, but at least 10 days prior to submission to the USGS Area Supervisor, of any plan* ~~required to be submitted under the Outer Continental Shelf Lands Act, as amended, (43 USC 1331 et seq.)~~*for the exploration of areas leased under the Outer Continental Shelf Lands *~~that~~*Act, and at least 30 days prior to submission of plans for the development or production of areas leased under that Act, any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director at the state office concerning all the activities required to be described in detail in the OCS plan affecting the land or water uses in the coastal zone*~~which affect land and water uses.~~*

This shall include, at minimum, activities requiring the following federal approvals:

USGS - Department of the Interior

- Approval of offshore drilling operations
- Approval of design plans for the installation of platforms
- Approval of gathering and flow lines

The following OCS related Federal license or permit activities are encouraged to be included, if they will be required in connection with the OCS activity.

Department of Defense U.S. Army Corps of Engineers

- Permits and licenses required under Sections 9 and 10 of the Rivers Harbors Act of 1899
- Permits and licenses required under Section 103 of the Marine

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Protection, Research and Sanctuaries Act of 1972

- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f)

Department of the Interior - Bureau of Land Management - USGS

- Permits and licenses required for drilling and mining on public lands (BLM)
- Permits for pipeline rights-of-way on the Outer Continental Shelf
- Permits and licenses for rights-of-way on public lands

Environmental Protection Agency

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality

Department of Transportation - U.S. Coast Guard

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534
- Permits for deepwater ports under the Deepwater Port Act (P.L.93-627)

Federal Energy Regulatory Commission

- Certifications required for interstate gas pipelines
- Permits or licenses for construction and operation of facilities needed to import, export or transship natural gas or electrical energy

Any other OCS related Federal license or permit activities which are not listed above are also encouraged to be included, if they will be required in connection with the OCS activity.

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(b) The Executive Director shall provide the applicant with a copy of the California Coastal Management Plan ("CCMP") upon request.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.75, 930.82, 930.64, 930.77.

13660.2. [RESERVED]

13660.3. Submission of Consistency Certification. (a) The applicant shall submit to the USGS Area Supervisor who in turn shall submit to the Executive Director: the OCS plan, with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13360.1(a) of these regulations, and the environmental report as soon as it is approved by the USGS Area Supervisor pursuant to 30 CFR 250.34-1 for exploration plans or 30 CFR 250.34-2 for development and production plans.

(b) The consistency certification*for all activities described in detail in the OCS plan as required by Section 13660.3(a) above*shall be in the following form:

> The proposed activities described in detail in this plan comply with California's approved coastal management program and will be conducted in a manner consistent with such program.

The applicant shall also include the following supporting information:

1) a brief assessment relating the probable coastal zone effects of each of the enumerated activities and their associated facilities to the relevant elements of the program policies of the CCMP; and

(2) a brief set of findings derived from the assessment indicating that each of the enumerated activities (e.g. drilling, platform

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placement) and its associated facilities (e.g. onshore support structures, offshore pipelines), and its primary effects (e.g. air, water, waste discharges, erosion, wetlands, beach access impacts) are consistent with the mandatory provisions of the CCMP.

(d) Upon request of the applicant, the California Coastal Commission staff will provide assistance in preparing the assessment and findings required in Section 13660.3(c)(1) and (2) of these regulations.

(e) The Executive Director may request in writing additional data and information from the applicant if he deems it necessary for a complete and proper review. Such a request shall not extend the date for commencement of Coastal Commission review; however, failure to submit the requested information could result in an objection to the applicant's consistency certification *~~determination~~*[See §13660.8(b)(4)]. The applicant shall comply with such request within 10 days of its receipt or shall indicate wthin 10 days reasons why the request cannot be complied with.

(f) When the OCS Plan submitted to the Executive Director by the USGS Area Supervisor has deleted confidential and prorietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequate assess the coastal zone effects of the activities described in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the*~~provisions of the Outer Continental Shelf Lands Act, as amended, and the Freedom of Information Act, and their~~*applicable implementing federal regulations. The procedures specified in §13660.3(e)

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apply to the Executive Director's request for confidential and proprietary information.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR Sections, 930.77, 930.58 and 30 CFR Part 252.

13660.4. Staff Summary Recommendation, and Hearing Notice. After receipt of the OCS plan, environmental report, consistency certification* determination*and the accompanying findings and assessments and any other information which the Executive Director deems necessary, the Executive Director shall:

(a) Prepare a staff summary and recommendation of the applicant's findings and assessments and send the summary to the applicant, the Assistant Administrator, the USGS Area Supervisor, and other relevant Federal agencies,*the affected Regional Commissions,*local governments, state agencies, and other interested parties. If the vote on the certification is scheduled for a later meeting than the oral hearing on the staff summary, the Executive Director shall prepare a separate staff recommendation according to the requirements of Chapter 5, Article 12.

(b) Schedule a*State Coastal*Commission public hearing on the applicant's consistency certification*determination,*findings and assessments and the staff summary, and recommendation, giving appropriate notice to all interested parties, (as listed in §13660.4(a) above), with particular emphasis on informing citizens of the coastal area which will be affected pursuant to the permit regulations in Chapter 5 unless specifically changed herein. The Director shall endeavor, where possible, to schedule the public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certificate and findings. The state and regional agencies responsible for

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air and water quality compliance shall be notified and provided the opportunity to present their agencies' positions before the Commission hearing. Such hearing shall be set for a regular Coastal Commission meeting not later than the 49th*42nd*day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 49-day*42-day*time period for a hearing. All public hearings shall be scheduled with a view toward allowing widespread public distribution of the information contained in the staff's summary and recommendation and toward allowing maximum public participation and attendance at the hearing particularly for the citizens of the affected area, while affording the applicant expeditious consideration of consistency certifications.*determinations.*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), and 30621, Public Resources Code. Federal law: 15 CFR 930.79, 930.84(a), 930.61(a), 930.63.

13660.5. Contents of Summary and Recommendation. The summary shall: (1) list the major activities listed in the OCS plan, for which a consistency certification*~~determination~~,*assessments and findings have been required, (2) discuss the effect of these activities and their associated facilities, or*and*their effects on land and water uses in the coastal zone, (3) discusss the consistency of such activities and related effects with the mandatory provisions of the CCMP. The summary shall also specifically list all other Federal permits for which consistency findings have not been enclosed and for which future consistency certification* determinations*will be required under Section 13660.11 of these regulations.

13660.6. Conduct of Hearings on Staff Recommendations on a Consistency Certification.*Det~~ermination~~.* The Commission shall ~~be*the~~

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final decision maker on consistency determinations and shall*conduct de novo hearings on consistency certifications*~~determinations~~*substantially in accordance with the applicable procedures for permit hearings set forth in ~~Sections 13057 through 13096, excluding*Sections 13071, 13085, and 13087 of these Regulations.~~* Chapter 5 of these regulations.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.79 and CZMA.

13660.7. Consent Calendar Procedures. Consistency certifications at the discretion of the Executive Director may be included as a consent calendar item pursuant to Chapter 5, Article 15 of these regulations.

~~13660.7. Regional Commission Role. The affected Regional~~ Commission(s) may wish to conduct hearings prior to the Commission hearing, and based on those hearings present testimony at the Commission hearing. The Regional Commission hearing panel may include State Commissioners. Upon written request by a Regional Executive Director, the Executive Director may extend for an additional 30 days the 42-day time period for its hearing required by Section 13660.4 in order to allow a full hearing at the Regional Commission level. Any Regional Commission hearings shall also be conducted substantially in accordance with Sections 13064-13096 of these regulations. The Regional Commission and State Commission shall attempt to hold a joint hearing where possible.

13660.8. Final Commission Decision. (a) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP; i.e., whether it "concurs" or "objects" to the applicant's consistency certification, at the earliest practicable time and in no event

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more than 6 months from the date of receipt of such consistency certification and required information from the USGS Area Supervisor (see Section 13660.3 of these regulations). If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator, the applicant, the USGS Area Supervisor, and the relevant Federal agencies of the status of review and the basis for further delay.

(b) A Commission decision which objects to an applicant's consistency certification for one or more of the activities described in detail in the OCS plan shall be accompanied by a statement indicating:

(1) the effect which the activity will have on coastal land or*and* water uses, in the coastal zone,

(2) how the activity is inconsistent with a mandatory provision of the CCMP,

(3) alternative measures or conditions (if they exist) which would make their proposed activity consistent with CCMP policies,

(4) if a decision to object is based upon grounds that the applicant has to*~~not~~*provide information*~~required in Section~~ 13660.3 ~~above, which has been~~*requested by the Executive Director, the type*nature*of*~~the~~*information requested and the necessity of that information for a consistency certification *determination*must be described, and

(5) the applicant's right of appeal to the Secretary of Commerce on the grounds that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

(c) The Commission shall notify the applicant, the USGS Area

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Supervisor, the Assistant Administrator, and the relevant Federal agencies of its decision by sending a copy of its Final Decision to them.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.79 and 15 CFR 930.64, 930.63 and CZMA.

13660.9. Appeals Procedure. Any applicant may file a notice of appeal of a Commission objection to a consistency certification within 30 days of receipt to the Secretary of Commercere according to the provisions of the Coastal Zone Management Act and the regulations contained in 15 CFR Par 930.120 et seq*Any applicant who appeals to the Secretary of Commerce a Commission objection to a consistency determination*The applicant shall send a copy of the notice of appeal and accompanying documents to the Executive Director.*of the Commission.* The Executive Director shall submit detailed comments to the Secretary of Commerce within 30 days of receipt of the appeal and transmit*send*copies of*such comments*to the applicant, the USGS Area Supervisor, and the relevant Federal agencies. Where the Commission meeting schedule allows sufficient time for discussion prior to the 30 day period, these comments shall be the subject of Commission discussion with opportunity for public comment. This procedure shall also be followed if the Secretary of Commerce pursues an independent review of the consistency of an OCS activity.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.120-134.

13660.10. Required Amendments. Any amendment to an OCS plan which must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan; i.e., Sections 13660.1-.13 of these regulations apply, except that the Commission

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must make its decision within 3 months of receipt.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public resources Code. Federal law: 15 CFR Part 930.83 et seq.

13660.11. Multiple Permit Review. (a) Applicants are strongly encouraged to include with OCS plans ~~and*with consistency certifications~~ required to be submitted to the Commission in accordance ~~with Section~~ 13660.3 of these regulations,*detailed descriptions, consistency certification*determinations,*findings and assessments and other supporting data for other OCS-related activities, which require a federal license or permit but are not required to be described in detail in OCS plans by the Secretary of the Interior (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, or the other permits listed in Section 13660.1 of these regulations). Where consistency certification*~~determinations~~*and related findings and assessments are made for activities for all required Federal permits connected with an OCS plan, the applicant shall so state and consolidated consistency review for these activities will take place at the same time and under the same procedures as review of activities required to be described in detail in OCS plans (Sections 13660.1-.13 of these Regulations).

(b) If consistency certifications*~~determinations~~*and related assessments and findings for all OCS related Federal permit activities are not included with an OCS plan and consistency certification*~~determination,~~* the applicant shall state which Federal permit activities have not been included. *~~The Commission will review those permit activities which are not~~

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included ~~separately~~.* The final decision of the Commission*for~~-consistency~~ determinations of OCS plan activities*shall state which Federal permit activities have not been included and*~~which~~*therefore must be reviewed separately.

(c) The applicant and the Coastal Commission shall comply with Sections 13660-13660.13 of these regulations in processing consistency certification*determ~~inations~~*which have not been included with OCS plans, except that:

(1) As soon as possible, but at least 10 days pior to submission of an application for a Federal permit, the applicant shall consult with the Executive Director concerning OCS-related Federal license or permit activities.

(2) An environmental report as described by 30 CFR 250.34-3(a) and 3(b) need not be submitted, if one which covered the subject permit activity was previously submitted under Section 13660.3 of these regulations, or if the Executive Director is satisfied that the applicant has provided sufficient information concerning the environmental effects of the permit activity to adequately review the project as if it were a coastal permit under the CCMP.

(3) Wherever there is a requirement to notify the USGS Area Supervisor, notification shall also be sent to the appropriate*chief of the*Federal permitting agency.

NOTE: Authority cited: State law: Section 30333, Public resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.82.

13660.12. Associated Coastal Development Permits. Where a facility associated with an OCS plan requires a coastal development permit under the California Coastal Act (e.g. pipeline, marine terminal, onshore

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Public Comment	Commission Response
I. Chevron. Letters dated 4/8/82 and 3/1/82.	
A. Item 1 - Section 13660.3(a) Three comments on typographical errors and requested citations to federal law.	Changes made as suggested by Chevron.
B. Item 2 - Section 13660.3(f) Objected to deletion of specific reference to OCSLA and requested reference to OCSLA regulation.	Change rejected. The Commission derives its authority to implement federal law from the CZMA, not OCSLA. The present regulation is erroneous and misleading in its reference to OCSLA and the Freedom of Information Act. The "authority cited" section specifically cites the two applicable federal CZMA regulations. Those regulations describe in detail the relationship of the CZMA to OCSLA. Furthermore, the authority cited section, generally references the OCSLA regulation which Chevron cites. There is potentially a difference of interpretation between the two federal agencies; i.e., the Department of Commerce (NOAA, which administers the CZMA and the Department of the Interior which administers the OCSLA. Therefore it is important that the Commission's regulations accurately cite "applicable" federal regulations. Chevron's comments ignore the CZMA and are therefore rejected. Furthermore, since federal regulations are revised on a fairly frequent basis, it appears more appropriate to cite them in the "authority cited" section, rather than in the grammatical paragraphs. It would also be difficult for non-lawyers to understand a reference to 30 CFR 252.7(a)(4). In contrast, a reference to "applicable federal regulations" with a specific citation to authority, is more understandable.
C. Item 3 - Section 13660.11(c)(3) Deletion of section requiring the Commission to notify an appropriate federal permitting agency.	Deletion rejected. NOAA regulations require the Commission to notify federal agencies of consistency certifications. The applicable federal regulation, Section 930.82, requires the Commission to follow notice procedures described in Section 930.63 and 930.64, which state: "At the earliest practicable time, the State agency shall notify the federal agency...." The regulation is necessary because the federal NOAA regulations are not easily accessible to Commissioners, the public, and staff.

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D. Item 4 - Section 13660(c)
Chevron requests clarification of the term Area Supervisor.

Change accepted.
The U.S.G.S. was re-named Minerals Management Service after circulation of these regulations. Correction has been made in all sections of Chapter 10.

E. Item 5 - Clarity
Plural form of "certification" should be used in some sections.

Change accepted.

II. Naida West, representing Council for Economic and Environmental Balance.

A. Suggested revisions to 13666.4(a)(1)

Change accepted.

III. Jim Doty, City of L.A. Phone call.

A. Requested change in monetary limit on major public works defined in Section 13012.

Change accepted.

IV. Exxon letter dated 4/8/82.

A. Item 1 - suggested clarification of title to Section 13666.1. Requested appeal to the Commission of Executive Director's preliminary determination.

Change on title accepted.
Change on Executive Director decision discussed in Item 2.

B. Item 2 - Requested appeal to the Commission of Executive Director's preliminary determination.

Change accepted.
Exxon suggested a change to Section 1366.1 that would establish the following procedure:

Executive Director -----> Commission -----> Local Govt.-----> Commission

OPTIONAL - PRELIMINARY DETERMINATION

This procedure would have taken two hearings before the Commission and resulted in delays to applicants. Instead the Commission has responded to the concerns by clarification of Section 13666.2(b) to assure

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C. Item 3 - Section 13666.3
Requested clarification of the term local government resolution

Commission review of the Executive Director's preliminary determination after local government has acted upon the application. The Commission's regulation's provide for review as follows:

Executive Director -----> Local Government -----> Commission

OPTIONAL PRELIMINARY DETERMINATION

Change accepted.

D. Item 4 - Section 13666.4
(a)(1) delete "identified" and correct "geologic"

(a)(1) change accepted

(a)(2) requested clarification of reference to "adequate to carry out the policies of Coastal Act."

(a)(2) clarification is as follows:
Section 30515 referes to local coastal program amendments. Local coastal programs include both land use plans and zoning ordinances. The Commission anticipates that applicants will request plan and zoning changes in the same application. Applicants will also likely request permit approval. In order to approve changes in the zoning ordinances, the Commission must find it is adequate to carry out the land use plan, which in turn must conform to Chapter 3. See Section 30513. The legal conclusion incorporates both requirements into one finding to assure that the Commission will act on the entire application at a single session. This is clearly the intent of the legislation in the use of the phrase "local coastal program".

(a)(3) requests clarification of the wording

Change substantially accepted.

(a)(4) suggests reference to the CZMA.

Change substantially accepted.
The Commission referenced the Coastal Management Program approved pursuant to the CZMA. Chapter 11 of the Program contains the "public welfare" or "national interests" portions of the CZMA. The Program would not be applicable to all facilities. That may take advantage of Section 30515, such as public works facilities.

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CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

February 18, 1982

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: LINDA L. BREEDEN, ENERGY COUNSEL
ROY GORMAN, CHIEF COUNSEL

SUBJECT: REVISIONS TO REGULATIONS ON CONSISTENCY REVIEW OF OCS PLANS AND ADOPTION OF REGULATIONS ON LCP AMENDMENT OVERRIDE PROCEDURES FOR ENERGY FACILITIES AND PUBLIC WORKS PROJECTS

Exhibit 1 includes a statement of reasons (O.A.L. term for summary) and regulations on the following subjects:

1. Minor amendments to the Commission's OCS Consistency regulations deleting references to the regional commissions, defining the California Coastal Management Program, and proposing similar clarifying changes.

2. New regulations that implement Section 30515 of the Coastal Act which allows applicants of public works and energy facility developments to petition the Commission for LCP amendments. This section is frequently referred to as an "Override" provision. It is particularly important to the Commission in consideration of the national interest, as required in the federally approved Coastal Management Program, in energy facility siting.

3. Correction to Section 13012 to define major public works based on a $50,000 monetory limit and deletion of the geographic limitation. The geographic limitation is inconsistent with Section 30601(1) and (2).

STAFF RECOMMENDATION

Staff recommends that the Commission open the public hearing at its mid-March meeting, take testimony, and allow written comments to be received until April 10, 1982. Staff recommends a vote on the regulations at the Commission's mid-April meeting.

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SUMMARY OF PROPOSED CHANGES

Statement of Reasons

Chapter 10

Federal Consistency

Purpose

A statement of reasons and statement of review completion was previously submitted to OAL. Due to 1981 amendments to OAL's authorizing legislation, this agency is submitting new statements of reasons and review completion. However, material from the prior submissions will not be repeated and are incorporated herein by this reference. Chapter 10 implements the federal Coastal Zone Management Act, 16 USC 1451 et seq. The Coastal Commission is the federally designated coastal management agency responsible for implementation of California's coastal management program (CCMP). Under federal law, the Commission reviews federal activities and federally licensed activities for "consistency" with the CCMP. One type of activity it reviews are OCS plans of exploration and development, 16 USC Sec. 1456(c)(3)(B). Regulations describe procedures for reviewing plans in accordance with federal law, federal regulations codified in 15 CFR Part 930, and the CCMP. Since the Commission's consistency authority is analogous, but not identical, to its permit authority, separate procedural regulations are necessary. The amendments proposed herein are minor in nature, seeking to conform to new OAL requirements for citations, and to federal regulations on consistency. The Commission derives its authority over these projects from federal, not state, law.

Title

The title of the Chapter was revised to more closely correspond to the language of the federal law. Under federal law and regulations, federal agencies make "consistency determinations", whereas applicants for federal licenses or permits make "consistency certifications". Since this Chapter refers to applicants, the term "determination" was corrected to now become "certification". This change was made to every section where the word "determination" occurred.

13660. Definitions

In subsection (a), the last phrase is proposed to be deleted because it is redundant. A new subsection (f) will be added which defines "California Coastal Management Program". The term is used throughout the Chapter and is confusing without a definition. Citations to federal law and regulations have been added to all sections to comply with OAL requirements.

13660.1 Preliminary Consultation

Redundant phrases have been deleted. The regulation will be clarified to indicate that consultation should take place at the state office. The state office is responsible for the OCS program in the reorganization of the Commission.

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EXHIBIT NO. I

California Coastal Commission

13660.3 Submission of Consistency Certification

Clarifying, editorial changes are proposed.

13660.4 Staff Summary, Recommendation and Hearing Notice

Changes to reflect amendments to the Coastal Act (e.g., 49 days for a public hearing) are proposed. Also, reorganization of the Commission necessitates other minor revisions.

13660.7 Regional Commission Role

This section will be repealed since regional Commissions no longer exist. A new "Consent Calendar Procedure" section will be added to assure OCS applicants of speedy Commission action.

13660.8 Final Commission Decision

Based on comments received last year, Section (b)(1) will be changed to quote exactly the federal law. Apparently, some commentators objected to the paraphrased version of the federal law. The Commission is aware of OAL's objection to regulations which quote laws and is therefore somewhat caught in the middle. However, due to the relative unavailability of federal legislation to applicants and staff, it is necessary to state the basis for decision making. A few editorial changes are also proposed.

13660.9 Appeals Procedure

Clarification of the first sentence is proposed to include more information about federal regulations. Commission actions under Chapter 10 are appealable to the Department of Commerce.

13660.11 Multiple Permit Review

To comply with OAL mandates, deletion of repetitive phrases are proposed. No substantive changes are proposed.

13660.12 Associated Coastal Development Permits

This section currently deals with the relationship of a state Commission consistency certification to an associated permit under consideration by a regional Commission. Since the regional Commissions no longer exist, and the Commission handles all permits, revisions to the regulation are needed.

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STATEMENT OF REASONS

CHAPTER 11

Energy Facilities

Subchapter 2. Certified Local Coastal Program "Override" Procedures

Introduction:

Section 30515 provides special procedures allowing applicants to petition the Commission for Local Coastal Program amendments. The section only applies to public works facilities and energy facilities. For all other types of facilities, local government submits Local Coastal Program amendments to the Commission. The section is also extremely important as an implementation mechanism for the Commission's national interest responsibilities pursuant to the Coastal Zone Management Act (CZMA), 16 USC Section 1451 et seq. and the approved California Coastal Management Program (CCMP).

13666 Applicability

This section indicates that the so-called "override" procedures of Section 30515 are applicable to energy facilities and public works facilities. The entire Chapter also implements the national interest in energy facility planning and siting necessary to carry out the Commission's approved Coastal Management Program ("CCMP") pursuant to the Coastal Zone Management Act of 1972 ("CZMA" 16 USC 1451). There are frequent references in the federal approval of the CCMP to the importance of implementation of Section 30515. The Commission relies on the CCMP, CZMA, and Coastal Act in proposing this regulation. A copy of these documents has previously been sent to OAL and is available upon request. The section describes the two eligibility requirements for State Coastal Commission "override" of local decisionmaking. It also specifically provides that developments that are not subject to the "override" procedures shall follow Local Coastal Program amendment procedures.

13666.1 Information Requirements for Preliminary Determination

This section describes the type of information that may be submitted to the Executive Director to determine if the proposed development is subject to this subchapter. This application may be submitted prior to local government review, if the applicant, at his option, desires local government to be informed at the outset that the application is subject to "override" provisions. It is anticipated that applicants would chose to exercise this option, if they anticipate local opposition to the development.

13666.2 Submittal to Local Government

Subsection (a) describes the procedures for submittal of an amendment application if the applicant has requested a preliminary determination. The application is to be submitted first to the local government whose decision is subject to the factual findings of this subchapter. If the local government fails to amend the Local Coastal Program within 90 days, the applicant may file an amendment request with the Commission. Ninety days is an appropriate time period because local governments submit local coastal program amendments three times a year. This time period is intended to allow the applications to be considered along with local governments' existing local procedures.

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Subsection (b) describes the procedures for review of amendment applications, if the applicant has not elected to request a preliminary determination. Generally speaking, this section would apply if the amendment were first denied by local government and then appealed to the Commission. It could also apply to appeals of amendment approvals, if the applicant were dissatisfied with the conditions of approval. In either event, the subsection only applies to appeals.

13666.3 Commission Review

This section assures commission consultation with the affected local government as required by Section 30515 and indicates the applicable provisions of the Chapter 5 regulations and Local Coastal Program regulations. Citation to the existing regulations avoids duplication of procedural and substantive regulations.

13666.4 Required Findings

The required findings assure that the Commission decision will be supported by an analysis of factual matters to support the legal conclusions specified in Section 30515.

CHAPTER 1

General Provisions

13012. Major Public Works

This section defines major public works but includes an erroneous reference to P.R.C. Section 30601(1) and (2) that is proposed to be deleted.

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Chapter 10. Federal Consistency ~~Determination~~
Subchapter 1. Commission Procedures for Consistency Certifications ~~Determinations~~ for Outer Continental Shelf (OCS) Exploration, Development or Production Plans and for OCS Related Federal Permits.

13660. Definitions. (a) The term "applicant" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional or local government, or any entity of such Federal, State, regional or local government, who submits to the USGS Area Supervisor (or other designee of the Secretary of Interior) after August 31, 1978, an OCS Plan ~~which describes in detail activities requiring a Federal license or permit~~.

(b) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. §1331 et. seq.), and the regulations under that Act, which describes in detail activities requiring a Federal license or permit.

(c) The term "USGS Area Supervisor" means the Pacific Area Oil and Gas Supervisor, Minerals Management Service formerly the United States Geological Survey ~~United States Geological Survey~~, Department of the Interior.

(d) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

(e) The term "Executive Director" means the Executive Director of the California Coastal Commission.

(f) The term "California Coastal Management Program" (CCMP) means the program approved by the Department of Commerce pursuant to the Coastal Zone Management Act (16 USC Section 1451 et.seq.).

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NOTE: Authority cited: State law: Section 30333, Public Resources Code, Reference cited: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et. seq.; 15 CFR Part 930 et. seq. as adopted June 25, 1979, 44 FR 37143.

13660.1. Preliminary Consultation. (a) As soon as possible, but at least 10 days prior to submission to the USGS Area Supervisor, of any plan ~~required to be submitted under the Outer Continental Shelf Lands Act, as amended, (43 USC 1331 et seq.)~~ for the exploration of areas leased under the Outer Continental Shelf Lands ~~that~~ Act, and at least 30 days prior to submission of plans for the development or production of areas leased under that Act, any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director at the state office concerning all the activities required to be described in detail in the OCS plan affecting the land or water uses in the coastal zone* ~~which affect land and water uses.~~*

This shall include, at minimum, activities requiring the following federal approvals:

USGS - Department of the Interior

- Approval of offshore drilling operations,
- Approval of design plans for the installation of platforms
- Approval of gathering and flow lines

The following OCS related Federal license or permit activities are encouraged to be included, if they will be required in connection with the OCS activity.

Department of Defense - U.S. Army Corps of Engineers

- Permits and licenses required under Sections 9 and 10 of the Rivers Harbors Act of 1899
- Permits and licenses required under Section 103 of the Marine

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Protection, Research and Sanctuaries Act of 1972

- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333 (f))

MMS

Department of the Interior - Bureau of Land Management - ~~USGS~~

- Permits and licenses required for ~~drilling~~ and mining on public lands (BLM)
- Permits for pipeline rights-of-way on the Outer Continental Shelf
- Permits and licenses for rights-of-way on public lands

Environmental Protection Agency

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality

Department of Transportation - U.S. Coast Guard

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534
- Permits for deepwater ports under the Deepwater Port Act (P.L.93-627)

Federal Energy Regulatory Commission

- Certifications required for interstate gas pipelines
- Permits or licenses for construction and operation of facilities needed to import, export or transship natural gas or electrical energy

Any other OCS related Federal license or permit activities which are not listed above are also encouraged to be included, if they will be required in connection with the OCS activity.

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(b) The Executive Director shall provide the applicant with a copy of the California Coastal Management Plan ("CCMP") upon request.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.75, 930.82, 930.64, 930.77.

13660.2. [RESERVED]

13660.3. Submission of Consistency Certification. (a) The applicant shall submit to the USGS Area Supervisor who in turn shall submit to the Executive Director: the OCS plan. with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13360.1(a) of these regulations, and the environmental report as soon as it is approved by the USGS Area Supervisor pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2 for development and production plans.

(b) The consistency certification*~~for all activities described in detail in the OCS plan as required by Section 13660.3(a) above~~*shall be in the following form:

> The proposed activities described in detail in this plan comply with California's approved coastal management program and will be conducted in a manner consistent with such program.

(c) The applicant shall also include the following supporting information:

(1) a brief assessment relating the probable coastal zone effects of each of the enumerated activities and their associated facilities to the relevant elements of the program policies of the CCMP; and

(2) a brief set of findings derived from the assessment indicating that each of the enumerated activities (e.g. drilling, platform

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placement) and its associated facilities (e.g. onshore support structures, offshore pipelines), and its primary effects (e.g. air, water, waste discharges, erosion, wetlands, beach access impacts) are consistent with the mandatory provisions of the CCMP.

(d) Upon request of the applicant, the California Coastal Commission staff will provide assistance in preparing the assessment and findings required in Section 13660.3(c)(1) and (2) of these regulations.

(e) The Executive Director may ~~request in~~ writing additional data and information from the applicant if he deems it necessary for a complete and proper review. Such a request shall not extend the date for commencement of Coastal Commission review; however, failure to submit the requested information could result in an objection to the applicant's consistency certification* ~~determination~~* [See §13660.8(b)(4)]. The applicant shall comply with such request within 10 days of its receipt or shall indicate wthin 10 days reasons why the request cannot be complied with.

(f) When the OCS Plan submitted to the Executive Director by the USGS Area Supervisor has deleted confidential and prorietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequately assess the coastal zone effects of the activities described in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the* ~~provisions of the Outer Continental Shelf Lands Act, as amended, and the Freedom of Information Act, and the~~ applicable* implementing federal regulations. The procedures specified in §13660.3(e)

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apply to the Executive Director's request for confidential and proprietary information.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC 1451 et seq., 15 CFR Sections, 930.77, 930.58 and 30 CFR Part 252.

13660.4. Staff Summary, Recommendation, and Hearing Notice. After receipt of the OCS plan, environmental report, consistency certification *~~determination~~* and the accompanying findings and assessments and any other information which the Executive Director deems necessary, the Executive Director shall:

(a) Prepare a staff summary and recommendation of the applicant's findings and assessments and send *~~the summary~~* it to the applicant, the Assistant Administrator, the USGS Area Supervisor, and other relevant Federal agencies, ~~the affected Regional Commissions~~, local governments, state agencies, and other interested parties. If the vote on the certification is scheduled for a later meeting than the oral hearing on the staff summary, the Executive Director shall prepare a separate staff recommendation according to the requirements of Chapter 5, Article 12.

" (b) Schedule a ~~State Coastal~~ Commission public hearing on the applicant's consistency certification ~~determination~~, findings and assessments and the staff summary, and recommendation, giving appropriate notice to all interested parties, (as listed in §13660.4(a) above), with particular emphasis on informing citizens of the coastal area which will be affected pursuant to the permit regulations in Chapter 5 unless specifically changed herein. The Director shall endeavor, where possible, to schedule the public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certificate and findings. The state and regional agencies responsible for

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air and water quality compliance shall be notified and provided the opportunity to present their agencies' positions before the Commission hearing. Such hearing shall be set for a regular Coastal Commission meeting not later than the 49th*~~42nd~~*day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 49-day*~~42-day~~*time period for a hearing. All public hearings shall be scheduled with a view toward allowing widespread public distribution of the information contained in the staff's summary and recommendation and toward allowing maximum public participation and attendance at the hearing particularly for the citizens of the affected area, while affording the applicant expeditious consideration of consistency certifications.*~~determinations~~.*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 and 30621, Public Resources Code. Federal law: 16 USC 1451 et seq., 15 CFR 930.79, 930.84(a), 930.61(a), 930.63.

13660.5. Contents of Summary and Recommendation. The summary shall: (1) list the major activities listed in the OCS plan, for which a consistency certification has*~~determination, assessments and findings have~~* been required, (2) discuss the effect of these activities and their associated facilities, and*~~their effects~~*on land*~~and~~*or water uses in the coastal zone, (3) discuss the consistency of such activities and related effects with the mandatory provisions of the CCMP. The summary shall also specifically list all other Federal permits for which consistency findings have not been enclosed and for which future consistency certification *~~determinations~~*will be required under Section 13660.11 of these regulations.

13660.6. Conduct of Hearings on Staff Recommendation on a Consistency Certification.*~~Determination~~.* The Commission shall*be the*

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*~~final decision maker on consistency determinations and shall conduct~~*de novo hearings on consistency certifications*determinations*substantially in accordance with the applicable procedures for permit hearings set forth in *~~Sections 13057 through 13096, excluding Sections 13071, 13085, and 13087 of these Regulations.~~ *Chapter 5 of these regulations.

NOTE: Authority ~~cited:~~ State law: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code. Federal law: 16 USC 1451 et seq., and 15 CFR 930.79.

13660.7. Consent Calendar Procedures. Consistency certifications at the discretion of the Executive Director may be included as a consent calendar item pursuant to Chapter 5, Article 15 of these regulations.

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

~~13660.7. Regional Commission Role. The affected Regional Commission(s) may wish to conduct hearings prior to the Commission hearing, and based on those hearings present testimony at the Commission hearing. The Regional Commission hearing panel may include State Commissioners. Upon written request by a Regional Executive Director, the Executive Director may extend for an additional 30 days the 42-day time period for its hearing required by Section 13660.4 in order to allow a full hearing at the Regional Commission level. Any Regional Commission hearings shall also be conducted substantially in accordance with Sections 13064-13096 of these regulations. The Regional Commission and State Commission shall attempt to hold a joint hearing where possible.~~

13660.8. Final Commission Decision. (a) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP; i.e., whether it "concurs" or "objects" to the applicant's consistency certification, at the earliest practicable time and in no event

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more than 6 months from the date of the receipt of such consistency certification and required information from the USGS Area Supervisor (see Section 13660.3 of these regulations). If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator, the applicant, the USGS Area Supervisor, and the relevant Federal agencies of the status of review and the basis for further delay.

(b) A Commission decision which objects to an applicant's consistency certification for one or more of the activities described in detail in the OCS plan shall be accompanied by a statement indicating:

(1) the effect which the activity will have on coastal land or ~~and~~ water uses, in the coastal zone,

(2) how the activity is inconsistent with a mandatory provision of the CCMP,

(3) alternative measures or conditions (if they exist) which would make their proposed activity consistent with CCMP policies,

(4) if a decision to object is based upon grounds that the applicant has*~~not provided~~*failed to provide information *~~required in Section 13660.3 above, which has been~~*requested by the Executive Director, the type*~~nature~~*of*~~the~~* information requested and the necessity of that information for a consistency certification *~~determination~~*must be described, and

(5) the applicant's right of appeal to the Secretary of Commerce on the grounds that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

(c) The Commission shall notify the applicant, the USGS Area

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Supervisor, the Assistant Administrator, and the relevant Federal agencies of its decision by sending a copy of its Final Decision to them.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.79 and 15 CFR 930.64, 930.63.

13660.9. Appeals Procedure. Any applicant may file a notice of appeal of a Commission objection to a consistency certification within 30 days of receipt to the Secretary of Commercere according to the provisions of the Coastal Zone Management Act and the regulations contained in 15 CFR Par 930.120 et seq. ~~Any applicant who appeals to the Secretary of Commerce a Commission objection to a consistency determination~~ The applicant shall send a copy of the notice of appeal and accompanying documents to the Executive Director. ~~of the Commission.~~ The Executive Director shall submit detailed comments to the Secretary of Commerce within 30 days of receipt of the appeal and transmit ~~send~~ copies of ~~such comments~~ to the applicant, the USGS Area Supervisor, and the relevant Federal agencies. Where the Commission meeting schedule allows sufficient time for discussion prior to the 30 day period, these comments shall be the subject of Commission discussion with opportunity for public comment. This procedure shall also be followed if the Secretary of Commerce pursues an independent review of the consistency of an OCS activity.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.120-134.

13660.10. Required Amendments. Any amendment to an OCS plan which must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan; i.e., Sections 13660.1-.13 of these regulations apply, except that the Commission

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must make its decision within 3 months of receipt.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR Part 930.83 et seq.

13660.11. Multiple Permit Review. (a) Applicants are strongly encouraged to include with OCS plans ~~with consistency certifications required to be submitted to the Commission in accordance with Section 13660.3 of these regulations,~~ detailed descriptions, consistency certification ~~determinations~~, findings and assessments and other supporting data for other OCS-related activities, which require a federal license or permit but are not required to be described in detail in OCS plans by the Secretary of the Interior (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, or the other permits listed in Section 13660.1 of these regulations). Where consistency certification ~~determinations~~ and related findings and assessments are made for activities for all required Federal permits connected with an OCS plan, the applicant shall so state and consolidated consistency review for these activities will take place at the same time and under the same procedures as review of activities required to be described in detail in OCS plans (Sections 13660.1-.13 of these Regulations).

(b) If consistency certifications ~~determinations~~ and related assessments and findings for all OCS related Federal permit activities are not included with an OCS plan and consistency certification ~~determination~~, the applicant shall state which Federal permit activities have not been included. ~~The Commission will review those permit activities which are not~~

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included separately.* The final decision of the Commission*for consistency determinations of OCS plan activities*shall state which Federal permit activities have not been included and*which*therefore must be reviewed separately.

(c) The applicant and the Coastal Commission shall comply with Sections 13660-13660.13 of these regulations in processing consistency certification*determinations*which have not been included with OCS plans, except that:

(1) As soon as possible, but at least 10 days pior to submission of an application for a Federal permit, the applicant shall consult with the Executive Director concerning OCS-related Federal license or permit activities.

(2) An environmental report as described by 30 CFR 250.34-3(a) and 3(b) need not be submitted, if one which covered the subject permit activity was previously submitted under Section 13660.3 of these regulations, or if the Executive Director is satisfied that the applicant has provided sufficient information concerning the environmental effects of the permit activity to adequately review the project as if it were a coastal permit under the CCMP.

(3) Wherever there is a requirement to notify the USGS Area Supervisor, notification shall also be sent to the appropriate*chief of the*Federal permitting agency.

NOTE: Authority cited: State law: Section 30333, Public resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.82.

13660.12. Associated Coastal Development Permits. Where a facility associated with an OCS plan requires a coastal development permit under the California Coastal Act (e.g. pipeline, marine terminal, onshore

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support and processing facilities, etc.), the applicant shall notify the Executive Director of the facility's relationship to the OCS plan at the time of submittal of the plan. Where an application for such a facility precedes submittal of the OCS plan to the Commission, the applicant shall notify the Executive Director that the facility is associated with a forthcoming OCS plan. If the Executive Director determines that a consolidated review of the applicant's consistency certification*~~determination~~*and application for a coastal development permit is necessary for complete and proper consideration of the matter, he shall recommend such*~~direct~~*consideration*of ~~such permit application by the State Coastal Commission pursuant to §30333.5 of the Coastal Act~~.*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code. Federal law: 15 CFR 930.82

13660.13. Monitoring of Federal Permits. Copies of Federal license and permit applications for activities described in detail in an OCS plan, as well as for OCS-related activities, which have received Commission concurrence and which have been requested in the final Commission decision, shall be sent by the applicant to the Executive Director to allow the Commission to monitor the activities.

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RMF

CHAPTER 11: ENERGY FACILITIES AND LCP "OVERRIDE" PROCEDURES

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CERTIFIED LOCAL COASTAL PROGRAM (LCP) AMENDMENT "OVERRIDE" PROCEDURES

13666. Applicability

These procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:

(1) unanticipated by the person proposing the development at the time the Local Coastal Program was before the Commission for certification

(2) meets the public needs of an area greater than that included in the certified Local Coastal Program

All other developments requiring an amendment to the certified Local Coastal Program shall follow the Local Coastal Program amendment procedures of the affected local government and the Commission.

13666.1. Information Requirements for Preliminary Determination

A person desiring review according to this subchapter may first submit an LCP amendment application (following the requirements of the affected local government) to the Executive Director with sufficient information setting forth the reasons for the amendment with particular emphasis on the applicability requirements as specified in Section 13666, and how it conforms with the policies of Chapter 3. The Executive Director shall, within 30 days, review the Local Coastal Program file and the projected scope of this subchapter. A determination of the Executive Director is final and shall be forwarded to the affected local government and the person desiring review.

13666.2. Submittal to Local Government

(a) If the Executive Director has preliminarily determined that the development is subject to this subchapter, the application shall first be submitted to the affected local government for a Local Coastal Program amendment according to applicable requirements. The local government shall make its determination based on factual findings and reasoning supporting the conclusions of law set forth in this subchapter. If the local government fails to amend the Local Coastal Program within 90 days of submittal, the person submitting such an amendment may file a request for an amendment with the Commission

(b) If the applicant has not requested a preliminary determination, prior to submittal of an amendment application to the local government, he may nevertheless request the Commission to consider the application through an appeal from a final local government decision as subject to the override provisions. The appeal from the local government's decision shall follow local coastal program regulations of the affected local government and the Commission and include the information requirements of this subchapter in order to advise the Commission that in the applicant's opinion, the development is subject to Section 30515.

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13666.3 Commission Review

Commission review shall be undertaken only after consultation with the affected local government and with the exception of the local government resolution, review shall be conducted according to the Local Coastal Program regulations.

13666.4 Required Findings

(a) If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic, and environmental effects, supports the following conclusions:

(1) development meets an identified public need of a geologic area greater than that included within the certified Local Coastal Program.

(2) development conforms with and is adequate to carry out the policies of Chapter 3.

(3) if significant adverse environmental impacts have been identified, reasonable alternatives have been required and mitigation measures included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.

(4) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act.

(b) If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.

CHAPTER 1
GENERAL PROVISIONS

13012. Major Public Works: "Major public works" means any public works ~~*located within an area listed in Public Resources Code, Section 30601(1) and (2),*~~ that costs more than fifty thousand dollars ($50,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610,30610.5, 30611, or 30624.

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CALIFORNIA CO . AL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

April 5, 1982

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: LINDA L. BREEDEN, ENERGY COUNSEL
ROY GORMAN, CHIEF COUNSEL

SUBJECT: ADOPTION OF AMENDMENTS TO REGULATIONS ON CONSISTENCY REVIEW OF OCS PLANS AND REGULATIONS ON LCP AMENDMENT OVERRIDE PROCEDURES FOR ENERGY FACILITIES AND PUBLIC WORKS PROJECTS

Exhibit 1 includes the following regulations:

1. Minor amendments to the Commission's OCS Consistency regulations. In response to comments, Section 13660.3 now includes language of the OCS plan federal regulation. Grammatical revisions to Section 13660.12 were made after the public hearing to clarify the procedures applicable to OCS plans that are associated with Coastal permit applications.

2. New regulations implement Section 30515 of the Coastal Act which allows applicants of public works and energy facility developments to petition the Commission for LCP amendments. This section is frequently referred to as an "Override" provision. No changes were made after the public hearing comments objected to the legislation and not the regulation.

3. Correction to Section 13012 to define major public works and major energy facilities based on a $100,000 monetory limit and deletion of the geographic limitation. Based on comments received, the monetory amount was revised from $50,000 to $100,000 to reflect amendments in the definition of "administrative permit application." Also major energy facilities are now defined. Major energy facilities are subject to the same procedures as public works facilities and were formerly defined in the LCP regulations. The Commission recently adopted changes to the LCP regulations that deleted the definition. Hence it is now necessary to define it in these regulations.

STAFF RECOMMENDATION

Staff recommends adoption of the regulations at the Commission's mid-April meeting.

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Chapter 10. Federal Consistency ~~Determination~~
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(b) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. §1331 et. seq.), and the regulations under that Act, which describes in detail activities requiring a Federal license or permit.

(c) The term "Area Supervisor" means the Pacific Area Oil and Gas Supervisor, Minerals Management Service formerly the United States Geological Survey ~~United States Geological Survey~~, Department of the Interior.

(d) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

(e) The term "Executive Director" means the Executive Director of the California Coastal Commission.

(f) The term "California Coastal Management Program" (CCMP) means the program approved by the Department of Commerce pursuant to the Coastal Zone Management Act (16 USC Section 1451 et.seq.).

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NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference cited: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et. seq.; 15 CFR Part 930 et. seq. as adopted June 25, 1979, 44 FR 37143.

13660.1. Preliminary Consultation. (a) As soon as possible, but at least 10 days prior to submission to the Area Supervisor, of any plan ~~required to be submitted under the Outer Continental Shelf Lands Act, as amended, (43 USC 1331 et seq.)~~ for the exploration of areas leased under the Outer Continental Shelf Lands ~~that~~ Act, and at least 30 days prior to submission of plans for the development or production of areas leased under that Act, any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director at the state office concerning all the activities required to be described in detail in the OCS plan affecting the land or water uses in the coastal zone* ~~which affect land and water uses.~~*

This shall include, at minimum, activities requiring the following federal approvals:

MMS - Department of the Interior

- Approval of offshore drilling operations
- Approval of design plans for the installation of platforms
- Approval of gathering and flow lines

The following OCS related Federal license or permit activities are encouraged to be included, if they will be required in connection with the OCS activity.

Department of Defense - U.S. Army Corps of Engineers

- Permits and licenses required under Sections 9 and 10 of the Rivers Harbors Act of 1899
- Permits and licenses required under Section 103 of the Marine

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Protection, Research and Sanctuaries Act of 1972

- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333 (f))

Department of the Interior - Bureau of Land Management - USGS

- Permits and licenses required for drilling and mining on public lands (BLM)
- Permits for pipeline rights-of-way on the Outer Continental Shelf
- Permits and licenses for rights-of-way on public lands

Environmental Protection Agency

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality

Department of Transportation - U.S. Coast Guard

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534
- Permits for deepwater ports under the Deepwater Port Act (P.L.93-627)

Federal Energy Regulatory Commission

- Certifications required for interstate gas pipelines
- Permits or licenses for construction and operation of facilities needed to import, export or transship natural gas or electrical energy

Any other OCS related Federal license or permit activities which are not listed above are also encouraged to be included, if they will be required in connection with the OCS activity.

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(b) The Executive Director shall provide the applicant with a copy of the California Coastal Management Plan ("CCMP") upon request.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.75, 930.82, 930.64, 930.77.

13660.2. [RESERVED]

13660.3. Submission of Consistency Certification. (a) The applicant shall submit to the USGS Area Supervisor who in turn shall submit to the Executive Director: the OCS plan with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13660.1(a) of these regulations, and the environmental report as soon as it is ~~approved by~~ deemed submitted to the Area Supervisor pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2(b)(1) for development and production plans.

(b) The consistency certification*~~for all activities described in detail in the OCS plan as required by Section 13660.3(a) above~~*shall be in the following form:

> The proposed activities described in detail in this plan comply with California's approved coastal management program and will be conducted in a manner consistent with such program.

(c) The applicant shall also include the following supporting information:

(1) a brief assessment relating the probable coastal zone effects of each of the enumerated activities and their associated facilities to the relevant elements of the program policies of the CCMP; and

(2) a brief set of findings derived from the assessment indicating that each of the enumerated activities (e.g. drilling, platform

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placement) and its associated facilities (e.g. onshore support structures, offshore pipelines), and its primary effects (e.g. air, water, waste discharges, erosion, wetlands, beach access impacts) are consistent with the mandatory provisions of the CCMP.

(d) Upon request of the applicant, the California Coastal Commission staff will provide assistance in preparing the assessment and findings required in Section 13660.3(c)(1) and (2) of these regulations.

(e) The Executive Director may request in writing additional data and information from the applicant if he deems it necessary for a complete and proper review. Such a request shall not extend the date for commencement of Coastal Commission review; however, failure to submit the requested information could result in an objection to the applicant's consistency certification* ~~determination~~* [See §13660.8(b)(4)]. The applicant shall comply with such request within 10 days of its receipt or shall indicate within 10 days reasons why the request cannot be complied with.

(f) When the OCS Plan submitted to the Executive Director by the USGS Area Supervisor has deleted confidential and proprietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequately assess the coastal zone effects of the activities described in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the* ~~provisions of the Outer Continental Shelf Lands Act, as amended, and the Freedom of Information Act, and their~~* applicable implementing federal regulations. The procedures specified in §13660.3(e)

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apply to the Executive Director's request for confidential and proprietary information.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC 1451 et seq., 15 CFR Sections, 930.77, 930.58 and 30 CFR Part 252.

13660.4. Staff Summary, Recommendation, and Hearing Notice. After receipt of the OCS plan, environmental report, consistency certification *~~determination~~* and the accompanying findings and assessments and any other information which the Executive Director deems necessary, the Executive Director shall:

(a) Prepare a staff summary and recommendation of the applicant's findings and assessments and send *~~the summary~~* it to the applicant, the Assistant Administrator, the USGS Area Supervisor, and other relevant Federal agencies, ~~the affected Regional Commissions~~, local governments, state agencies, and other interested parties. If the vote on the certification is scheduled for a later meeting than the oral hearing, the Executive Director shall prepare a separate staff recommendation according to the requirements of Chapter 5, Article 12.

(b) Schedule a ~~State Coastal~~ Commission public hearing on the applicant's consistency certification ~~determination~~, findings and assessments and the staff summary, and recommendation, giving appropriate notice to all interested parties, (as listed in §13660.4(a) above), with particular emphasis on informing citizens of the coastal area which will be affected pursuant to the permit regulations in Chapter 5 unless specifically changed herein. The Director shall endeavor, where possible, to schedule the public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certificate and findings. The state and regional agencies responsible for

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air and water quality compliance shall be notified and provided the opportunity to present their agencies' positions before the Commission hearing. Such hearing shall be set for a regular Coastal Commission meeting not later than the 49th*~~42nd~~*day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 49-day*~~42-day~~*time period for a hearing. All public hearings shall be scheduled with a view toward allowing widespread public distribution of the information contained in the staff's summary and recommendation and toward allowing maximum public participation and attendance at the hearing particularly for the citizens of the affected area, while affording the applicant expeditious consideration of consistency certifications.*~~determinations~~.*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 and 30621, Public Resources Code. Federal law: 16 USC 1451 et seq., 15 CFR 930.79, 930.84(a), 930.61(a), 930.63.

13660.5. Contents of Summary and Recommendation. The summary shall: (1) list the major activities listed in the OCS plan, for which a consistency certification has*~~determination, assessments and findings have~~* been required, (2) discuss the effect of these activities and their associated facilities, ~~and*their effects~~*on land*~~and~~*or water uses in the coastal zone, (3) discusss the consistency of such activities and related effects with the mandatory provisions of the CCMP. The summary shall also specifically list all other Federal permits for which consistency findings have not been enclosed and for which future consistency certification *~~determinations~~*will be required under Section 13660.11 of these regulations.

13660.6. Conduct of Hearings on Staff Recommendation on a Consistency Certification.*~~Determination~~.* The Commission shall conduct *~~be-the~~*

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*~~final decision maker on consistency determinations and shall conduct~~*de novo hearings on consistency certifications*~~determinations~~*substantially in accordance with the applicable procedures for permit hearings set forth in *~~Sections 13057 through 13096, excluding Sections 13071, 13085, and 13087 of these Regulations.~~*Chapter 5 of these regulations.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code. Federal law: 16 USC 1451 et seq., and 15 CFR 930.79.

13660.7. Consent Calendar Procedures. Consistency certifications at the discretion of the Executive Director may be included as a consent calendar item pursuant to Chapter 5, Article 15 of these regulations.

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

~~13660.7. Regional Commission Role. The affected Regional Commission(s) may wish to conduct hearings prior to the Commission hearing, and based on those hearings present testimony at the Commission hearing. The Regional Commission hearing panel may include State Commissioners. Upon written request by a Regional Executive Director, the Executive Director may extend for an additional 30 days the 42-day time period for its hearing required by Section 13660.4 in order to allow a full hearing at the Regional Commission level. Any Regional Commission hearings shall also be conducted substantially in accordance with Sections 13064-13096 of these regulations. The Regional Commission and State Commission shall attempt to hold a joint hearing where possible.~~

13660.8. Final Commission Decision. (a) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP; i.e., whether it "concurs" or "objects" to the applicant's consistency certification, at the earliest practicable time and in no event

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more than 6 months from the date of the receipt of such consistency certification and required information from the[ ] Area Supervisor (see Section 13660.3 of these regulations). If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator, the applicant, the[ ] Area Supervisor, and the relevant Federal agencies of the status of review and the basis for further delay.

(b) A Commission decision which objects to an applicant's consistency certification for one or more of the activities described in detail in the OCS plan shall be accompanied by a statement indicating:

(1) the effect which the activity will have on coastal land ~~and~~ or water uses, in the coastal zone.

(2) how the activity is inconsistent with a mandatory provision of the CCMP,

(3) alternative measures or conditions (if they exist) which would make the proposed activity consistent with CCMP policies,

(4) if a decision to object is based upon grounds that the applicant has*~~not provided~~*failed to provide information *~~required in Section 13660.3 above, which has been~~*requested by the Executive Director, the type*~~nature~~*of*~~the~~* information requested and the necessity of that information for a consistency certification *~~determination~~*must be described, and

(5) the applicant's right of appeal to the Secretary of Commerce on the grounds that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

(c) The Commission shall notify the applicant, the Area

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Supervisor, the Assistant Administrator, and the relevant Federal agencies of its decision by sending a copy of its Final Decision to them.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.79 and 15 CFR 930.64, 930.63.

13660.9. Appeals Procedure. Any applicant may file a notice of appeal of a Commission objection to a consistency certification within 30 days of receipt to the Secretary of Commercere according to the provisions of the Coastal Zone Management Act and the regulations contained in 15 CFR Par 930.120 et seq. ~~Any applicant who appeals to the Secretary of Commerce a Commission objection to a consistency determination~~ The applicant shall send a copy of the notice of appeal and accompanying documents to the Executive Director. ~~of the Commission.~~ The Executive Director shall submit detailed comments to the Secretary of Commerce within 30 days of receipt of the appeal and transmit ~~send~~ copies of ~~such comments~~ to the applicant, the Area Supervisor, and the relevant Federal agencies. Where the Commission meeting schedule allows sufficient time for discussion prior to the 30 day period, these comments shall be the subject of Commission discussion with opportunity for public comment. This procedure shall also be followed if the Secretary of Commerce pursues an independent review of the consistency of an OCS activity.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.120-134.

13660.10. Required Amendments. Any amendment to an OCS plan which must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan; i.e., Sections 13660.1-.13 of these regulations apply, except that the Commission

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must make its decision within 3 months of receipt.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR Part 930.83 et seq.

13660.11. Multiple Permit Review. (a) Applicants are strongly encouraged to include with OCS plans ~~with consistency certifications required to be submitted to the Commission in accordance with Section 13660.3 of these regulations~~, detailed descriptions, consistency certifications~~determinations~~, findings and assessments and other supporting data for other OCS-related activities, which require a federal license or permit but are not required to be described in detail in OCS plans by the Secretary of the Interior (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, or the other permits listed in Section 13660.1 of these regulations). Where consistency certifications~~determinations~~ and related findings and assessments are made for activities for all required Federal permits connected with an OCS plan, the applicant shall so state and consolidated consistency review for these activities will take place at the same time and under the same procedures as review of activities required to be described in detail in OCS plans (Sections 13660.1-.13 of these Regulations).

(b) If consistency certifications ~~determinations~~ and related assessments and findings for all OCS related Federal permit activities are not included with an OCS plan and consistency certification ~~determination~~, the applicant shall state which Federal permit activities have not been included. ~~The Commission will review those permit activities which are not~~

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~~included separately~~. The final decision of the Commission ~~for consistency determinations of OCS plan activities~~ shall state which Federal permit activities have not been included and ~~which~~ therefore must be reviewed separately.

(c) The applicant and the Coastal Commission shall comply with Sections 13660-13660.13 of these regulations in processing consistency certifications~~determinations~~ which have not been included with OCS plans, except that:

(1) As soon as possible, but at least 10 days pior to submission of an application for a Federal permit, the applicant shall consult with the Executive Director concerning OCS-related Federal license or permit activities.

(2) An environmental report as described by 30 CFR 250.34-3(a) and 3(b) need not be submitted, if one which covered the subject permit activity was previously submitted under Section 13660.3 of these regulations, or if the Executive Director is satisfied that the applicant has provided sufficient information concerning the environmental effects of the permit activity to adequately review the project as if it were a coastal permit under the CCMP.

(3) Wherever there is a requirement to notify the Area Supervisor, notification shall also be sent to the appropriate ~~chief of the~~ Federal permitting agency.

NOTE: Authority cited: State law: Section 30333, Public resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.82.

13660.12. Associated Coastal Development Permits. Where a facility associated with an OCS plan precedes ~~requires~~ a coastal development permit application under the California Coastal Act (e.g. pipeline, marine terminal, onshore

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support and processing facilities, etc.), the applicant shall notify the Executive Director of the facility's relationship to the OCS plan at the time of submittal of the plan. Where ~~an~~ a coastal permit application for such an facility precedes submittal of the OCS plan to the Commission, the applicant shall notify the Executive Director that the facility is associated with a forthcoming OCS plan. If the Executive Director determines that a consolidated review of the applicant's consistency certification*~~determination~~*and application for a coastal development permit is necessary for complete and proper consideration of the matter, he shall recommend such*~~direct~~*consideration in whatever manner necessary to comply with applicable time limitations. ~~of such permit application by the State Coastal Commission pursuant to §30333.5 of the Coastal Act.~~*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.82

13660.13. Monitoring of Federal Permits. Copies of Federal license and permit applications for activities described in detail in an OCS plan, as well as for OCS-related activities, which have received Commission concurrence and which have been requested in the final Commission decision, shall be sent by the applicant to the Executive Director to allow the Commission to monitor the activities.

NOTE: Authority Cited: State Law: Section 30333, Public Resources Code, Reference; Section 30008, Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.86.

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CHAPTER 11: ENERGY FACILITIES AND LCP "OVERRIDE" PROCEDURES

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CERTIFIED LOCAL COASTAL PROGRAM (LCP) AMENDMENT "OVERRIDE" PROCEDURES

13666. Applicability

These procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:

(1) unanticipated by the person proposing the development at the time the Local Coastal Program was before the Commission for certification

(2) meets the public needs of an area greater than that included in the certified Local Coastal Program

All other developments requiring an amendment to the certified Local Coastal Program shall follow the Local Coastal Program amendment procedures of the affected local government and the Commission.

13666.1. Information Requirements for Preliminary Determination

A person desiring review according to this subchapter may first submit an LCP amendment application (following the requirements of the affected local government) to the Executive Director with sufficient information setting forth the reasons for the amendment with particular emphasis on the applicability requirements as specified in Section 13666, and how it conforms with the policies of Chapter 3. The Executive Director shall, within 30 days, review the Local Coastal Program file and the projected scope of this subchapter. A determination of the Executive Director is final and shall be forwarded to the affected local government and the person desiring review.

13666.2. Submittal to Local Government

(a) If the Executive Director has preliminarily determined that the development is subject to this subchapter, the application shall first be submitted to the affected local government for a Local Coastal Program amendment according to applicable requirements. The local government shall make its determination based on factual findings and reasoning supporting the conclusions of law set forth in this subchapter. If the local government fails to amend the Local Coastal Program within 90 days of submittal, the person submitting such an amendment may file a request for an amendment with the Commission.

(b) If the applicant has not requested a preliminary determination, prior to submittal of an amendment application to the local government, he may nevertheless request the Commission to consider the application through an appeal from a final local government decision as subject to the override provisions. The appeal from the local government's decision shall follow local coastal program regulations of the affected local government and the Commission and include the information requirements of this subchapter in order to advise the Commission that in the applicant's opinion, the development is subject to Section 30515.

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13666.3 Commission Review

Commission review shall be undertaken only after consultation with the affected local government and with the exception of the local government resolution, review shall be conducted according to the Local Coastal Program regulations.

13666.4 Required Findings

(a) If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic, and environmental effects, supports the following conclusions:

(1) development meets an identified public need of a geologic area greater than that included within the certified Local Coastal Program.

(2) development conforms with and is adequate to carry out the policies of Chapter 3.

(3) if significant adverse environmental impacts have been identified, reasonable alternatives have been required and mitigation measures included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.

(4) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act.

(b) If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.

CHAPTER 1
GENERAL PROVISIONS

13012. Major Public Works and Energy Facilities: "Major public works" and "Major energy facilities" ~~means any public works~~ mean facilities *~~located within an area listed in Public Resources Code, Section 30601(1) and (2)~~,* that cost more than ~~fifty~~ one hundred thousand dollars ~~($50,000)~~($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611, or 30624.

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CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

April 14, 1982

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: LINDA BREEDEN, ENERGY COUNSEL
ROY GORMAN, CHIEF COUNSEL

SUBJECT: ADOPTION OF AMENDMENTS TO REGULATIONS ON CONSISTENCY REVIEW OF OCS PLANS AND REGULATIONS ON LCP AMENDMENT OVERRIDE PROCEDURES FOR ENERGY FACILITIES AND PUBLIC WORK PROJECTS

Exhibit 1 includes the following regulations:

1. Minor amendments to the Commission's OCS Consistency regulations. In response to comments, Section 13660.3 now includes language of the OCS plan federal regulations. Grammatical revisions to Section 13660.12 were made after the public hearing to clarify the procedures applicable to OCS plans that are associated with coastal permit applications.

2. New regulations implement Section 30515 of the Coastal Act which allows applicants of public works and energy facility developments to petition the Commission for LCP amendments. This section is frequently referred to as an "Override" provision. Clarifications were made to the regulations after public hearing based on written testimony discussed in the Final Statement of Reasons.

3. Correction to Section 13012 to define major public works and major energy facilities based on a $100,000 monetory limit and deletion of the geographic limitiation. Based on comments received, the monetary amount was revised from $50,000 to $100,000 to reflect amendments in the definition of "administrative permit application". Also, major energy facilities are now defined. Major energy facilities are subject to the same procedures as public works facilities and were formerly defined in the LCP regulations. The Commission recently adopted changes to the LCP regulations that deleted the definition. Hence, it is now necessary to define it in these regulations.

Exhibit 2 includes the Final Statement of Reasons.

STAFF RECOMMENDATION

Staff recommends adoption of the regulations at the Commission's Northern California meeting in May.

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Chapter 10. Federal Consistency ~~Determination~~
Subchapter 1. Commission Procedures for Consistency Certifications ~~Determinations~~ for Outer Continental Shelf (OCS) Exploration, Development or Production Plans and for OCS Related Federal Permits.

13660. Definitions. (a) The term "applicant" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional or local government, or any entity of such Federal, State, regional or local government, who submits to the USGS Area Supervisor (or other designee of the Secretary of Interior) after August 31, 1978, an OCS Plan ~~which describes in detail activities requiring a Federal license or permit~~.

(b) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. §1331 et. seq.), and the regulations under that Act, which describes in detail activities requiring a Federal license or permit.

(c) The term "Area Supervisor" means the Pacific Area Oil and Gas Supervisor, Minerals Management Service formerly the United States Geological Survey ~~United States Geological Survey~~, Department of the Interior.

(d) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

(e) The term "Executive Director" means the Executive Director of the California Coastal Commission.

(f) The term "California Coastal Management Program" (CCMP) means the program approved by the Department of Commerce pursuant to the Coastal Zone Management Act (16 USC Section 1451 et.seq.).

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NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference cited: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et. seq.; 15 CFR Part 930 et. seq. as adopted June 25, 1979, 44 FR 37143.

13660.1. Preliminary Consultation. (a) As soon as possible, but at least 10 days prior to submission to the Area Supervisor, of any plan ~~required to be submitted under the Outer Continental Shelf Lands Act, as amended, (43 USC 1331 et seq.)~~ for the exploration of areas leased under the Outer Continental Shelf Lands ~~that~~ Act, and at least 30 days prior to submission of plans for the development or production of areas leased under that Act, any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director at the state office concerning all the activities required to be described in detail in the OCS plan affecting the land or water uses in the coastal zone* ~~which affect land and water uses.~~*

This shall include, at minimum, activities requiring the following federal approvals:

MMS - Department of the Interior

- Approval of offshore drilling operations
- Approval of design plans for the installation of platforms
- Approval of gathering and flow lines

The following OCS related Federal license or permit activities are encouraged to be included, if they will be required in connection with the OCS activity.

Department of Defense - U.S. Army Corps of Engineers

- Permits and licenses required under Sections 9 and 10 of the Rivers Harbors Act of 1899
- Permits and licenses required under Section 103 of the Marine

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Protection, Research and Sanctuaries Act of 1972

- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333 (f))

Department of the Interior - Bureau of Land Management - USGS

- Permits and licenses required for drilling and mining on public lands (BLM)
- Permits for pipeline rights-of-way on the Outer Continental Shelf
- Permits and licenses for rights-of-way on public lands

Environmental Protection Agency

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality

Department of Transportation - U.S. Coast Guard

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534
- Permits for deepwater ports under the Deepwater Port Act (P.L.93-627)

Federal Energy Regulatory Commission

- Certifications required for interstate gas pipelines
- Permits or licenses for construction and operation of facilities needed to import, export or transship natural gas or electrical energy

Any other OCS related Federal license or permit activities which are not listed above are also encouraged to be included, if they will be required in connection with the OCS activity.

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(b) The Executive Director shall provide the applicant with a copy of the California Coastal Management Plan ("CCMP") upon request.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.75, 930.82, 930.64, 930.77.

13660.2. [RESERVED]

13660.3. Submission of Consistency Certification. (a) The applicant shall submit to the USGS Area Supervisor who in turn shall submit to the Executive Director: the OCS plan with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13660.1(a) of these regulations, and the environmental report as soon as it is ~~approved by~~ deemed submitted to the Area Supervisor pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2(b)(1) for development and production plans.

(b) The consistency certification*~~for all activities described in detail in the OCS plan as required by Section 13660.3(a) above~~*shall be in the following form:

> The proposed activities described in detail in this plan comply with California's approved coastal management program and will be conducted in a manner consistent with such program.

(c) The applicant shall also include the following supporting information:

(1) a brief assessment relating the probable coastal zone effects of each of the enumerated activities and their associated facilities to the relevant elements of the program policies of the CCMP; and

(2) a brief set of findings derived from the assessment indicating that each of the enumerated activities (e.g. drilling, platform

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placement) and its associated facilities (e.g. onshore support structures, offshore pipelines), and its primary effects (e.g. air, water, waste discharges, erosion, wetlands, beach access impacts) are consistent with the mandatory provisions of the CCMP.

(d) Upon request of the applicant, the California Coastal Commission staff will provide assistance in preparing the assessment and findings required in Section 13660.3(c)(1) and (2) of these regulations.

(e) The Executive Director may request in writing additional data and information from the applicant if he deems it necessary for a complete and proper review. Such a request shall not extend the date for commencement of Coastal Commission review; however, failure to submit the requested information could result in an objection to the applicant's consistency certification ~~determination~~ [See §13660.8(b)(4)]. The applicant shall comply with such request within 10 days of its receipt or shall indicate within 10 days reasons why the request cannot be complied with.

(f) When the OCS Plan submitted to the Executive Director by the USGS Area Supervisor has deleted confidential and proprietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequately assess the coastal zone effects of the activities described in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the ~~provisions of the Outer Continental Shelf Lands Act, as amended, and the Freedom of Information Act, and their~~ applicable implementing federal regulations. The procedures specified in §13660.3(e)

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apply to the Executive Director's request for confidential and proprietary information.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC 1451 et seq., 15 CFR Sections, 930.77, 930.58 and 30 CFR Part 252.

13660.4. Staff Summary, Recommendation, and Hearing Notice. After receipt of the OCS plan, environmental report, consistency certification *~~determination~~* and the accompanying findings and assessments and any other information which the Executive Director deems necessary, the Executive Director shall:

(a) Prepare a staff summary and recommendation of the applicant's findings and assessments and send *~~the summary~~* it to the applicant, the Assistant Administrator, the USGS Area Supervisor, and other relevant Federal agencies, ~~the affected Regional Commissions~~, local governments, state agencies, and other interested parties. If the vote on the certification is scheduled for a later meeting than the oral hearing, the Executive Director shall prepare a separate staff recommendation according to the requirements of Chapter 5, Article 12.

(b) Schedule a ~~State Coastal~~ Commission public hearing on the applicant's consistency certification determination, findings and assessments and the staff summary, and recommendation, giving appropriate notice to all interested parties, (as listed in §13660.4(a) above), with particular emphasis on informing citizens of the coastal area which will be affected pursuant to the permit regulations in Chapter 5 unless specifically changed herein. The Director shall endeavor, where possible, to schedule the public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certificate and findings. The state and regional agencies responsible for

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air and water quality compliance shall be notified and provided the opportunity to present their agencies' positions before the Commission hearing. Such hearing shall be set for a regular Coastal Commission meeting not later than the 49th*~~42nd~~*day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 49-day*~~42-day~~*time period for a hearing. All public hearings shall be scheduled with a view toward allowing widespread public distribution of the information contained in the staff's summary and recommendation and toward allowing maximum public participation and attendance at the hearing particularly for the citizens of the affected area, while affording the applicant expeditious consideration of consistency certifications.*~~determinations~~.*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 and 30621, Public Resources Code, Federal law: 16 USC 1451 et seq., 15 CFR 930.79, 930.84(a), 930.61(a), 930.63.

13660.5. Contents of Summary and Recommendation. The summary shall: (1) list the major activities listed in the OCS plan, for which a consistency certification has*~~determination, assessments and findings have~~* been required, (2) discuss the effect of these activities and their associated facilities, ~~and*their effects~~*on land*~~and~~*or water uses in the coastal zone, (3) discusss the consistency of such activities and related effects with the mandatory provisions of the CCMP. The summary shall also specifically list all other Federal permits for which consistency findings have not been enclosed and for which future consistency certification *~~determinations~~*will be required under Section 13660.11 of these regulations.

13660.6. Conduct of Hearings on Staff Recommendation on a Consistency Certification.*~~Determination~~.* The Commission shall conduct *be-the*

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*~~final decision maker on consistency determinations and shall conduct~~*de novo hearings on consistency certifications*~~determinations~~*substantially in accordance with the applicable procedures for permit hearings set forth in *~~Sections 13057 through 13096, excluding Sections 13071, 13085, and 13087 of these Regulations.~~*Chapter 5 of these regulations.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code. Federal law: 16 USC 1451 et seq., and 15 CFR 930.79.

13660.7. Consent Calendar Procedures. Consistency certifications at the discretion of the Executive Director may be included as a consent calendar item pursuant to Chapter 5, Article 15 of these regulations.

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

~~13660.7. Regional Commission Role. The affected Regional Commission(s) may wish to conduct hearings prior to the Commission hearing, and based on those hearings present testimony at the Commission hearing. The Regional Commission hearing panel may include State Commissioners. Upon written request by a Regional Executive Director, the Executive Director may extend for an additional 30 days the 42-day time period for its hearing required by Section 13660.4 in order to allow a full hearing at the Regional Commission level. Any Regional Commission hearings shall also be conducted substantially in accordance with Sections 13064-13096 of these regulations. The Regional Commission and State Commission shall attempt to hold a joint hearing where possible.~~

13660.8. Final Commission Decision. (a) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP; i.e., whether it "concurs" or "objects" to the applicant's consistency certification, at the earliest practicable time and in no event

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more than 6 months from the date of the receipt of such consistency certification and required information from the[ ] Area Supervisor (see Section 13660.3 of these regulations). If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator, the applicant, the[ ] Area Supervisor, and the relevant Federal agencies of the status of review and the basis for further delay.

(b) A Commission decision which objects to an applicant's consistency certification for one or more of the activities described in detail in the OCS plan shall be accompanied by a statement indicating:

(1) the effect which the activity will have on coastal land ~~and~~ or water uses, in the coastal zone.

(2) how the activity is inconsistent with a mandatory provision of the CCMP,

(3) alternative measures or conditions (if they exist) which would make the proposed activity consistent with CCMP policies,

(4) if a decision to object is based upon grounds that the applicant has*~~not provided~~*failed to provide information *~~required in Section 13660.3 above, which has been~~*requested by the Executive Director, the type*~~nature~~*of*~~the~~* information requested and the necessity of that information for a consistency certification *~~determination~~*must be described, and

(5) the applicant's right of appeal to the Secretary of Commerce on the grounds that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

(c) The Commission shall notify the applicant, the Area

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Supervisor, the Assistant Administrator, and the relevant Federal agencies of its decision by sending a copy of its Final Decision to them.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.79 and 15 CFR 930.64, 930.63.

13660.9. Appeals Procedure. Any applicant may file a notice of appeal of a Commission objection to a consistency certification within 30 days of receipt to the Secretary of Commerce according to the provisions of the Coastal Zone Management Act and the regulations contained in 15 CFR Par 930.120 et seq. ~~Any applicant who appeals to the Secretary of Commerce a Commission objection to a consistency determination.~~ The applicant shall send a copy of the notice of appeal and accompanying documents to the Executive Director. ~~of the Commission.~~ The Executive Director shall submit detailed comments to the Secretary of Commerce within 30 days of receipt of the appeal and transmit ~~send~~ copies of ~~such comments~~ to the applicant, the Area Supervisor, and the relevant Federal agencies. Where the Commission meeting schedule allows sufficient time for discussion prior to the 30 day period, these comments shall be the subject of Commission discussion with opportunity for public comment. This procedure shall also be followed if the Secretary of Commerce pursues an independent review of the consistency of an OCS activity.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.120-134.

13660.10. Required Amendments. Any amendment to an OCS plan which must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan; i.e., Sections 13660.1-.13 of these regulations apply, except that the Commission

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must make its decision within 3 months of receipt.

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR Part 930.83 et seq.

13660.11. Multiple Permit Review. (a) Applicants are strongly encouraged to include with OCS plans ~~with consistency certifications required to be submitted to the Commission in accordance with Section 13660.3 of these regulations~~, detailed descriptions, consistency certifications~~determinations~~, findings and assessments and other supporting data for other OCS-related activities, which require a federal license or permit but are not required to be described in detail in OCS plans by the Secretary of the Interior (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, or the other permits listed in Section 13660.1 of these regulations). Where consistency certifications~~determinations~~ and related findings and assessments are made for activities for all required Federal permits connected with an OCS plan, the applicant shall so state and consolidated consistency review for these activities will take place at the same time and under the same procedures as review of activities required to be described in detail in OCS plans (Sections 13660.1-.13 of these Regulations).

(b) If consistency certifications ~~determinations~~ and related assessments and findings for all OCS related Federal permit activities are not included with an OCS plan and consistency certification ~~determination~~, the applicant shall state which Federal permit activities have not been included. ~~The Commission will review those permit activities which are not~~

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~~included separately~~. The final decision of the Commission ~~for consistency determinations of OCS plan activities~~ shall state which Federal permit activities have not been included and ~~which~~ therefore must be reviewed separately.

(c) The applicant and the Coastal Commission shall comply with Sections 13660-13660.13 of these regulations in processing consistency certifications~~determinations~~ which have not been included with OCS plans, except that:

(1) As soon as possible, but at least 10 days pior to submission of an application for a Federal permit, the applicant shall consult with the Executive Director concerning OCS-related Federal license or permit activities.

(2) An environmental report as described by 30 CFR 250.34-3(a) and 3(b) need not be submitted, if one which covered the subject permit activity was previously submitted under Section 13660.3 of these regulations, or if the Executive Director is satisfied that the applicant has provided sufficient information concerning the environmental effects of the permit activity to adequately review the project as if it were a coastal permit under the CCMP.

(3) Wherever there is a requirement to notify the Area Supervisor, notification shall also be sent to the appropriate ~~chief of the~~ Federal permitting agency.

NOTE: Authority cited: State law: Section 30333, Public resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.82.

13660.12. Associated Coastal Development Permits. Where a facility associated with an OCS plan precedes ~~requires~~ a coastal development permit application under the California Coastal Act (e.g. pipeline, marine terminal, onshore

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support and processing facilities, etc.), the applicant shall notify the Executive Director of the facility's relationship to the OCS plan at the time of submittal of the plan. Where ~~an~~ a coastal permit application for such an facility precedes submittal of the OCS plan to the Commission, the applicant shall notify the Executive Director that the facility is associated with a forthcoming OCS plan. If the Executive Director determines that a consolidated review of the applicant's consistency certification*~~determination~~*and application for a coastal development permit is necessary for complete and proper consideration of the matter, he shall recommend such*~~direct~~*consideration in whatever manner necessary to comply with applicable time limitations. ~~of such permit application*by the State Coastal Commission pursuant to §30333.5 of the Coastal Act.~~*

NOTE: Authority cited: State law: Section 30333, Public Resources Code. Reference: Section 30008 Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.82

13660.13. Monitoring of Federal Permits. Copies of Federal license and permit applications for activities described in detail in an OCS plan, as well as for OCS-related activities, which have received Commission concurrence and which have been requested in the final Commission decision, shall be sent by the applicant to the Executive Director to allow the Commission to monitor the activities.

NOTE: Authority Cited: State Law: Section 30333, Public Resources Code, Reference; Section 30008, Public Resources Code. Federal law: 16 USC Section 1451 et seq., 15 CFR 930.86.

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CHAPTER 11: ENERGY FACILITIES AND LCP "OVERRIDE" PROCEDURES

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CERTIFIED LOCAL COASTAL PROGRAM (LCP) AMENDMENT "OVERRIDE PROCEDURES

13666. Applicability

These procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:

(1) unanticipated by the person proposing the development at the time the Local Coastal Program was before the Commission for certification.

(2) meets the public needs of an area greater than that included in the certified Local Coastal Program.

All other developments requiring an amendment to the certified Local Coastal Program shall follow the Local Coastal Program amendment procedures of the affected local government and the Commission.

NOTE: Authority Cited: Section 30515, Public Resources Code.

13666.1. Information Requirements for Preliminary Determination of Applicability

A person desiring review according to this subchapter may first submit an LCP amendment application (following the requirements of the affected local government) to the Executive Director with sufficient information setting forth the reasons for the amendment with particular emphasis on the applicability requirements as specified in Section 13666, and how it conforms with the policies of Chapter 3. The Executive Director shall, within 30 days, review the Local Coastal Program file and the projected scope of this subchapter. A determination of the Executive Director is final and shall be forwarded to the affected local government and the person desiring review.

NOTE: Authority Cited: Section 30515, Public Resources Code.

13666.2. Submittal to Local Government

(a) If the Executive Director has preliminarily determined that the development is subject to this subchapter, the application shall first be submitted to the affected local government for a Local Coastal Program amendment according to applicable requirements. The local government shall make its determination based on factual findings and reasoning supporting the conclusions of law set forth in this subchapter. If the local government fails to amend the Local Coastal Program within 90 days of submittal, the person submitting such an amendment may file a request for an amendment with the Commission.

(b) If the applicant has not requested a preliminary determination, or if the Executive Director has determined that the override provisions do not apply, the applicant may nevertheless request the Commission to consider the application through an appeal from a final local government decision. The appeal from the local government's decision shall follow local coastal program regulations and additionally include the information requirements of this subchapter in order to advise the Commission that in the applicant's opinion, the development is subject to Section 30515.

NOTE: Authority Cited: Section 30515, Public Resources Code.

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13666.3 Commission Review

Commission review shall be undertaken only after consultation with the affected local government and review shall be conducted according to the Local Coastal Program regulations. A local government resolution is not required if the local government fails to act within 90 days as specified in 13666.2(a).

NOTE: Authority Cited: Section 30515, Public Resources Code.

13666.4 Required Findings

(a) If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic, and environmental effects, supports the following conclusions:

(1) development meets a public need of a geographic area greater than that included within the certified Local Coastal Program.

(2) development conforms with and is adequate to carry out the policies of Chapter 3.

(3) if significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.

(4) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act and the California Coastal Management Program, if applicable.

(b) If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.

NOTE: Authority Cited: Section 30515, Public Resources Code.

CHAPTER 1
GENERAL PROVISIONS

13012. Major Public Works and Energy Facilities: "Major public works" and "Major energy facilities" ~~means any public works~~ mean facilities ~~*located within an area listed in Public Resources Code, Section 30601(1) and (2),*~~ that ~~costs~~ cost more than ~~fifty~~ one hundred thousand dollars ~~($50,000)~~ ($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611, or 30624.

NOTE: Authority Cited: Section 30601, Public Resources Code.

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FINAL STATEMENT OF REASONS

(Section 11346.7(b))

Public Comment	Commission Response
I. Chevron. Letters dated 4/8/82 and 3/1/82.	
A. Item 1 - Section 13660.3(a) Three comments on typographical errors and requested citations to federal law.	Changes made as suggested by Chevron.
B. Item 2 - Section 13660.3(f) Objected to deletion of specific reference to OCSLA and requested reference to OCSLA regulation.	Change rejected. The Commission derives its authority to implement federal law from the CZMA, not OCSLA. The present regulation is erroneous and misleading in its reference to OCSLA and the Freedom of Information Act. The "authority cited" section specifically cites the two applicable federal CZMA regulations. Those regulations describe in detail the relationship of the CZMA to OCSLA. Furthermore, the authority cited section, generally references the OCSLA regulation which Chevron cites. There is potentially a difference of interpretation between the two federal agencies; i.e., the Department of Commerce (NOAA, which administers the CZMA and the Department of the Interior which administers the OCSLA. Therefore it is important that the Commission's regulations accurately cite "applicable" federal regulations. Chevron's comments ignore the CZMA and are therefore rejected. Furthermore, since federal regulations are revised on a fairly frequent basis, it appears more appropriate to cite them in the "authority cited" section, rather than in the grammatical paragraphs. It would also be difficult for non-lawyers to understand a reference to 30 CFR 252.7(a)(4). In contrast, a reference to "applicable federal regulations" with a specific citation to authority, is more understandable.
C. Item 3 - Section 13660.11(c)(3) Deletion of section requiring the Commission to notify an appropriate federal permitting agency.	Deletion rejected. NOAA regulations require the Commission to notify federal agencies of consistency certifications. The applicable federal regulation, Section 930.82, requires the Commission to follow notice procedures described in Section 930.63 and 930.64, which state: "At the earliest practicable time, the State agency shall notify the federal agency...." The regulation is necessary because the federal NOAA regulations are not easily accessible to Commissioners, the public, and staff.

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D. Item 4 - Section 13660(c)
Chevron requests clarification of the term Area Supervisor.

Change accepted.
The U.S.G.S. was re-named Minerals Management Service after circulation of these regulations. Correction has been made in all sections of Chapter 10.

E. Item 5 - Clarity
Plural form of "certification" should be used in some sections.

Change accepted.

II. Naida West, representing Council for Economic and Environmental Balance.

A. Suggested revisions to 13666.4(a)(1)

Change accepted.

III. Jim Doty, City of L.A. Phone call.

A. Requested change in monetary limit on major public works defined in Section 13012.

Change accepted.

IV. Exxon letter dated 4/8/82.

A. Item 1 - suggested clarification of title to Section 13666.1. Requested appeal to the Commission of Executive Director's preliminary determination.

Change on title accepted.
Change on Executive Director decision discussed in Item 2.

B. Item 2 - Requested appeal to the Commission of Executive Director's preliminary determination.

Change accepted.
Exxon suggested a change to Section 1366.1 that would establish the following procedure:

Executive Director -----> Commission -----> Local Govt. -----> Commission

OPTIONAL - PRELIMINARY DETERMINATION

This procedure would have taken two hearings before the Commission and resulted in delays to applicants. Instead the Commission has responded to the concerns by clarification of Section 13666.2(b) to assure

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Commission review of the Executive Director's preliminary determination after local government has acted upon the application. The Commission's regulation's provide for review as follows:

Executive Director -----> Local Government -----> Commission

OPTIONAL PRELIMINARY DETERMINATION

C. Item 3 - Section 13666.3
Requested clarification of the term local government resolution

Change accepted.

D. Item 4 - Section 13666.4
(a)(1) delete "identified" and correct "geologic"

(a)(1) change accepted

(a)(2) requested clarification of reference to "adequate to carry out the policies of Coastal Act."

(a)(2) clarification is as follows:
Section 30515 referes to local coastal program amendments. Local coastal programs include both land use plans and zoning ordinances. The Commission anticipates that applicants will request plan and zoning changes in the same application. Applicants will also likely request permit approval. In order to approve changes in the zoning ordinances, the Commission must find it is adequate to carry out the land use plan, which in turn must conform to Chapter 3. See Section 30513. The legal conclusion incorporates both requirements into one finding to assure that the Commission will act on the entire application at a single session. This is clearly the intent of the legislation in the use of the phrase "local coastal program".

(a)(3) requests clarification of the wording

Change substantially accepted.

(a)(4) suggests reference to the CZMA.

Change substantially accepted.
The Commission referenced the Coastal Management Program approved pursuant to the CZMA. Chapter 11 of the Program contains the "public welfare" or "national interests" portions of the CZMA. The Program would not be applicable to all facilities. That may take advantage of Section 30515, such as public works facilities.

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Land Department
Western Region

April 8, 1982

CALIFORNIA COASTAL COMMISSION
PROPOSED AMENDMENTS
CALIFORNIA ADMINISTRATIVE CODE
FEDERAL CONSISTENCY,
LCP OVERRIDE PROCEDURES,
PUBLIC WORKS PROJECTS

Ms. Linda L. Breeden
Energy Counsel
California Coastal Commission
631 Howard Street
San Francisco, CA 94105

Dear Linda:

Attached are comments of Chevron U.S.A. Inc. pursuant to your Notice dated February 18, 1982 of amendments to regulations in the California Administrative Code as referenced above. Thank you for allowing the public to submit written comments until April 10, 1982.

Please contact me (415/680-3035) if you have any questions whatsoever regarding Chevron's comments on these regulations.

Very truly yours,

Allan C. Moore

ACM:bc
Attachments

cc: Office of Administrave Law w/Attachments
1414 "K" Street
Sacramento, CA 95814

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CHEVRON U.S.A. INC.
PROPOSED AMENDMENTS
CALIFORNIA COASTAL COMMISSION
TITLE 14, CALIFORNIA
ADMINISTRATIVE CODE

TITLE 14, CALIFORNIA ADMINISTRATIVE CODE,
CHAPTER 10

1. Section 13660.3(a) (Clarity/Consistency/Reference/Authority)
Proposed Section 13660.3(a) states:

"13660.3. Submission of Consistency Certification. (a) The applicant shall submit to the USGS Area Supervisor who in turn shall submit to the Executive Director: The OCS plan. with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13360.1(a) of these regulations, and the environmental report as soon as it is approved by the USGS Area Supervisor pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2 for development and production plans..." (Emphasis added).

Comments

(1) The proposed Section contains a period after the phrase "OCS plan..." The period should be deleted. (This is simply a typographical error.)

(2) The proposed Section references "Section 13360.1(a) of these regulations..." This reference should be to Section 13660.1(a). (The inaccurate reference to Section 13360.1(a) was evidently inadvertently printed in the current California Administrative Code).

(3) This Section restates the applicable Federal regulations, which require that within two days after an exploration plan is "deemed submitted" pursuant to 30 CFR 250.34-1(a)(6), the Director shall transmit a copy of the plan and accompanying Environmental Report to each affected State (30 CFR 250.34-1(b)(1)). Similarly, the Federal regulations require that within ten days after a Development and Production Plan is "deemed submitted" pursuant to 30 CFR 250.34-2(a)(6), the Director shall transmit a copy of that plan and accompanying Environmental Report to each affected State (30 CFR 250.34-2(b)(1)). However, the wording and references of the Section are potentially misleading. The proposed Section states that the plan and Environmental Report are turned over "as soon as it is approved...pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2 for development and production plans..." The proposed Section, in closer conformity

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with the Federal regulations, should state: "as soon as they are deemed submitted...pursuant to 30 CFR 250.34-1(b)(1) for exploratory plans or 30 CFR 250.34-2(b)(1) for development and production plans." Alternatively, this Section could be deleted because much of the language is redundant with applicable Federal regulations.

2. Section 13660.3(f) (Consistency/Authority/Reference/Necessity/Clarity) Proposed Section 13660.3(f) states:

"(f) When the OCS Plan submitted to the Executive Director by the USGS Area Supervisor has deleted confidential and proprietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequately assess the coastal zone effects of the activities decribed in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the ~~provisions of the Outer Continental Shelf Lands Act, as amended, and the Freedom of information Act, and their~~ applicable implementing federal regulations. The procedures specified in §13660.3(e) apply to the Executive Director's request for confidential and proprietary information..." (Proposed new language underlined and proposed deletions lined through by Coastal Commission).

Chevron U.S.A. Inc. submits that the Coastal Commission's proposed revision to Section 13660.3(f), above, is far too broad, unnecessary, vague, inconsistent with Federal law, and without proper authority or reference.

The proposed revision mandates that confidential and proprietary information shall be provided to the Executive Director of the Coastal Commission "after the Executive Director has provided adequate assurance of confidentiality in accordance with the applicable implementing Federal regulations..." The revision proposes to strike express reference in the text to the Outer Continental Lands Act and the Freedom of Information Act.

The phrases "adequate assurance of confidentiality," and "in accordance with the applicable implementing Federal regulations" are too broad, and, without reference to particular applicable Federal law, provide no assurance or guidance to anyone submitting an OCS Plan.

The phrase "such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the applicable implementing Federal regulations" should be expanded to specifically reference the Outer Continental Shelf (OCS) Oil and Gas Information Program regulations; specifically, 30 CFR 252.7(a)(4). This subsection requires the Secretary of Interior to enter into an agreement with the State as a condition precedent to being granted access to any confidential data or information. In such an

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agreement the State must agree to (1) protect and maintain the confidentiality of privileged or proprietary data and information in accordance with the laws and regulations; (2) waive the defenses of claim of sovereign immunity or the claim that an employee who revealed the information was acting outside the scope of his employment; and (3) hold the United States Government harmless from any violation of the agreement to protect the confidentiality of the privileged information supplied the State. Until such an agreement has been entered into with the Department of Interior, the Coastal Commission should not be provided with confidential information.

15 CFR 930.77, entitled "Necessary Data and Information," is the Federal regulation which covers the data and information to be provided to the State. The original Supplementary Information section published in the Federal Register (F.R., March 13, 1978, Part III, pp. 10510, et seq.) states that the Interior's regulations pertaining to the OCS Oil and Gas Information Program regulations (30 CFR 252, et seq., discussed above) are applicable to the right of the State to receive OCS information necessary to assess the consistency of Federal license and permit activities. It is evident that 30 CFR 252.7(a)(4) should be referenced in the State regulations.

Finally, reference is made to the Outer Continental Shelf Lands Act, Section 26, entitled "Outer Continental Shelf Oil and Gas Information Program." Section 26(f) lists the same agreement provisions stated in 30 CFR 252.7(a)(4), delineated above. Section 26(g) states:

> "Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this Section, to the extent that it applies to such information." (Emphasis added).

It is evident that these State regulations must be kept consistent with the Federal law.

Chevron submits that the proposed 13660.3(f) be amended to conform to Federal law as follows:

> "...such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the provisions of the Outer Continental Shelf Lands Act, as amended, 30 CFR 252.7(a)(4), the Freedom of Information Act, and applicable implementing Federal regulations..."

3. 13660.11(c)(3) (Clarity/Necessity)
Section 13660.11(c)(3) states:

"(c) The applicant and the Coastal Commission shall comply with Sections 13660-13660-13 of these regulations in processing consistency certification which have not been included with OCS plans, except that:

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(3) Wherever there is a requirement to notify the USGS Area Supervisor, notification shall also be sent to the appropriate Federal Permitting Agency." (Emphasis added).

This Section is unclear and unnecessary. It is difficult to ascertain who might be the "appropriate Federal Permitting Agency" under a given set of circumstances. It is further difficult to ascertain when this regulation might apply.

4. Section 13660.(c) (Clarity)
Section 13660.(c) states:

"(c) The term 'USGS Area Supervisor' means the Pacific Area Oil and Gas Supervisor, Minerals Management Service formerly the United States Geological Survey, Department of the Interior."

ok

Chevron submits that for clarity the regulations be amended in each instance wherein reference is made to USGS Area Supervisor to reflect the change in title as referenced in 13660.(c). Thus, each reference in these regulations to "USGS Area Supervisor" should be amended to refer to "Pacific Area Oil and Gas Supervisor, Minerals Management Service."

5. Chapter 10, Generally (Clarity)

There are various instances throughout the regulations wherein the word "certification" is stated in the singular form in a context wherein the plural form is necessary, and vice versa. For example, Section 13660.11(c) lists the singular form "certification" while it seems the plural form "certifications" is appropriate. These errors may simply be typographical.

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Land Department
Western Region

RECEIVED
MAR 2 1982
CALIFORNIA
COASTAL COMMISSION

March 1, 1982

A.B. 1111
CALIFORNIA COASTAL COMMISSION
TITLE 14, DIVISION 5.5
CHAPTERS 7, 8, 9, AND 10

Ms. Cynthia K. Long
California Coastal Commission
631 Howard Street
San Francisco, CA 94105

Dear Ms. Long:

Please reference the comments dated June 26, 1981, submitted by CHEVRON U.S.A. Inc. on the above referenced regulations during the A.B. 1111 review process.

On page six of said comments, under comment number "2-A", CHEVRON set forth the provisions of current Section 13660.3(a). However, CHEVRON incorrectly referenced the Section as "13660(a)." Please accept our apologies for this error in reference.

Thank you for consideration of CHEVRON'S comments.

Very truly yours,

Allan C. Moore

ACM:bc

cc: Office of Administrative Law

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CHEVRON U.S.A. INC.
MAL-MAJ-1-08
A. B. 1111 Review
California Coastal
Commission
Title 14, Division 5.5
Chapters 7, 8, 9 and 10

CHAPTER 10 FEDERAL CONSISTENCY DETERMINATION

1. Consistency/Authority/Necessity/Reference/Clarity

A. Section 13660(b).

"The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. Section 1331 et. seq.), and the regulations under that Act, which describe in detail activities requiring a federal license or permit." (Emphasis added).

Chevron U.S.A. Inc. submits that the words "exploration or" should be deleted in this Section, and throughout Chapter 10. The Coastal Zone Management Act provides for consistency certification of those OCS plans which affect a land or water use within the coastal zone - it does not authorize the state to review all OCS plans. Exploratory operations do not affect a land or water use within the coastal zone.

Exploratory operations are a temporary activity, taking 60-90 days (or less), with no impact upon the land or water within the coastal zone. Exploratory wells are drilled from vessels which operate out of existing ports and do not require any increase in the local work force or alteration of existing onshore facilities.

Further, review of exploratory plans under this Chapter are not necessary. The state has an opportunity for review and imput of any potential impact resulting from exploratory operations during the lease sale process and the preparation of the EIS for such lease sale. The mitigating measures resulting from such state imput is manifested in stipulations attached to each particular lease. Exploration plans and environmental reports are further reviewed by the Federal government and a myriad of other permitting agencies. There is no necessity for the state to duplicate the review which has already been conducted. Finally, the authority and reference for this section do not support this section.

B. Section 13660.1.

(1) The reference in paragraph (a) of Section 13660.1 to "exploration" should be deleted in accordance with comment (1) of this paper.

(2) The first paragraph of this Section generally describes those activities subject to consistency review. The paragraph should be amended to refer only to those plans which affect uses "within the coastal zone."

The second paragraph is redundant and inaccurate. This paragraph attempts to specify OCS activities which are subject to consistency

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certification. Under certain circumstances listed activities will not affect the coastal zone (land or water use), and consistency certification would be unauthorized. For example; (1) exploratory drilling operations (see comment (1) under this Chapter); (2) projects such as the installation of a platform on the Outer Tanner Bank, which would produce directly into tankers headed for terminals outside of California.

Similarly, a number of the other OCS-related licenses and permits listed in paragraph 3 will not, under ordinary circumstances, affect a coastal zone land or water use. Chevron recommends deletion of the third and fourth paragraphs.

(3) The first paragraph of 13660.1 states: "...any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director concerning all the activities required to be described in detail in the OCS plan which affect land and water uses." As stated, reference to exploration should be deleted from this Chapter. At most, an applicant undertaking OCS plan activities should be required to notify the Executive Director, rather than consult under this Section. The word consult is overbroad, vague and unclear.

Further, there is no authority for the requirement to "consult" ten days prior to submission, in the USGS regulations, or in the Coastal Zone Management Act. Finally, the authority and reference cited do not support this regulation.

2. Consistency/Authority/Necessity/Reference

A. Section 13660(a).

"The applicant shall submit to the USGS Supervisor who in turn shall submit to the Executive Director: the OCS plan, with accompanying consistency certification... and the environmental report as soon as it is approved by the USGS Area Supervisor..." (Emphasis added).

Chevron U.S.A. Inc., submits that the words "approved by" above, should be deleted, and replaced with "deemed submitted to." This is consistent with 30 CFR 250.34-1(b)(1).

B. Section 13660.3(f).

Chevron U.S.A. Inc., submits that this section be deleted in its entirety. The first sentence in the paragraph is redundant and unnecessary. This subject is covered by Federal regulation. There is no statutory authority for the second sentence in this section. Under 15 CFR 930.76, confidential and proprietary information is specifically excluded from the material required to be submitted to the state.

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Title 14, Division 5.5
Chapters 7, 8, 9 and 10

C. Section 13660.4.

"After receipt of the OCS plan, environmental report, consistency determination and the accompanying findings... and any other information ...the Executive Director shall:
(a) Prepare a staff summary of the applicant's findings and assessments and send the summary to the applicant,...
(b) Schedule a State Coastal Commission Public Hearing on the applicant's consistency determination, findings and assessments and the staff summary, giving appropriate notice to all interested parties... with particular emphasis on informing citizens of the coastal area which will be affected. ...Such hearing shall be set for a regular Coastal Commission meeting not later than the 42nd day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 42 day time period for a hearing..." (Emphasis added).

(1) The first sentence of Section 13660.4 requires environmental reports... "and any other information" deemed necessary to be received by the Executive Director. This quoted language is unnecessary, vague, unclear, overbroad and should be deleted.

(2) Paragraph (a) above does not specify the time period in which the staff summary is sent to the applicant. This causes confusion and delay because the staff summary may not be sent to the applicant before the public hearing referred to in paragraph (b). It is proposed that paragraph (a) be amended to require the staff summary to be sent to the applicant at a designated time before the public hearing.

(3) Paragraph (b) requires notice of hearing to all interested parties..." with particular emphasis on informing citizens of the coastal area which will be affected." This latter language is unnecessary and should be deleted. Notice "to all interested parties" is sufficient.

(4) Paragraph (b) requires that the public hearing be set "not later than the 42nd day after receipt of the documents required..." It is proposed that this requirement be amended to "not later than 30 days after receipt of the documents required..." The hearing can easily be set within 30 days. There is no necessity or authority for allowing a longer time period. Further, it is proposed that the next sentence (allowing the Executive Director to extend the hearing period an additional 30 days) be deleted in its entirety. An additional 30 day period causes unreasonable and unnecessary delay. There is no authority for such an allowance.

3. Necessity

A. Section 13660.7.

This Section will necessarily be deleted with the expiration of the regional commissions on June 30, 1981.

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4. Necessity/Consistency/Authority/Reference

A. Section 13660.8.

"Final Commission Decision.

(A) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP... at the earliest possible time and in no event more than 6 months from the date of receipt of such consistency certification and required information from the USGS Area Supervisor... If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator... of the status of the review and the basis for further delay." (Emphasis added).

Chevron U.S.A. Inc., submits that the requirement for decision within 6 months in Section 13660.8 is inconsistent with existing law, and without authority. An allowance of 6 months causes unreasonable delay and prejudice to the applicant. Chevron proposes that the section be amended to require decision within 60 days. This still gives the Commission more than enough time to evaluate submitted materials. Further, the second sentence, requiring notification of status of the review and basis for delay, should be deleted in accordance with the above.

5. Necessity/Consistency/Authority/Reference

A. Section 13660.10.

"Any amendment to an OCS plan must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan... except that the Commission must make its decision within 3 months of receipt." (Emphasis added).

The emphasized language in Section 1366.10 should be amended in accordance with Chevron's previous comment, above.

6. Necessity/Authority/Reference/Consistency

A. Section 13660.11.

(1) If Section 13660.1 is amended/repealed pursuant to Chevron's proposal in this paper, it would be appropriate to delete this Section in its entirety.

(2) If Section 13660.11 is retained, it is proposed that 13660.11(3) be clarified. Chevron is not certain who is the "chief" of the Federal permitting agency.

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CHEVRON U.S.A. INC.
A. B. 1111 Review
California Coastal
Commission
Title 14, Division 5.5
Chapters 7, 8, 9 and 10

7. Necessity/Authority/Reference/Consistency

A. Section 13660.12.

"...Where an application for [such] a facility precedes submittal of the OCS plan to the Commission, the applicant shall notify the Executive Director that the facility is associated with a forthcoming OCS plan. If the Executive Director determines that a consolidated review of the applicant's consistency determination and application for a coastal development permit is necessary for complete and proper consideration of the matter, he shall recommend direct consideration of such permit application by the State Coastal Commission pursuant to Section 30333.5 of the Coastal Act.

This Section places the determination that a consolidated review is necessary completely in the discretion of the Director. There is no authority for this regulation. Chevron U.S.A. Inc., proposed the following amendment to the third sentence of Section 13660.12.

"...If a consolidated review of the applicant's consistency determination and application for a coastal development permit is necessary for complete and proper consideration of the matter, the director shall recommend direct consideration of such permit application by the State Coastal Commission. "

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PRODUCTION DEPARTMENT
WESTERN DIVISION

DONALD E. CORNETT
ENVIRONMENTAL CONSERVATION MANAGER

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COASTAL COMMISSION

April 8, 1982

Comments on Regulations for LCP Amendment Override Procedures for Energy Facilities and Public Works Projects.

California Coastal Commission
631 Howard Street
San Francisco, California 94105

Attention: Linda L. Breeden, Energy Counsel

Dear Ms. Breeden:

The Commission staff recently produced regulations for adoption by the Commission to implement Section 30515 of the California Coastal Act. These regulations would provide a procedure for the Commission to override a local coastal authority's refusal to amend its Local Coastal Plan for an energy facility or public works project under certain prescribed conditions. We have reviewed these proposed regulations and have the following comments for your consideration:

(1.) Section 13666.1 is confusing in that while the Statement of Reasons makes it clear that the "determination" referred to in the regulation relates to applicability, it is not readily apparent from the language of the regulation whether the "determination" concerns applicability or the applied for amendment to the LCP. The title should be modified to read "Information Requirements for Preliminary Determination of Applicability". In addition, a clarification that the "determination" relates to applicability should be provided in the last sentence of Section 13666.1.

ok

This section also provides that the decision of the Executive Director regarding applicability of this override procedure is final. Since these override procedures are designed to assure that energy facilities and public works projects beneficial to a large area or group of people will not be halted by a Local Coastal Authority, it is important that the Coastal Commission have the final authority over the applicability of this procedure. We recommend that the regulations allow review of the Executive Director's decision by the Commission at the request of the applicant.

No

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State of California, Edmund G. Br[illegible] Governor

California Coastal Commission
631 Howard Street, 4th floor
San Francisco, California 94105
(415) 543-8555

MAL-MA-01-08

February 23, 1982

Dean Hargis
Dames and Moore
222 E. Anapamu
Santa Barbara, CA 93101

Subject: Copies of Chapter 10 & 11 Regulations

Dear Mr. Hargis:

Enclosed are copies of the requested regulations. If you have quesitons, please call.

Very truly yours,

LINDA BREEDEN
Energy Counsel

Encl.

cc: Tony Perez
Office of Administrative Law
1414 "K" Street, Suite 600
Sacramento, CA 95814

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(2.) Section 13666.2 (e): The last sentence of Section 13666.1 provides that the determination of the Executive Director is final. The first sentence of Section 13666.2 (a) refers to that determination as "preliminary." This inconsistency should be eliminated as suggested in item (1) above.

(3.) Section 13666.3: This section refers to a "local government resolution." Presumably this refers to a local government resolution denying an application for an amendment to the LCP. The reference should be clarified.

(4.) Section 13666.4: The language of paragraph (a) (1) through (4) should be modified to more closely track the language in the statute, Section 30515. In instances where a statute sets forth requirements with considerable specificity, modification of that language in regulations adopted pursuant to such statutes results in confusion. For example, the significance of the words "identified" and "geologic" to the statutory language essentially reproduced in Section 13666.4(a) (1) is not clear without further explanation and should be eliminated. It should be noted that the word "geologic" in this context is probably not correct. "Geographic" would be a more appropriate term.

While the statute requires that the proposed amendment be "in conformity with the policies of this Division," Section 13666.4 (a) (2) requires that the development "conforms with and is adequate to carry out" such policies. Again, the significance of the distinction is not readily apparent and we would like clarification.

The language in the second line of subparagraph (a) (3) is unclear. We suggest the language be modified to read "Reasonable alternatives have been examined with regard to feasibility and mitigation measures have been..."

While subparagraph (a) (4) refers to the definition of "public welfare" in the Coastal Act, an additional reference to the Coastal Zone Management Act would serve to further clarify what constitutes the "public welfare." We suggest the addition of a reference to the Federal Coastal Zone Management Act in subparagraph (a) (4).

If we may be of further assistance, please let me know.

Sincerely,

D. E. Cornett

LDR/1ja

cc: M. E. Buchanan
B. E. Lundvall
S. H. Moore, Jr.

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State of California, Edmund G. P[illegible]n Jr., Governor

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San Francisco, California 94105
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- 83 - OAL FILE

February 23, 1982

Allan Moore
Chevron Land & Production Division
2120 Diamond Blvd.
Concord, CA 94520

Subject: Copi s of Proposed Regulations
Consistency & LCP Override Procedures

Dear Mr. Moore:

Enclosed are copies of draft regulations and the statement of reasons. As I indicated on the phone, we previously sent copies to your San Francisco office and you may wish to discuss them with that branch. If you have questions, please call.

Very truly yours,

LINDA BREEDEN
Energy Counsel

Encl.

cc: Office of Administrative Law
Tony Perez
1414 "K" Street
Sacramento, CA 95814

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State of California, Edmund G. Brown Jr. Governor

California Coastal Commission
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San Francisco, California 94105
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84.

MAL MAd 1-08

March 1, 1982

Jim Doty
Bureau of Engineering
200 N. Spring St., Room 810
Los Angeles, CA 90012

Subject: Copies of Chapter 10 & 11 Regulations

Dear Mr. Doty:

Enclosed are copies of the requested regulations. If you have questions, please call.

Very truly yours,

Linda Breeden

LINDA BREEDEN
Energy Counsel

Encl.

cc: Tony Perez
Office of Administrative Law
1414 "K" Street, Suite 600
Sacramento, CA 95814

LB/do

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