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.

Staff Reports

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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 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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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

April 5, 1982

TO: COMMISSIONERS AND INTERESTED PERSONS

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. 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 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.

STAFF RECOMMENDATION

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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
RMF - 209

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))

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 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 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) 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*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 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 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 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 3033, 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.

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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.

MAL-MAJ-1-08

DEPARTMENT OF PUBLIC WORKS

BUREAU OF ENGINEERING
REPORT NO. 1, Section 3

May 14, 1982
CD No's 6, 11, 15

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CA Coastal Comm.
SCRC

ADOPTED BY THE BOARD OF PUBLIC WORKS OF THE CITY of Los Angeles, California

MAY 14 1982

B. J. Mc Kelvey

DEFINITION OF MAJOR PUBLIC WORKS PURSUANT TO THE ~~CALIFORNIA~~ COASTAL ACT OF 1976

RECOMMENDATIONS

That this report be forwarded to the City Council with the following recommendations:

1. That the City request the California Coastal Commission to amend its definition of "major public works" (Section 13012 of Title 14, Division 5.5 of the California Administrative Code) to eliminate reference to cost and to adopt other criteria defining projects of more than local concern in regard to the policies and provisions of the Coastal Act.

2. That the City Engineer be authorized to assist the Coastal Commission in developing appropriate criteria.

DISCUSSION

The California Coastal Act of 1976 regulates, with certain exceptions, all projects having a physical effect on the coastal zone or affecting land use. The highest degree of regulation is given to projects:

a. on tidelands, submerged lands or public trust lands; or

b. between the sea and the first public road paralleling the sea; or

c. within 100 feet of any wetland, estuary or stream; or

d. within 300 feet of the inland extent of any beach, the mean high tide line where there is no beach, or the top of the seaward face of any coastal bluff; or

e. constituting a major public works or major energy facility.

Currently, projects meeting these criteria must be approved by the Coastal Commission. Following certification by the Commission that local plans and codes have been adopted to implement the Coastal Act, jurisdiction over all projects, except category (a), will be returned to the City. However, the Commission will retain the prerogative to review these projects upon appeal by any "aggrieved person" or two Commissioners.

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The Coastal Commission has defined "major public works" as any public works project that costs more than $50,000 and is located in any of the areas listed above. Less than 10 percent of the public works in the City's current (1982-83 -- 1986-87) five-year capital improvement program will cost less than $50,000 to construct; 78% will cost more than $100,000. Therefore, the Bureau of Engineering views the Commission's definition as severely restrictive. However, since the regulation has applied only to small areas of special concern within the coastal zone, the Bureau has not actively objected heretofore.

At this writing, however, the Commission proposes to amend the definition of major public works to include any public works project costing more than $100,000, anywhere in the coastal zone. The resultant regulation could significantly impede the implementation of public works projects in Los Angeles.

While we do not oppose state review of public works projects of more than local significance, we do object to review of four out of every five projects based solely on cost. Cost is irrelevant to the legitimate concerns of the Coastal Commission since cost does not reflect a project's potential for significant environmental impact or conflict with Coastal Act policies. Consider for example the relative cost of closing a badly deteriorated public facility versus reconstructing the same facility. Clearly, closing a facility could cost much less than $100,000 but substantially conflict with the Coastal Act while reconstruction could cost much more than $100,000 but be de minimus with regard to the Coastal Act.

We recommend that the City request the California Coastal Commission to amend its definition of "major public works" (Section 13012 of the regulations of the Coastal Commission) to eliminate reference to cost and to adopt other criteria defining projects of more than local concern in regards to the policies and provisions of the Coastal Act. We further recommend that the City Engineer be authorized to assist the Coastal Commission in developing appropriate criteria.

BWR/JD:vg (BWR BDS RSH)
COORD.

cc: Calvin S. Hamilton, Director of City Planning
Attention: Peter Broy

Nancy Lucaster, South Coast District Director
California Coastal Commission
666 East Ocean Blvd., Suite 3107
Long Beach, Ca 90801-1450

Ken Spiker, Chief Legis. Analyst

Respectfully submitted,

PHIL KING
ACTING CITY ENGINEER

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OAL FILE

State of California, Edmund G. [illegible]vn Jr., *Governor*

MAL-MAL-1-08

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

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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State of California, Edmund G. [illegible]vn Jr., *Governor*

MAL-MAJ-1-08
California Coastal Commission
631 Howard Street, 4th floor
San Francisco, California 94105
(415) 543-8555

February 23, 1982

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

Subject: Copies 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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TED REDACTED REDACTED
REDACTED REDACTED

MAL-MAJ-1-08

Chevron U.S.A. Inc.
2120 Diamond Boulevard, Concord, California
Mail Address: P.O. Box 8000, Concord, CA 94524

Land Department
Western Region

REDACTED REDACTED
REDACTED REDACTED
REDACTED REDACTED

June 26, 1981

REDACTED REDACTED
REDACTED REDACTED

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

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

Dear Ms. Long:

Attached are comments of Chevron U.S.A. Inc. pursuant to your notice of review of Chapters 7, 8, 9 and 10. This will also confirm our telephone conversation of June 25, 1981, wherein you stated that no changes in the above referenced regulations have been proposed at this time, and that Chevron U.S.A. Inc. will be notified in the event of proposed changes to these regulations.

Very truly yours,

Allan C. Moore

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

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MAL-MAJ-1-08

CHAPTER 10

FEDERAL CONSISTENCY DETERMINATION

FOREWARD:

When a "person" (defined in Section 13660) proposes to undertake activities on any area leased under the Outer Continental Shelf Lands Act, he must submit to the Secretary of Interior (through the USGS Area Supervisor) a plan for such activities (the "OCS plan"). Section 307(c)(3)(13) of the Coastal Zone Management Act ("CZMA", 16 USC 1451, et seq.) provides that when any activity required to be described in detail in the OCS plan affects land or water uses in the coastal zone, the applicant must also submit to the USGS Area Supervisor and to the agency (California Coastal Commission) administering the state's approved coastal management program (the California Coastal Management Program, "CCMP") a certification that each such activity complies with and will be carried out in a manner consistent with the CCMP. Under the general federal consistency authority established at Section 307(c)(3)(A) of the CZMA, other OCS-related activities requiring federal permits or licenses must be consistent with the CCMP. A federal permit or license for the proposed activity may not be issued until the agency's executive director has concurred with the certification or the Secretary of Interior finds that the activity is consistent with the objectives of the CZMA or is otherwise in the interest of national security. Federal regulations governing consistency certification appear at 15 CFR 930, et seq. As authorized by Section 307(c)(3)(A) of the CZMA, Chapter 10 of the instant regulations establishes procedures applicable for that portion of the consistency certification process carried out by the State. Chapter 10 also incorporates and makes specific many of the relevant federal regulations in order to provide in a single document complete information about consistency procedures applicable to the State.

13660. Definitions. This section defines key terminology used in the regulations. It is proposed to add a definition of ~~"associated facilities" to clarify~~ "California to ~~scope of coverage of the consistency requirement~~.

13660.1. Preliminary Consultation. This section provides for a consultation between the executive director and the applicant prior to submission of an OCS plan including activities which will require a consistency certification.

This section establishes two mechanisms to enable an applicant to consider the requirements of the CCMP during the development of an OCS plan and OCS-related activities. (1) It informs the applicants that copies of the CCMP are available from the executive director upon request. (2) It provides for consultation between the applicant and the executive director prior to submittal of the plan.

The CCMP identifies certain activities which must be described in detail in the OCS plan and which affect land and water uses within the coastal zone and therefore require consistency certifications. The CCMP also identifies other OCS-related activities which are subject to the consistency certification process. Both categories of activities are listed in this regulation. It is proposed to revise the format and wording of the section to clarify that both categories are subject to the consistency requirement.

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It is proposed to add wording to clarify that the phrase "affect land and water uses" refers to uses within the coastal zone.

Add to the authorities cited: 15 CFR Section 930.75 (requiring an applicant to obtain the views and assistance of the State agency prior to submitting the OCS plan and requiring the State agency to make copies of the management program available for inspection).

Typo 13660.2. Submission of Consistency Certification. Subsection (a) of this section informs the applicant of the procedure to be followed in submitting the consistency certification to the executive director, i.e., that it is submitted along with the OCS plan to the USGS Area Supervisor who in turn submits it to the executive director. The section also provides that the same mechanism is to be used for submitting the environmental report to the state agency. It is proposed to revise the structure and format of this subsection to make it more easily understood.

Subsection (c) specifies the information which must be submitted in support of the certification, consistent with 15 CFR 930.77(b), to enable the state to evaluate consistency. This comprises: (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 and its associated facilities and its primary effects are consistent with the mandatory provisions of the CCMP. The regulation parenthetically gives examples of associated facilities' primary effects to enhance clarity.

In order to provide more specific direction for applicants, it is proposed that reference be made in this subsection to Chapter 3 of the Coastal Act, Division 20, PRC Sections 30000 et seq. as that element of the CCMP which contains the relevant program policies and mandatory provisions applicable to OCS activities.

It is also proposed that the word "mandatory" be deleted from the phrase "mandatory provisions of the CCMP," because it limits this standard in a manner inconsistent with the standard used in the corresponding federal regulation, "consistent with the provisions of the management program" (15 CFR 930.77(b)(3).

Subsection (d) informs the applicant of the availability of the Coastal Commission staff to assist in preparing the required supporting information.

Subsection (e) and (f) establish a mechanism, consistent with 15 CFR 930.77(d) to enable the executive director to request additional information needed for complete and proper review of the activities as well as confidential and proprietary information needed for a reasoned decision on the consistency of the activities. The sections set out procedures for the applicant to follow in responding to these requests and cite federal laws applicable to a request for such information (the Outer Continental Shelf Lands Act, as amended, and the Freedom of Information Act, and their implementing regulations). Subsection (e) informs the applicant that failure to comply with a proper request for information could result in an objection to the consistency "determination." It is proposed to include citations to the relevant portions of the two cited statutes.

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It is proposed that the term "consistency determination" as used in Subsection (e) be changed to "consistency certification," which is the correct terminology for the subject process.

It is proposed to add to the authorities cited the relevant sections from 15 CFR 930, et seq., which have been noted herein, to provide additional guidance to applicants.

13660.4. Staff Summary and Hearing Notice. Pursuant to the requirement of Section 307(c)(3)(A) of the CZMA, subsection (a) of this section establishes procedures for public notice of consistency certifications on OCS activities through preparation and wide dissemination of a staff summary of the applicants' findings and assessments. Section 307(c)(3)(A) of the CZMA also authorizes establishment of procedures for public hearings in connection with OCS consistency certifications. It is proposed to add to this section the requirement that the staff also prepare a recommendation based on all material submitted by the applicant and any interested party, that the Commission concur or disagree with the consistency certfification. This was seemingly an inadvertant omission in the current regulations, for reference is made in other sections to the Staff Recommendation. Staff preparation of such a recommendation is the current practice.

It is proposed to delete from this section reference to the regional commissions, which expire on June 30, 1981.

Subsection 307(c)(3)(A) of the CZMA authorizes the state to establish procedures for public hearings in connection with OCS consistency certifications. Consistent with 15 CFR 930.78, Subsection (b) sets out the procedures for determining the date of the hearing and providing notice of the hearing to the public and interested agencies and persons.

It is proposed that the "consistency determination" whereever used in this section be changed to "consistency certification," which is the correct terminology for the subject process.

It is proposed to rewrite the section to eliminate some repetitiveness and improve clarity.

It is proposed to add to the authorities cited for this section the relevant sections from the CZMA and the federal regulations, which have been noted herein, to provide additional guidance to applicants.

13660.5 Content of Summary. This section, by stating the required content of the summary, informs the public of the kinds of information to expect in the summary.

It is proposed that the word "mandatory" be deleted from the phrase "mandatory provisions of the COMP," for the reasons stated above in relation to Section 13660.2. It is also proposed that the term "consistency determination" be changed to "consistency certification," which is the correct terminology for the subject process.

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13669.6. Conduct of Hearings on Staff Recommendations on Consistency Determinations.

Subsection 307(c)(3)(A) of the CZMA authorizes the state to establish procedures for public hearings in connection with OCS consistency certification. This section establishes certain such procedures and states the consistency hearings shall be conducted substantially in accordance with the procedures for permit hearings set forth elsewhere in the regulations (citations provided).

It is proposed that the term "consistency determination" be changed whereever it is used in this section to "consistency certification," which is the correct terminology for the subject process.

It is proposed to add to the authorities cited subsection 307(c)(3)(A) of the CZMA, which provides authority for this section.

13660.7 Regional Commission Role. It is proposed to repeal this section because the regional commissions expire on June 30, 1981.

13660.8. Final Commission Decision. This section makes applicable specifically to the Commission federal rules governing the process of concurring or objecting to a consistency certification, as set forth at 15 CFR 930.79 and 15 CFR 930.64(b) and (c).

It is proposed that the term "consistency determination" be changed whereever it is used in this section to "consistency certification," which is the correct terminology for the subject process.

It is proposed to add to the authorities cited Section 307(c)(3)(A), of the CZMA and the two cited sections of the federal regulations, all dealing with the state agency's concurrence of objection to a consistency certification.

13660.9. Appeals Procedure. Appeal to the Secretary of Commerce from the Commission's objection to a consistency determination is governed by procedures set forth at 15 CFR 930.120 – 134. The instant section sets forth the obligation in the event of an appeal of the applicant to provide the Executive Director with a copy of the notice of appeal and supporting documents and the right of the Executive Director to provide the Secretary with comments.

It is suggested that this section be amended to inform the applicant that a notice of appeal must be filed within 30 days from receipt of the Commission's objection and to include citations to the above-noted federal procedures governing appeal to the Secretary.

13660.10. Required Amendments. This section makes applicable to the Commission federal rules (15 CFR 930.83 - 84) governing submittal of an OCS Plan which has been amended as a result of the Commission's objection to a consistency certification. Such submittals are processed as if the amendment were a new plan, except that the Commission must make its decision within three months of receipt. The federal rules apply the shortened decision time also for review of new OCS plans resulting from a

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Commission's objection. The instant regulation should be amended to apply the three-month review period also to such new plans.

It is proposed to add to the authorities cited citations to the relevant federal regulations, as noted above, to provide additional guidance to applicants.

13660.11. Multiple Permit Review. This section seeks to implement the objective of reviewing all related activities requiring a federal permit or license in a single review procedure. Revisions proposed to Section 13660.1 to clarify procedures applicable for different categories of related activities are expected to enhance the clarity and utility of this section.

In an increasing number of cases, major energy projects are being undertaken in a manner in which separate corporate entities are soley responsible for separate segments (e.g., platform, pipe, on-shore facilities, etc.). A single review of all phases of such projects would be more efficient and effective for all concerned. Therefore, it is proposed to amend this section to provide that an applicant for consistency review of an OCS activity is encouraged to join in its consistency certification other present or future applicants for consistency review for activities directly related to the subject OCS activity.

It is proposed to add to the authorities cited 15 CFR 930.82, relating to multiple permit review, to provide additional guidance to applicants.

It is proposed that the term "consistency determination" be changed to "consistency certification," which is the correct terminology for the subject process.

13660.12. Associated Coastal Development Permits. This section establishes a mechanism whereby review of associated facilities, which would otherwise be subject to the coastal development permit process at the local level, in appropriate circumstances can be reviewed instead by the Commission as part of the consistency review process.

13660.13. Monitoring of Federal Permits. This section establishes a mechanism to enable the Executive Director to monitor OCS-related activities.

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State of California, Edmund G. Bro Jr., Governor
MAL-MAJ-1-08
California Coastal Commission
631 Howard Street, 4th floor
San Francisco, California 94105
(415) 543-8555

Breeden

July 19, 1982

Gene Livingston, Executive Director
Office of Administrative Law
1414 K Street, Suite 600
Sacramento, CA 95814

Subject: Coastal Commission Regulations Implementing the federal Coastal Zone Management Act; Chapter 10, Title 14, California Administrative Code

Dear Gene:

I am writing to you to emphasize the importance of the so-called "consistency" and "LCP override" regulations to California's Federal Coastal Management Program. These regulations were submitted to your office for review on May 25th.

The Governor's office and the Commission are currently in litigation over several aspects of the "consistency" issue with the Department of the Interior. The first consistency case, Lease Sale 53, is before the Federal Court of Appeals. Other cases, involving southern California lease areas, are pending in Federal District Court. I myself have testified before numerous congressional committees over the need for federal consistency regulations. I have always been able to point with pride to the Commission's own state regulations and the Commission's documented record of expeditious handling of federal applications. However, I am concerned about any action or non-action of your agency which could affect this record. My staff has advised me that your office may take up to 6 months to review the regulations. I am concerned that a delay could be interpreted in such a way as to jeopardize the state's fine record on consistency.

I urge you to take steps to expedite review, particularly in view of the fact that, with only one minor exception, the Commission has responded with modifications to all public comments.

Sincerely,

MICHAEL L. FISCHER
Executive Director

cc: Deni Greene
OPR

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State of California, Edmund G. Brown Jr., *Governor*

MAL-MAJ-1-08

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

May 26, 1982

Jim Doty
Bureau of Engineering
200 N. Spring Street, Rm 810
Los Angeles, CA 90012

Subject: Coastal Commission Regulations Defining Public Works Facilities

Dear Mr. Doty:

I just received a copy of a May 14th staff report which your office presented to the Board of Public Works on the above-mentioned subject. As I mentioned to you in February, the Commission first considered this regulation in a public hearing in March. Written comments were timely up to April 10, 1982. The Commission held the record open an extra month to May 6, 1982, because it received some late comments. However, the Commission adopted the final regulations on May 6, 1982, prior to receipt of your May 14, 1982 communication. Thus the final regulations have been adopted and your recent communication is no longer timely and cannot be considered by the Commission.

Thank you for your interest in the matter. I have included your name on our permanent mailing list should the regulations be amended some time in the future.

Very truly yours,

Linda Breeden

LINDA BREEDEN
Energy Counsel

LB/jde

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CCEEB

Chapter 10

It is impossible to comment on specific proposed revisions to Chapter 10, as they were not provided in the staff report. Therefore these comments will also be general. Opportunity for fuller review of proposed regulatory changes would have been afforded by the provision of specific proposals. CCEEB requests the opportunity to comment on any specific proposals that may be forthcoming in the future.

Chapter 10 should be modified to ensure a minimization of duplication and redundency with other agencies and to circumscribe the discretion of the coastal commission relative to federal consistency determinations. Clarification of the commission's role in implementing the federal coastal zone management act would improve communications between the agency and applicants, many of whom are concerned about a possible overreaching of the state's authority. Such communication is one of the fundamental functions of regulations.

Unlike Chapters 1 through 9, which carry out the specifically enumerated purposes of the Coastal Act, Chapter 10 is written to carry out the very general statements of two federal acts (Outer Continental Shelf Lands Act and the Coastal Zone Management Act) and the procedural directions provided by federal regulation. Pursuant to those federal regulations, Chapter 10 contains nearly exclusively procedural information. The practices

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of the Commission relative to federal consistency applications, as contrasted with its procedures, have developed through history and precedent, not pursuant to statutory direction.

In its proposed modification of the state Administrative Code, Section 13660, Commission staff refers to the need to add a "definition of 'associated facilities' to clarify to (sic) scope and coverage of the consistency requirement". CCEEB agrees that the scope of commission activities in OCS consistency determinations needs to be clarified. Further CCEEB recommends that the scope of commission activities reflect the purposes of the federal statutes and federal regulations. Specifically, we caution the commission that the state regulations should reflect the federal intent for the state agency to operate primarily in a secondary capacity vis a vis the federal permitting agencies. Our sense from the staff report on Chapter 10 is that commission clarification of "scope and coverage" of consistency requirements may run in the opposite direction, giving the commission wider scope and greater coverage. This would be contrary to the intent of authorizing legislation.

The Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. Section 1331 et seq.) authorizes the leasing of federal lands for the purpose of development of oil and gas resources. Section 101 of that Act declares

> (7) The Outer Continental Shelf Lands Act contains significant quantities of oil and natural gas

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and is a vital national resource reserve which must be carefully managed to reflect fair value to preserve and maintain competition and reflect the public interest.

(13) Because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment including fish and shellfish growth and recovery, and recreation activity, the federal government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation.

The OCS Lands Act references the Coastal Zone Management Act, (CZMA) which provides general direction for the management and planning of such resource development. 1980 Amendments provide policy direction for OCS development as follows:

Sec. 303. The Congress finds and declares that it is the national policy --

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, which programs should at least provide for --

(C) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy . . .

(D) the coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources. (16 USC 1451)

Federal statutes clearly authorize the expediting of gas and oil development on the OCS consistent with other values.

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Federal consistency regulations adopted pursuant to the CZMA state:

> "Sec. 930.1. The objectives of these regulations are. . . (c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the Federal consistency provisions of the Act are satisfied:"

Senator Jerry Smith, author of SB 1277 clarified the intent of the coastal act relative to federal and other agencies in a letter printed in the California Senate Journal August 31, 1976.

> "The coastal commission has no direct permit or planning controls pursuant to SB 1277, over any area or the activities of any other public agency outside the coastal zone (i.e. the commission may only deal with those activities occuring within the coastal zone.). . . the only charge to such agencies is (See Section 30200) that where their activities outside the coastal zone could have a direct impact on resources within the coastal zone, they must consider the effect of such activities relative to the policies of this bill. This provision can be fully met if such effects are considered by way of the environmental impact review process. No additional requirements are required or intended by this section." (emphasis Senator Smith)

The various references cited argue for the circumscription of the commission's role in OCS consistency activities, a limitation not presently provided in the regulations. Any increase in complexity of review standards proposed by the commission would conflict with the intent of these authorities.

Again, CCEEB wishes to comment on any specific regulatory changes propsed by staff.

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EXXON COMPANY, U.S.A.
1800 AVENUE OF THE STARS • LOS ANGELES, CALIFORNIA • (213) 552-5776

PRODUCTION DEPARTMENT
WESTERN DIVISION

DONALD E. CORNETT
ENVIRONMENTAL CONSERVATION MANAGER

RECEIVED
JUN 24 1981
CALIFORNIA
COASTAL COMMISSION

June 19, 1981

Re: California Coastal Commission
Review of California Administrative
Code, Title 14, Division 5.5,
Chapters 7, 8, 9 and 10

California Coastal Commission
631 Howard Street
San Francisco, California 94105

Attention: Cynthia K. Long, Legal Counsel

Gentlemen:

Exxon Company, U.S.A. welcomes the opportunity to provide comments to the California Coastal Commission on its regulations in California Administrative Code, Title 14, Division 5.5, Chapters 7, 8, 9 and 10 regarding coastal development permits issued by local governments and other public agencies, port implementation plans, review of certain sewage treatment works and procedures for review of federal consistency certifications. Review of these regulations is being conducted pursuant to Government Code Section 11349.7 with the objective of reducing the number of administrative regulations by removing any unnecessary or unauthorized regulations and improving the overall quality of those regulations retained.

The following comments address particular provisions contained in Chapter 10 concerning Commission review of federal consistency certifications respecting exploration and development and production plans for the Outer Continental Shelf (OCS) submitted to the United States Geological Survey (USGS). As a general matter, Exxon is fully supportive of the Commission's effort to reference pertinent provisions of the federal Coastal Zone Management Act (CZMA) of 1972, as amended, 16 U.S.C. § 1451 et seq., and the implementing regulations adopted by the National Oceanic and Atmospheric Administration (NOAA) of the U. S. Department of Commerce, 15 C.F.R. Part 930. In addition to providing additional guidance to applicants, inclusion of these citations is

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consonant with the "authority" and "consistency" standards set forth in Section 11349.1 of the Government Code.

Chapter 10, Section 13660 contains definitions applicable to the remainder of that chapter. The staff issue paper proposes the adoption of a definition of "associated facilities" to clarify the scope of the consistency certification. As has been done elsewhere in these regulations, the Commission should rely upon the NOAA consistency regulations for guidance and utilize the definition of the term "associated facilities" contained at 15 C.F.R. Section 930.21 as the basis for the definition adopted by the Commission.

Chapter 10, Section 13660.1 provides that, prior to submission of an OCS plan to the USGS, the applicant "shall consult with" the Executive Director of the Commission. With respect to an exploration plan, this consultation is to occur at least 10 days prior to such submission and in the case of a development and production plan, such consultation is to occur at least 30 days prior to submission. This provision should be revised to encourage early contact and consultation rather than making this a mandatory requirement.

Subsection (a) should be revised to provide that preliminary consultation is encouraged and should occur as early in the planning stages as possible, consistent with the purpose of such consultation, and that the Executive Director will be available for preliminary consultation at such time as the applicant is in a position to review its proposed activities and obtain the views and assistance of the Commission regarding means for ensuring consistency with the California Coastal Management Plan. Additionally, subsection (a) should provide that only activities which affect land and water uses in the coastal zone of California are subject to consistency certification and the preliminary consultation process.

The staff issue paper indicates that the authority for the preliminary consultation provision is 15 C.F.R. Section 930.75 which requires that an applicant obtain the views and assistance of the State agency prior to submitting an OCS plan. Section 930.75(a) in fact provides that any person intending to submit an OCS plan "should obtain" the views and assistance of the State agency. To require that such consultation occur within certain time limitations prior to

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submission of an OCS plan goes beyond this federal directive, could result in unnecessary delay and is in excess of Commission authority. Accordingly, Section 13660.1 should be revised to reflect the desirability of such advance contact and to provide that such consultation should occur at an early date.

Chapter 10, Section 13660.3 details the information which an applicant is to submit in support of a consistency certification. Subsection (e) permits the Executive Director to request additional data and information from the applicant, if necessary for a complete and proper review; subsection (f) contains additional provisions applicable when such a request concerns confidential and proprietary information which has been deleted from the OCS plan provided the Commission. The additional data and information requirements contained in Section 13660.3(e) and (f) should be revised so as to be consistent with pertinent federal regulations.

The consistency regulations adopted by NOAA pursuant to the CZMA require that State agencies rely upon information received pursuant to the Department of Interior's operating regulations governing exploration, development and production operations on the OCS (30 C.F.R. § 250.34) and the OCS information program (30 C.F.R. Part 252) to determine the consistency of proposed Federal license and permit activities described in detail in an OCS plan. 30 C.F.R. Section 930.77(a). This restriction should be included in subsection (e) of Section 13660.3.

Subsection (f), by referencing the procedures specified in subsection (e), would appear to require that the applicant furnish confidential and proprietary information to the Executive Director when so requested. It is the USGS, however, which bears this responsibility. Pursuant to the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. §§ 1331-1356, the Department of the Interior (DOI) is under an obligation to assure that the confidentiality of privileged or proprietary information is maintained. The OCS information program regulations adopted by the USGS pursuant to the OCSLA designate the Director of the USGS as the person who determines what confidential and proprietary information may be given to the State. 30 C.F.R. Section 252.7. A recommendation that State coastal zone management agency officials be accorded special access to proprietary and

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confidential information deleted from OCS plans was considered and rejected by the USGS in adopting that provision. 44 Fed. Reg. 46407 (August 7, 1979).

If any confidential and proprietary information is deemed essential by the Executive Director, the procedures established by the OCS information program regulations should be followed and the USGS should administer all requests for such information. Subsection (f) of Section 13660.3, therefore, should be deleted.

Chapter 10, Section 13660.11 addresses Commission review of consistency certifications for OCS-related activities which require a federal license or permit but which are not required to be described in detail in an OCS plan. For the reasons discussed in our comment on Section 13660.1, subsection (c)(1) should be revised to indicate that the applicant "should" consult with the Executive Director prior to submission of the federal permit application.

Chapter 10, Section 13660.12 establishes a means whereby the Executive Director, by recommending direct consideration by the Coastal Commission of an application for a coastal development permit for a facility associated with an OCS plan, can achieve consolidated review of the permit application with the applicant's consistency certification. Section 13660.12 currently provides that such action may be taken pursuant to Public Resources Code Section 30333.5. The scope of Section 30333.5 is limited to situations where the Commission removes such a permit application from action by a regional commission. In light of the statutory termination of the regional commissions on June 30, 1981 and, in as much as the staff issue paper indicates that Section 13660.12 allows Commission review in instances where the permit review process would otherwise occur at the local level, the final sentence of Section 13660.12 should be deleted and the Commission should indicate the authority and circumstances under which direct Commission review of applications for coastal development permits is permissible.

Chapter 10, Section 13660.13 provides that copies of specified license and permit applications for activities described in detail in an OCS plan and OCS-related activities which have received Commission consistency certification concurrence are to be sent by the applicant to the Executive Director to allow the Commission to monitor the activities. This

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provision would appear to be based upon language contained in Section 930.80(b) of the NOAA consistency regulations. The purpose of this requirement is to allow the Commission to ensure that all such applications are filed and acted upon in a manner consistent with the Commission's concurrence. Distinct provisions of the NOAA regulations address the matter of cooperative monitoring of permitted activities to make certain that such activities continue to conform to Federal and State requirements. 15 C.F.R. Section 930.86. Section 13660.13, therefore, should be revised to clarify that receiving copies of applications when filed will allow the Commission to monitor activity relating to the permit applications, not the actual conduct of the specific permitted activity.

D.E. Cornett

CSL/DEC:ec

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CAL-4 (Interim)

MAL-MAJ-1-08

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS WITH THE OFFICE OF ADMINISTRATIVE LAW AND WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11343.1)

DO NOT WRITE IN THIS SPACE

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

California Coastal Commission
(Agency)

(Billing Code)

Date of adoption, amendment, or repeal:

MAY 7, 1982

By:

ROY GORMAN, CHIEF COUNSEL
(Title)

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14 of the California Administrative Code.

Division, Part, Chapter, etc., affected by this order: DIVISION 5.5, CHAPTER 1, CHAPTER 10.

TYPE OF ORDER (Check as applicable)

- ☐ Emergency (Attach Finding of Emergency)
- ☐ Certificate of Compliance
- ☐ Certificate of Non-Compliance
- ☒ Regular
- ☐ Procedural and Organizational

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ One Certified Copy With Original Signature and Six Copies of Order or Certificate of Compliance Attached
- ☒ Regulation Summary (Form 690) Attached (1 copy)
- ☒ Publication Date (in Notice Register) of Notice for Attached Order or Certificate of Compliance is 2/17/82
- ☒ Authority and Reference Citation Placed Beneath Each Section in Attached Order
- ☒ Cost Statement Attached (Refer to SAM Section 6050)

Effective Date:

- ☒ On _____ as Specified by Statute ____ _____, or
- ☐ On _____, if Later Than 30 Days After Filing With the Secretary of State (Emergency regulations will be effective upon filing with the Secretary of State; all other regulations will be effective 30 days after filing with the Secretary of State.)
- ☒ Rule-Making File

BUILDING STANDARDS (Check one)

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.
- ☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The attached copy contains Building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)

The attached Conflict of Interest Regulations contain the FPPC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
- ☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all board or commission members present at the regulation adoption proceeding.

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STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
OAL 10 (Rev 9 80)

Appendix 2

FACE SHEET
FOR FILING STATEMENT OF REVIEW COMPLETION WITH THE OFFICE OF ADMINISTRATIVE LAW

DO NOT WRITE IN THIS SPACE	Copy below is hereby certified to be a true and correct statement by: Coastal Commission (Agency) (Billing Code) By: Roy Gorman Chief Counsel (Title)	DO NOT WRITE IN THIS SPACE

CONTACT PERSON	TELEPHONE NUMBER
Linda Breeden, Energy Counsel	(415) 543-8555

Review of rules and regulations contained in Title(s) 14 Chapter(s) 10
Division(s) 5.5, Article(s) See Below, or Section(s) _____ of the California Administrative Code was completed on May 6, 1982.
(Date)

Pursuant to Government Code § 11346 Notice of Proposed Regulatory Action must be submitted to OAL for any regulations adopted, amended or repealed resulting from the review (see procedures outlined in OAL letter of July 25, 1980).

I. Cite all regulations to be repealed.

II. Cite all regulations to be amended.

13012, 13660, 13660.1 - 13660.9, 13660.11, 13660.12

Cite all new regulations:

13666, 13666.1 - 13666.4

III. Cite all regulations retained. Attach a Statement of Findings summarizing why the regulations are retained. Provide reasons and related information for retaining. State reasons for rejecting public comments recommending repeal of regulations. Provide specific references where none now exist.

13660.10, 13660.13

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STATE OF CALIFORNIA

REGULATION SUMMARY

STD. 400 (NEW 2-77)

(1) TITLE	(2) NAME OF AGENCY
14	CALIFORNIA COASTAL COMMISSION

(3) CALIFORNIA ADMINISTRATIVE CODE SECTIONS AFFECTED BY THE ATTACHED ORDER

13012, 13660 - 13660.13, 13666 - 13666.14

(4) RE: *(Action Taken: Amendment, Adoption, Repeal, Cert. of Compliance)*

(5) INFORMATIVE SUMMARY OF REGULATION'S CONTENT

OAH USE ONLY

(6) AUTHORITY *(Statute(s)* authorizing regulation changes)*

SEE NOTE AFTER EACH SECTION

(7) REFERENCE *(Statute(s)* being implemented, interpreted or made specific)*

Sections 3008, 30601, and 30515, Public Resources Code, 16 USC 1451 et seq.

(8) FOR FURTHER INFORMATION *(Name and telephone number of agency contact)*

LINDA BREEDEN, ENERGY COUNSEL, (415) 543-8555

* *Also include Chaptered Bill number (e.g., SB 42 (Chap. 1139, 1976 Stats.), Court decision (e.g., Mayer v. Calif. Optometric Association), or commonly used identifying terms (e.g., P.L. 94-566; Right to Die Law).*

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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)

LEGISLATIVE INTENT SERVICE (800) 666-1917

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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~~

LEGISLATIVE INTENT SERVICE (800) 666-1917

~~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 136 0-13660.13 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

LEGISLATIVE INTENT SERVICE (800) 666-1917

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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

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) un nticipated 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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

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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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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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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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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

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.

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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

(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.

(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 their~~*applicable implementing federal regulations. The procedures specified in §13660.3(e)

LEGISLATIVE INTENT SERVICE (800) 666-1917

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 o 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 e public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certification findings. The state and regional agencies responsible for

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