

**CALIFORNIA COASTAL COMMISSION**

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# F14

**MEMORANDUM**

December 3, 2014

TO: California Coastal Commissioners

FROM: Hope Schmeltzer, Chief Counsel  
Christopher Pederson, Deputy Chief Counsel

RE: **Petition for Repeal of After-the-Fact Permit Fee Regulation**  
(for the Commission Meeting of **December 12, 2014**)

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**EXECUTIVE SUMMARY:**

On November 6, 2014, the Commission received the Beach and Bluff Conservancy's Petition for Repeal of After-the Fact Permit Regulation (Petition). (Exhibit 1.) The Petition requests the Commission to repeal section 13055(d) of the Commission's regulations. (*See* Exhibit 2.) Section 13055(d) provides that the filing fee for coastal development permit (CDP) applications to authorize "after-the-fact" (ATF) development is five times the otherwise applicable fee. The Executive Director may reduce that amount if either staff can process the application without significant additional review time or if the current owner did not undertake the development. The Executive Director may not reduce the fee to less than twice the normal fee. If an application seeks approval for both ATF development and development that has not yet commenced, the multiplier applies only to the ATF development.

The Petition alleges that the Commission lacks authority to apply the multiplier to ATF development because it exceeds the cost of processing ATF applications and because the multiplier constitutes an unlawful penalty.

Commission staff recommends that the Commission deny the Petition.

**RECOMMENDED MOTION:**

I move that the Commission grant the Petition for Repeal of After-the-Fact Permit Regulation and recommend a **NO** vote pursuant to the staff recommendation.

Failure of this motion will result in denial of the Petition for the reasons provided in this staff report.

**BACKGROUND:**

The Coastal Act authorizes the Commission to “require a reasonable filing fee and the reimbursement of expenses” for coastal development permit applications. (Pub. Resources Code, § 30620, subd. (c).) Prior to 2008, the Coastal Act required that all filing fees paid to the Commission be transferred to the State Coastal Conservancy and restricted to paying for the development, maintenance, and operation of public access facilities. During the mid-2000s, the Legislature and Governor’s Office considered various proposals to increase and redirect the Commission’s filing fees. (Staff Report, Public Hearing on Proposed Revisions to [Filing Fee Regulations], pp. 4-5 (Exhibit 3).) In response, the Commission adopted significant revisions to its filing fee regulations in February 2008. The last time the Commission had raised the fees was in 1991.

Also in 2008, the Legislature amended the Coastal Act to provide that filing fees be deposited in the newly established Coastal Act Services Fund. (Pub. Resources Code, § 30620, subd. (c)(2).) The intent was to reduce the amount of general fund revenues appropriated to the Commission and replace it with money paid to the Commission as filing fees. Most of the revenue from filing fees is now expended to enforce and implement the Coastal Act. (Pub. Resources Code, § 30620.1, subd. (a).) The legislation, however, also maintained funding for public access facilities by requiring that \$500,000, adjusted for inflation, be transferred each year to the Coastal Conservancy for that purpose. (Pub. Resources Code, § 30620.1, subd. (b).)

On February 8, 2008, by a unanimous vote, the Commission amended its regulations regarding filing fees after four public hearings and several opportunities to submit written comments. In determining the regulations should be adopted, the Commission surveyed the application fees that local governments charge and provided an extensive explanation for how the Commission decided upon the revised fees. (Staff Report, Public Hearing on Proposed Revisions to [Filing Fee Regulations], pp. 10-14 (Exhibit 3).) The Office of Administrative Law approved the amended regulations in March 2008. No lawsuit has been filed challenging either the Commission’s adoption of the regulations or how the Commission has subsequently implemented them.

The California Administrative Procedures Act allows any person to file a petition requesting the Commission to adopt, amend, or repeal a regulation. (Gov. Code, § 11340.6.) The Commission must within 30 days of receipt of the petition either deny it on the merits or schedule a public hearing. (Gov. Code, § 11340.7, subd. (a).)

The Commission received the Petition on November 6, 2014. Under the Bagley-Keene Open Meeting Act, items on a state agency's agenda must be publicly noticed 10 days prior to a state agency's public meeting. (Gov. Code, § 11125, subd. (b).) Because November 6 was less than 10 days prior to the Commission's meeting on November 12-14, 2014, the earliest meeting at which the Commission could act on the Petition is its December 2014 meeting. The notice for the hearing on the Petition was posted on the Commission's online agenda for the December meeting on November 26, 2014.

The Commission may take any action it determines is warranted by the Petition. (Gov. Code, § 11340.7, subd. (b).) If the Commission decides to change its regulations in response to the Petition, it must follow the normal notice and comment procedures that apply to agency actions to adopt, amend, or repeal regulations. (Gov. Code, § 11340.7, subd. (a).)

### **ANALYSIS:**

The Beach and Bluff Conservancy argues that the multiplier for ATF development is unlawful because it exceeds the cost of processing applications for ATF development and because it constitutes an unauthorized penalty for Coastal Act violations. Neither contention has merit.

The Revised Statement of Reasons for the filing fee regulations (pg. 14 (Exhibit 5).) provided the following explanation for the ATF multiplier:

ATF permits enable the Commission to authorize development that has been completed without a permit, when that development can be found to be consistent with the Coastal Act. The proposed fee for ATF permits is five times the normal fee. Local governments in the Coastal Zone charge from 2 to 9 times the regular filing fee for ATF permit authorization. This is because ATF permits require more review than normal permits. Often, more site visits than usual are required to analyze the site as it would have been before the unpermitted development occurred. It is far more difficult to assess environmental impacts and to devise conditions for mitigating environmental impacts after development has occurred. To ensure that the few ATF permits that do not require substantial staff time are not overcharged, the proposed regulations allow the executive director to reduce the ATF filing fee when appropriate. However, the fee would never be allowed to be less than two times the regular filing fee.

The proposed regulations also clarify that the ATF fee is only charged for the portion of the application which has been developed without a permit. This is important because applicants often request ATF approval of development at the same time that they apply for a larger development. For example, an already completed well might be applied for at the same time that an applicant applies for a permit to build a house. In this circumstance, the proposed regulations would require ATF fees only for the portion of the project that was carried out without a permit.

This explanation still holds true today. ATF applications require Commission analysts to undertake the often difficult task of determining site conditions prior to the unpermitted development. They also generally involve additional legal review and coordination with enforcement staff and can require assistance from the Commission's Mapping Unit and other technical services.

The Beach and Bluff Conservancy's argument appears to assume that no applicant can be required to pay a fee that is greater than the actual costs associated with processing that applicant's application. That is incorrect. So long as application fees do not generate more revenue than it costs the agency to carry out the regulatory program for which the fees are assessed, the uniform filing fees need not be exactly tied to the costs of each individual application. *California Assn. of Professional Scientists v. California Dept. of Fish and Game* (2000) 79 Cal.App.4<sup>th</sup> 935, 944.

Here, the Commission's filing fees cover only a portion of the cost of the Commission's regulatory program. In 2008, the Commission projected that the increased filing fees would generate only 20% to 36% of the Commission's annual costs. (Revisions to the Statement of Reasons, pp. 2-3 (Exhibit 5).) Moreover, where imposition of the full five times multiplier would result in fees that are disproportionate to the increased work and expenses associated with a particular ATF application, staff may reduce the application fee to as low as twice the non-ATF. If an applicant disagrees with staff's determination regarding an ATF filing fee, the applicant may take that dispute to the Commission itself. (Cal. Code Regs., tit. 14, § 13056, subd. (d).) The Commission's filing fees are in line with fees that local governments in California charge for land development permits. (*See* Staff Report, Public Hearing on Proposed Revisions to [Filing Fee Regulations], pp. 10-14 (Exhibit 3).)

Because the ATF filing fee is an appropriate and proportionate fee in the context of the Commission's overall schedule of filing fees, the Beach and Bluff Conservancy's argument that the ATF filing fee is a penalty is also without merit. (*See* Final Statement of Reasons for Amendments to the California Coastal Commission's Filing Fee Regulations, pp. 14-15 (Exhibit 4).)

Commission staff therefore recommends that the Commission deny the Petition.

### **Exhibits**

1. Beach and Bluff Conservancy, Petition for Repeal of After-the Fact Permit Regulation
2. Text of Cal. Code Regs., tit. 14, § 13055
3. Excerpts of Staff Report for Public Hearing on Proposed Revisions to Sections 13055, 13169, 13255 and 13576 Title 14, California Code of Regulations Regarding Filing Fees (Sept. 27, 2007)
4. Excerpts of Final Statement of Reasons for Amendments to the California Coastal Commission's Filing Fee Regulations (Nov. 30, 2007)
5. Excerpts of Revisions to the Statement of Reasons for Proposed Amendments of the California Coastal Commission's Filing Fee Regulations (Jan. 23, 2008)

BEFORE THE CALIFORNIA COASTAL COMMISSION

In re Petition to California Coastal Commission  
for Repeal of After-the-Fact Permit Fee Regulation

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**PETITION TO THE CALIFORNIA  
COASTAL COMMISSION FOR REPEAL OF  
AFTER-THE-FACT PERMIT FEE REGULATION**

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
INTEREST OF PETITIONERS .....	1
BACKGROUND .....	2
ARGUMENT .....	3
THE AFTER-THE-FACT PERMIT FEE REGULATION SHOULD BE REPEALED BECAUSE THE COASTAL ACT DOES NOT AUTHORIZE IT .....	3
I. THE ADMINISTRATIVE PROCEDURE ACT PROHIBITS ULTRA VIRES REGULATIONS .....	3
II. PROCESSING AFTER-THE-FACT PERMITS DOES NOT REQUIRE TWO TO FIVE TIMES THE EFFORT FOR COMPARABLE BEFORE-THE-FACT PERMITS .....	4
III. THE COMMISSION’S POWER TO PENALIZE PROPERTY OWNERS DOES NOT EXTEND TO PERMITTING FEES .....	7
CONCLUSION .....	9
CERTIFICATION .....	11

## TABLE OF AUTHORITIES

	Page
<b>Cases</b>	
<i>Am. Fed'n of Labor v. Unemployment Ins. Appeals Bd.</i> , 13 Cal. 4th 1017 (1996) .....	9
<i>Bearden v. U.S. Borax, Inc.</i> , 138 Cal. App. 4th 429 (2006) .....	3-4
<i>California Beer &amp; Wine Wholesalers Ass'n v. Dep't of Alcoholic Beverage Control</i> , 201 Cal. App. 3d 100 (1988) .....	4
<i>Dyna-Med, Inc. v. Fair Employment &amp; Housing Comm'n</i> , 43 Cal. 3d 1379 (1987) .....	8-9
<i>Henderson v. Mann Theatres Corp.</i> , 65 Cal. App. 3d 397 (1976) .....	9
<i>LT-WR, L.L.C. v. Cal. Coastal Comm'n</i> , 152 Cal. App. 4th 770 (2007) .....	6
<i>Pulaski v. California Occupational Safety &amp; Health Standards Bd.</i> , 75 Cal. App. 4th 1315 (1999) .....	4
<i>San Diego Gas &amp; Elec. Co. v. San Diego Cnty. Air Pollution Control Dist.</i> , 203 Cal. App. 3d 1132 (1988) .....	4
<i>Terhune v. Superior Court</i> , 65 Cal. App. 4th 864 (1998) .....	4
<i>Transworld Sys., Inc. v. Cnty. of Sonoma</i> , 78 Cal. App. 4th 713 (2000) .....	4
<b>Statutes</b>	
Gov't Code § 11340.6 .....	1, 10
§ 11340.7 .....	4, 10
§ 11342.1 .....	3, 9

	<b>Page</b>
§ 11342.2 .....	3, 9
Pub. Res. Code § 30620(c)(1) .....	4, 7-8
§ 30820 .....	8-9
§ 30821 .....	8, 10
§ 30821(a) .....	8
§ 30821(c) .....	8
§ 30821(h) .....	8

**Regulations**

Cal. Code Regs. tit. 14 § 13055(d) (2014) .....	1, 9
§ 13055(d) (1992) .....	2, 5
§ 13055(d)(2) (2014) .....	2, 7

**Miscellaneous**

---

Appeal Staff Report for A-2-SMC-11-041 & A-2-SMC-11-040 (Hodge, San Mateo Co.) (Dec. 2013) .....	6
Revisions to the Statement of Reasons for Proposed Amendments of the California Coastal Commission's Filing Fee Regulations (2008) .....	5
Staff Report for 3-12-018 (Gravelle's Boat Yard, Moss Landing) (June 2013) .....	6
Staff Report for 5-12-292 (Oglivie & Svrcek, Newport Beach) (Sept. 2013) .....	6
Staff Report: Permit Amendment for A-5-RPV-93-005-A21 (VH Property Corp.) (July 2014) .....	6



## INTRODUCTION

Pursuant to Government Code section 11340.6, the Beach and Bluff Conservancy hereby petitions the California Coastal Commission for the repeal of the Commission's after-the-fact permit fee regulation, Cal. Code Regs. tit. 14, § 13055(d). Under this regulation, applicants for after-the-fact coastal development permits are presumptively required to pay five times, and under no circumstance less than twice, the permit fee for a comparable before-the-fact permit. This regulation should be repealed because the Coastal Act does not authorize it. The regulation operates as a de facto penalty for property owners who, the Commission alleges, committed development without first obtaining a permit, or who in good faith acquired property with unpermitted development on it. The Act, however, sets forth specific procedures by which the Commission may impose monetary penalties on a property owner. Because the Act does not authorize the Commission to assess penalties against landowners as part of a permit processing fee, the Commission's after-the-fact permit fee regulation is ultra vires and should be repealed.

## INTEREST OF PETITIONERS

The Beach and Bluff Conservancy is a mutual benefit corporation that represents the interests of coastal landowners. Formed in 1998, its broad mission is to restore, rebuild, maintain, and preserve the safety, beauty, and joy

of, and access to, beaches and bluffs for the benefit of everyone. Its supporters' concerns over fairness for coastal landowners, coupled with at least one supporter's personal experience with the after-the-fact permitting process, support the Conservancy's interest in the repeal of the Commission's after-the-fact permit fee regulation.

### **BACKGROUND**

In 1992, the Commission enacted a regulation requiring all after-the-fact permit applicants to pay double the fee for comparable before-the-fact permit applications, unless the executive director determined that the permit "could be processed by staff without significant additional review time resulting from the processing of the violation." Cal. Code Regs. tit. 14, § 13055(d) (1992). In 2008, the Commission amended the regulation to presumptively impose a fee five times that charged for before-the-fact permits.

Although the executive director retains the discretion to reduce the fee in certain circumstances, the amended regulation provides that in no instance can the fee be less than double that for a before-the-fact permit. *See id.* § 13055(d)(2) (2014). Thus, under the amended regulation, after-the-fact permit fee applicants can be expected to pay a sum considerably greater for

their permits than before-the-fact permit applicants seeking approval for the same development. That is true even if the applicant had no role in the alleged unpermitted development, and acquired the property in good-faith without knowledge of any alleged unpermitted development.

## **ARGUMENT**

### **THE AFTER-THE-FACT PERMIT FEE REGULATION SHOULD BE REPEALED BECAUSE THE COASTAL ACT DOES NOT AUTHORIZE IT**

The Commission's after-the-fact permit fee regulation is punitive. The Coastal Act, however, does not authorize the assessment of penalties as part of a permit fee. Accordingly, the regulation is ultra vires and should be repealed.

## **I**

### **THE ADMINISTRATIVE PROCEDURE ACT PROHIBITS ULTRA VIRES REGULATIONS**

The Administrative Procedure Act prohibits agencies from exercising any powers not delegated by the Legislature: no regulation "is valid or effective unless consistent and not in conflict with the statute." Gov't Code § 11342.2. Regulations must "be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." *Id.* § 11342.1. *See Bearden v. U.S. Borax, Inc.*, 138 Cal. App. 4th 429, 436 (2006) ("[T]he rulemaking power of an administrative agency does not permit the

agency to exceed the scope of authority conferred on the agency by the Legislature.”) (citation omitted). Whatever its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with its governing statutes. *E.g., Terhune v. Superior Court*, 65 Cal. App. 4th 864 (1998); *Pulaski v. California Occupational Safety & Health Standards Bd.*, 75 Cal. App. 4th 1315, 1341 (1999); *Transworld Sys., Inc. v. Cnty. of Sonoma*, 78 Cal. App. 4th 713, 717 (2000). Therefore, regulations that “alter or amend the [governing] statutes or enlarge or restrict the agency’s statutory power” are invalid. *California Beer & Wine Wholesalers Ass’n v. Dep’t of Alcoholic Beverage Control*, 201 Cal. App. 3d 100, 106-07 (1988).

## II

### **PROCESSING AFTER-THE-FACT PERMITS DOES NOT REQUIRE TWO TO FIVE TIMES THE EFFORT FOR COMPARABLE BEFORE-THE-FACT PERMITS**

The Coastal Act authorizes the Commission to charge reasonable filing fees designed to reimburse the Commission for the expenses of processing permit and other applications.<sup>1</sup> *See* Pub. Res. Code § 30620(c)(1). The

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<sup>1</sup> When establishing fee rates, an agency must “prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned.” *San Diego Gas & Elec. Co. v. San Diego Cnty. Air Pollution Control Dist.*, 203 Cal. App. 3d 1132, 1146 (1988). The Conservancy requests that in the response to this Petition, *cf.* Gov’t Code § 11340.7, the Commission set forth the analysis, if any, on which the Commission relied to determine that the after-the-fact permit fee provision is designed only to generate those funds necessary to reimburse the  
(continued...)

Commission's original after-the-fact permit fee regulation presumptively imposed a double multiplier, but nevertheless gave the executive director discretion to reduce the multiplier to zero if the processing of the application would not take "significant additional review time." Cal. Code Regs. tit. 14, § 13055(d) (1992). In the 2008 amendments to the regulation, the Commission asserted that review of after-the-fact permit applications "require[s] more review than normal permits," because "more site visits than usual are required to analyze the site as it would have been" before the development, and because it is "far more difficult to assess the environmental impacts and to devise conditions for mitigating environmental impacts after development has occurred." *See Revisions to the Statement of Reasons for Proposed Amendments of the California Coastal Commission's Filing Fee Regulations 14 (2008).*

After-the-fact permit applications, however, do not require twice as much effort, much less five times more effort, than comparable before-the-fact permit applications.<sup>2</sup> Given the Commission's policy of processing after-the-

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<sup>1</sup> (...continued)

Commission for the administrative and processing costs associated with after-the-fact permits.

<sup>2</sup> A Public Records Act request to the Commission seeking "all documents showing how the Commission determined that presumptively charging five times the regular fee for after-the-fact permit applications, and in all such cases no less than twice the regular fee" was appropriate produced nothing of

(continued...)

fact permit applications as if they were before-the-fact permit applications,<sup>3</sup> processing after-the-fact permit applications presumably requires no more work than that for comparable before-the-fact permit applications. *Cf. LT-WR, L.L.C. v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770, 796-97 (2007) (“In order to enable the Commission to protect coastal resources, and to avoid condoning unpermitted development, the Commission properly reviewed the application as though the unpermitted development had not occurred.”).

Although after-the-fact permit applications may require hypothetical reconstruction (“What did the project site look like before the alleged

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<sup>2</sup> (...continued)

relevance except for the conclusory staff report assertions quoted in the text. *See* Exhibit 1.

<sup>3</sup> *See, e.g.*, Staff Report: Permit Amendment for A-5-RPV-93-005-A21 (VH Property Corp.), at 2 (July 2014) (“When the Commission evaluates permits for development that has already taken place, it must evaluate the development as if it had not taken place.”); Appeal Staff Report for A-2-SMC-11-041 & A-2-SMC-11-040 (Hodge, San Mateo Co.), at 25 (Dec. 2013) (“[S]ince the fill of wetlands and the removal of riparian and wetland vegetation were undertaken without the required [coastal development permit], the Commission reviews the [coastal development permit] application based on the resources that existed prior to unpermitted activities. Therefore, the analysis below is based on the assumption that the wetlands and the extent of riparian habitat which existed on the property in 2004 still exist . . . .”); Staff Report for 5-12-292 (Oglivie & Svrcek, Newport Beach), at 2 (Sept. 2013) (“Staff has considered the existing unpermitted bulkhead, pool and spa as if they do not exist and thus, the proposal is for new development of two homes with one pool and bulkhead . . . .”); Staff Report for 3-12-018 (Gravelle’s Boat Yard, Moss Landing), at 9 (June 2013) (“Although the development exists, it has not previously been authorized by a [coastal development permit], and therefore, for Coastal Act analytical purposes, the evaluation of the proposed development is as if it is not yet in place.”).

unpermitted development?”), there is no reason why such paper reconstruction cannot be provided by the after-the-fact permit applicant. Moreover, even if some after-the-fact permits require more processing time to reconstruct the permit’s baseline, they may also save time: the impacts of the “proposed” development are easier to assess and no longer speculative, because they already exist. The Commission simply does not have sufficient evidence to conclude that the after-the-fact permit application multiplier produces a “reasonable filing fee.” Pub. Res. Code § 30620(c)(1). The Conservancy must therefore conclude that the real reason for the after-the-fact permit fee multiplier—which applies no matter how insignificant the alleged unpermitted development—is to penalize.<sup>4</sup>

### III

#### **THE COMMISSION’S POWER TO PENALIZE PROPERTY OWNERS DOES NOT EXTEND TO PERMITTING FEES**

The Commission does not have the power to impose a penalty as part of a permit fee. Rather, the Coastal Act authorizes only two ways by which the Commission can force someone to pay a penalty: following a judgment of the superior court, or following the issuance of an administrative penalty order.

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<sup>4</sup> The regulation as much as admits the punitive nature of the fee multiplier in its allowance to the executive director to reduce the fee if the after-the-fact permit applicant was not the one responsible for the unpermitted development. *See* Cal. Code Regs. tit. 14, § 13055(d)(2). The innocence of the permit applicant has nothing to do with the cost to the Commission of processing the permit.

*See* Pub. Res. Code §§ 30820, 30821. Notably, both of these methods impose important limitations on the Commission's punitive power not found in the permit fee process. Penalties for unpermitted development that do not implicate the Coastal Act's public access provisions are committed to the sound discretion of a superior court judge—not the Commission. *See id.* § 30821(c). Although the Commission may assess penalties against landowners for violation of the Coastal Act's public access provisions without first having obtained superior court approval, the Commission may only do so following a duly noticed hearing and a majority vote of the Commission, *id.* § 30821(a), and even then the alleged violator has 30 days to correct the violation before penalties can be assessed, *id.* § 30821(h).<sup>5</sup> None of these protections is afforded an applicant for an after-the-fact permit.

The Legislature has clearly limited the circumstances under which and the procedures through which the Commission may assess penalties. Pursuant to the canon of statutory interpretation *expressio unius*, no other provision of the Coastal Act—including the provision to charge permit fees, Pub. Res. Code § 30620(c)(1)—should be read impliedly to authorize alternative methods of penalty assessment. *Cf. Dyna-Med, Inc. v. Fair Employment &*

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<sup>5</sup> That the Legislature only recently granted the Commission the power to issue *any* penalty orders (and those only for alleged public access violations) underscores that the Coastal Act's methods for penalty assessment should be strictly construed. *Cf. Dyna-Med, Inc. v. Fair Employment & Housing Comm'n*, 43 Cal. 3d 1379, 1389 (1987) (“An administrative agency cannot by its own regulations create a remedy which the Legislature has withheld.”).



*Housing Comm'n*, 43 Cal. 3d 1379, 1391 n.13 (1987) (“‘[T]he expression of certain things in a statute necessarily involves exclusion of other things not expressed . . . .’”) (quoting *Henderson v. Mann Theatres Corp.*, 65 Cal. App. 3d 397, 403 (1976)). To interpret the Act’s fee provision to allow for punitive after-the-fact permit fees would frustrate the Legislature’s desire to constrain, procedurally and substantively, the Commission’s punitive power. *Cf. Am. Fed’n of Labor v. Unemployment Ins. Appeals Bd.*, 13 Cal. 4th 1017, 1034 (1996) (holding that, based on the Civil Code’s express authorization for superior court judges to award interest on wrongfully withheld unemployment benefits, a state agency had no implied authority to award the same through its own administrative process); *Dyna-Med*, 43 Cal. 3d at 1392 (refusing to authorize an implied power for an administrative agency to assess punitive damages).

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## CONCLUSION

The Administrative Procedure Act forbids the enforcement of regulations that exceed the authority granted by, or that are in conflict with, their purportedly authorizing statute. *See* Gov’t Code §§ 11342.1, 11342.2. The Commission’s after-the-fact permit fee regulation, Cal. Code Regs. tit. 14, § 13055(d), falls within this prohibition because it imposes a de facto penalty for owners of alleged unpermitted development outside the procedures that the Coastal Act authorizes for penalty assessment. *Cf.* Pub. Res. Code §§ 30820,


30821. Therefore, the Conservancy petitions the Commission to repeal the regulation. *Cf.* Gov't Code § 11340.6.

Pursuant to Government Code section 11340.7, the Commission has thirty days from the receipt of this Petition to set a hearing on the Petition or to explain in writing why the Commission denies the Petition. The Conservancy looks forward to the Commission's prompt response.

DATED: November 5, 2014.

Respectfully submitted,

JONATHAN C. CORN  
DAMIEN M. SCHIFF

By   
DAMIEN M. SCHIFF

Attorneys for Petitioner  
Beach & Bluff Conservancy

**CERTIFICATION**

I, Tawnda Elling, certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation:

Dr. Charles Lester  
Executive Director  
California Coastal Commission  
45 Fremont Street  
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(415) 904-5200

  
TAWNDA ELLING





# PACIFIC LEGAL FOUNDATION

September 8, 2014

Jessica Reed  
Legal Analyst  
California Coastal Commission  
San Francisco Division

**VIA FACSIMILE**  
**(415) 904-5400**

**Re: Follow-Up Public Records Act Request**

Dear Ms. Reed:

In 2008, the California Coastal Commission amended its after-the-fact permit fee regulation to require that the application fee for an after-the-fact permit should be presumptively five times the fee for a comparable before-the-fact permit application, and that in no circumstance should the fee be less than two times the fee for a comparable before-the-fact application. See Cal. Code. Regs. tit. 14, § 13055(d).

As a follow-up public records act request, please provide all documents showing how the Commission determined that presumptively charging five times the regular fee for after-the-fact permit applications, and in all such cases no less than twice the regular fee, conforms to Public Resources Code section 30620(c)(1), which authorizes the Commission to charge only a "reasonable filing fee for the processing by the commission of an application for a coastal development permit."

Please let me know what the fee is to obtain the copies, or if you have any questions. Thank you for your assistance.

Sincerely

KIREN MATHEWS  
Pacific Legal Foundation  
Litigation Paralegal  
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Tele: 916.503.8993

EXHIBIT 1  
Petition for Repeal of After-the-Fact  
Permit Fee Regulation  
Page 17 of 18

**CALIFORNIA COASTAL COMMISSION**

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September 11, 2014

Kiren Mathews  
Pacific Legal Foundation  
930 G Street  
Sacramento, CA 95814

Re: Your Public Records Act Request dated September 8, 2014

Dear Ms. Mathews:

This responds to your above-referenced request for records of the California Coastal Commission (“Commission”). You have requested regarding the 2008 regulation amendments by the Commission with regard to 14 CCR 13055(d).

We have two rule-making files for the 2008 filing fee regulation changes, the first of which contains 33 pages, and the second of which contains 46 pages and the February 2008 report with exhibits, which is available on the Commission’s website at <http://documents.coastal.ca.gov/reports/2008/2/F2.5a-2-2008.pdf>. The copying cost, at 27¢ per page, without the February report, is \$21.33. Along with the February 2008 report, the other reports on the 2008 regulation amendments are available at <http://documents.coastal.ca.gov/reports/2007/7/F11a-7-2007.pdf> (hearing available at <http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2007-07-13>) and <http://documents.coastal.ca.gov/reports/2007/11/W3a-11-2007.pdf> (hearing available at <http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2007-11-14>). The February 2008 hearing is available at <http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2008-02-08>.

If you would like copies of the rule-making files, please send a check payable to the California Coastal Commission in the amount of \$21.33 and directed to my attention. Upon receipt, I will make and mail the copies to you.

Please let me know if you have any questions.

Sincerely,

  
Jessica Reed  
Senior Legal Analyst

EXHIBIT 1  
Petition for Repeal of After-the-Fact  
Permit Fee Regulation  
Page 18 of 18

HISTORY

1. Amendment to subsections (a) and (c) filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8-22-77 as an emergency; effective upon filing (Register 77, No. 35).
3. Amendment of subsection (a) filed 9-30-77, effective thirtieth day thereafter (Register 77, N 40). Amendment subsection (a) (c) filed 8-81; effective thirtieth day thereafter (Register 81, No. 5).
4. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
5. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
6. Amendment of article heading, section heading and section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

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

**§ 13055. Fees.**

(a) Filing fees for processing coastal development permit applications shall be as follows:

- (1) \$2,740 for any development qualifying for an administrative permit.
- (2) (A) For up to 4 detached, single-family residences the fee for each residence shall be based on the square footage of the proposed residence as shown in the following table:

Square Footage of Proposed Residence	Fee
1500 or less	\$3,288
1501 to 5000	\$4,932
5001 to 10,000	\$6,576
10,001 or more	\$8,220

(B) For more than 4 detached, single-family residences, the fee shall be as follows:

1. For residences of 1500 square feet or less, the fee shall be \$16,440 or \$1,096 per residence, whichever is greater, but not to exceed \$109,600;
2. For residences of 1501 to 5000 square feet, the fee shall be \$24,660 or \$1,644 per residence, whichever is greater, but not to exceed \$109,600;
3. For residences of 5001 to 10,000 square feet, the fee shall be \$32,880 or \$2,192 per residence, whichever is greater, but not to exceed \$109,600;
4. For residences of 10,001 or more square feet, the fee shall be \$41,100 or \$2,740 per residence, whichever is greater, but not to exceed \$109,600.

For developments that include residences of different sizes, the fee shall be based upon the average square footage of all the residences.

(C) As used herein, the term "square footage" includes gross internal floor space of the main house and attached garage(s), plus any detached structures (e.g., guest houses, detached bedrooms, in-law units, garages, barns, art studios, tool sheds, and other outbuildings.)

- (3) (A) For up to 4 attached residential units the fee shall be \$8,220.
- (B) For more than 4 attached residential units, the fee shall be \$10,960 or \$822 per unit, whichever is greater, but not to exceed \$54,800.
- (4) All projects that include more than 50 cubic yards of grading shall be subject to an additional fee as shown on the following table:

Cubic Yards of Grading	Fee
51 to 100	\$548
101 to 1000	\$1,096
1001 to 10,000	\$2,192
10,001 to 100,000	\$3,288
100,001 to 200,000	\$5,480
200,001 or more	\$10,960

This fee does not apply to residential projects that qualify for administrative permits.

**EXHIBIT 2**  
**Petition for Repeal of After-the-Fact Permit Fee Regulation**  
 Page 1 of 2

(5) For office, commercial, convention, or industrial (including energy facilities as defined in Public Resources Code section 30107) development, and for all other development not otherwise identified in this section, the fee shall be based upon either the gross square footage as shown in (5)(A) or the development cost as shown in (5)(B) whichever is greater.

(A) Fees based upon gross square footage shall be as follows:

Square Footage of Proposed Development	Fee
1000 or less	\$5,480
1001 to 10,000	\$10,960
10,001 to 25,000	\$16,440
25,001 to 50,000	\$21,920
50,001 to 100,000	\$32,880
100,001 or more	\$54,800

(B)1. Fees based upon development cost shall be as follows:

Development Cost	Fee
\$100,000 or less	\$3,288
\$100,001 to \$500,000	\$6,576
\$500,001 to \$2,000,000	\$10,960
\$2,000,001 to \$5,000,000	\$21,920
\$5,000,001 to \$10,000,000	\$27,400
\$10,000,001 to \$25,000,000	\$32,880
\$25,000,001 to \$50,000,000	\$54,800
\$50,000,001 to \$100,000,000	\$109,600
\$100,000,001 or more	\$274,000

2. As used herein, the term "development cost" includes all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction.

(6) \$1,096 for immaterial amendments to coastal development permits, and fifty percent (50%) of the permit fee that would currently apply to the permitted development for material amendments to coastal development permits.

(7) \$1,096 for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow-up coastal development permit.

(8) \$2,740 for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be \$1,096.

(b) Filing fees for filings other than coastal development permit applications shall be as follows:

(1) (A) \$548 for either an extension or reconsideration of coastal development permit for a single-family dwellings.

(B) \$1,096 for an extension or reconsideration of any other coastal development permit.

(2) \$548 for a "de minimis" waiver of a coastal development permit application pursuant to Public Resources Code section 30624.7 and for a waiver pursuant to sections 13250(c) and 13253(c) of this title.

(3) \$274 for any written confirmation of exemption from permit requirements of Public Resources Code section 30600.

(4) \$1,096 for any continuance requested by the applicant, except the first continuance.

(5) The filing fee for:

(A) any certification of consistency that is submitted to the Commission pursuant to sections 307(c)(3)(A) or (B) of the Coastal Zone Management Act of 1972 (16 USC section 1456(c)(3)(A), (B)), or

(B) any appeal to the Commission pursuant to Public Resources Code sections 30602 or 30603(a)(5) by an applicant of a denial of a coastal development permit application shall be determined in accordance with the provisions of subsection (a).

(6) The request for a boundary determination pursuant to either section 13255.1 or 13576(c) shall be accompanied by a filing and processing fee of \$274. For a request for a boundary determination pursuant to section 13255.1 or 13576(c)(2) that pertains to two or more parcels, the fee shall be paid on a per parcel basis.

(7) The request for a boundary adjustment pursuant to section 13255.2 shall be accompanied by a filing and processing fee of \$5,480.

(c) The fees established in this section shall be increased annually by an amount calculated on the basis of the percentage change from the year in which this provision becomes effective in the California Consumer Price Index for Urban Consumers as determined by the Department of Industrial Relations pursuant to Revenue and Taxation Code Section 2212. The increased fee amounts shall become effective on July 1 of each year. The new fee amounts shall be rounded to the nearest dollar.

(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit,

but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(e) Where a development consists of a land division including, but not limited to, lot line adjustments or issuance of a conditional certificate of compliance pursuant to Government Code section 66499.35(b), the fee shall be \$3,288 for each of the first four lots, plus \$1,096 for each additional lot. Conversion to condominiums shall be considered a division of the land.

(f) If different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for residential development exceed \$109,600 and in no case shall the fee for all other development exceed \$274,000.

(g) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in processing the permit application, including the costs of providing public notice. Notwithstanding the foregoing, the commission shall not require an applicant for a permit for one single-family dwelling to reimburse it for litigation costs or fees that the commission may incur in defending a judicial challenge to the commission's approval of the permit.

(h) The fees specified in sections (a) and (b) may be modified under the following circumstances:

~~(1) The executive director shall waive the application fee where requested by resolution of the commission.~~

(2) The executive director of the commission shall waive the filing and processing fee in full or in part for an application for a housing development that contains housing units the occupancy of which by persons of low or moderate income as defined in Health and Safety Code section 50093 is assured for the period of time specified in Government Code section 65915(c)(1). Applications for projects that will create a greater public benefit will have a larger portion of the fee waived than applications for projects that will create a lesser public benefit. The executive director will determine the degree of public benefit based on a variety of factors, including, but not limited to (A) the total number of affordable units, (B) the proportion of affordable units in the development, (C) the degree of affordability, and (D) the availability of, and demand for, affordable units in the area. Applications for projects that will exceed current requirements for affordable housing under the law will receive a larger fee waiver than applications for projects which do not.

(3) For applications received prior to January 1, 2015, the executive director of the Commission shall reduce the filing fee for projects that are certified at a minimum of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Gold standard or equivalent. The executive director shall determine if an alternative certification is equivalent to the LEED Gold standard based on a comprehensive re-

view of the certification program's ability to ensure an equivalent or greater environmental benefit. After registering a project with an approved third-party certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute approved by the executive director in the amount of the remainder of the required filing fee. After submitting proof of certification at a minimum of LEED Gold or equivalent, the letter of credit or other cash substitute will be released by the Commission to the applicant. If the applicant does not receive a minimum of LEED Gold certification or equivalent within three years of the date of permit issuance, the Commission will cash the letter of credit or other cash substitute. The executive director may grant an extension of the three year deadline for good cause. Request for extension must be submitted to the executive director in writing at least 60 days prior to the deadline, outlining the reason for the request and the expected completion date. The extension shall not exceed one year.

(i) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620(c) and 30253, Public Resources Code.

#### HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsections (a) and (b) filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment of subsection (d) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
4. Amendment filed 5-30-91 as an emergency; operative 5-30-91 (Register 91, No. 31). A Certificate of Compliance must be transmitted to OAL by 9-27-91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-91 order transmitted to OAL 9-18-92 and filed 10-21-92 (Register 92, No. 43).
6. Amendment filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
7. Amendment of article heading, section and NOTE filed 3-14-2008; operative 3-14-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).
8. Editorial correction of subsection (a)(5)(B)(1) (Register 2008, No. 18).
9. Change without regulatory effect amending section filed 8-14-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 33).
10. Change without regulatory effect amending section filed 8-6-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 32).
11. Change without regulatory effect amending section filed 8-7-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 32).

## Article 5. Determination Concerning Filing

### § 13056. Filing.

(a) A permit application shall be submitted on the form issued pursuant to sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to section 13055. The executive director shall file the application only after reviewing it and finding it



## CALIFORNIA COASTAL COMMISSION

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# F8a

September 27, 2007

TO: Coastal Commissioners and Other Interested Persons

FROM: Peter Douglas, Executive Director  
Susan Hansch, Chief Deputy Director  
John Bowers, Staff Counsel  
Madeline Cavalieri, Coastal Program Analyst  
Jeff Staben, Administrative Assistant

SUBJECT: **Public Hearing on Proposed Revisions to Sections 13055, 13169, 13255 and 13576 Title 14, California Code of Regulations Regarding Filing Fees**

### EXECUTIVE SUMMARY

Staff recommends that the Commission hear public testimony and authorize revisions to the proposed regulations regarding filing fees. In July 2007, the Commission authorized staff to commence the rulemaking process with the proposed regulations as shown in Exhibits A through D. (Proposed additions are shown in underline and deletions are shown in strikeout.) The proposed fees are summarized in Exhibit E. Since obtaining the Commission's authorization to proceed, ~~staff has undertaken the procedures required by the Administrative Procedure Act~~ (APA) (Government Code § 11340 *et. seq.*). Staff mailed notice of the Commission's intent to adopt the proposed amendments to interested persons as required by the Government Code, published the Notice of Proposed Rulemaking in the California Notice Register, (See Register 2007, No. 37-Z, September 14, 2007), and prepared the Initial Statement of Reasons. The documents are attached as Exhibits F and G and can be found on the Coastal Commission's website ([www.coastal.ca.gov](http://www.coastal.ca.gov)). **The 45-day written public comment period required by the APA began September 14, 2007 and will end on October 29, 2007.** Under the APA, the Commission has until September 14, 2008, one year from the date of commencement of the rulemaking, to complete the process.

In August 2007, the Commission discussed the addition of language regarding indemnification to the regulations and the Executive Director agreed to include that language. Staff has also developed two additional revisions for the Commission to consider. These revisions are discussed on page 7 under the heading "Revised Regulation Amendments" and attached as Exhibit H. Under the Office of Administrative Law (OAL) rules and procedures, every change

that is made to proposed regulations after the commencement of the rulemaking process, except those that are "nonsubstantial or solely grammatical in nature" (Government Code § 11346.8(c)) will be the subject of a separate comment period. (The OAL process is attached in Exhibit I.) Therefore, after receiving Commission authorization to do so, staff will submit the revisions to the OAL. Staff has determined that the proposed revisions to the amendments are substantially related to the originally proposed regulations, and should therefore require a 15-day comment period. If OAL concurs with that determination, the comment period will most likely begin on October 30, 2007 and end on November 13, 2007. If the revisions approved by the Commission are determined by OAL to be not substantially related to the originally proposed regulations, a 45-day comment period will be required by the OAL.

*Because of the strict requirements of the OAL and our goal to complete these regulation amendments in an efficient and timely manner, it is important that the Commission fully consider the many details of the proposed regulation package at the October 2007 hearing. The Commission cannot take final action on the proposed regulation package until the necessary public comment period is complete, so making revisions to the regulations at future hearings will continually postpone the adoption of the regulations. Staff strongly recommends that the Commission decide on their preferred regulation amendment package at the October 2007 hearing.*

At the October meeting, staff recommends that the Commission:

1. Open and take public testimony regarding the proposed regulations.
2. Make desired changes to the proposed regulations.
3. Authorize staff to revise the originally proposed regulations and submit these changes to OAL to begin additional public review process.  
(The motion can be found on page 3.)

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In the following report, staff provides a brief history of the Commission's filing fee revenues; describes the revisions proposed since July; responds to the Commission's July comments; describes the research and analysis performed by staff; and provides the reasoning behind each regulation amendment. The majority of the Commission's fees are contained within section 13055 of the regulations, and this section has received the majority of the proposed amendments. However, there are several other sections that are related to fees, and amendments to sections 13111, 13169, 13255 and 13576 complement the changes made to section 13055.

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The following next steps will occur:

1. After hearing public testimony at the October 2007 hearing, the Commission will make desired changes to the proposed package of amended regulations.
2. Staff will submit the revised package of amended regulations to the OAL, provide notice to interested parties, and initiate the additional comment period required by the APA.

3. The written comment period regarding the originally proposed amendments will end October 29, 2007. A new written comment period to allow for public comment on any changes made at the October meeting will begin on approximately October 30 and end on November 13, 2007. At the November 14, 2007 hearing, as required by the APA, the Commission will take public testimony.
4. The Commission is required to respond to all public comments in writing. Staff will provide these written responses to the Commission for their approval prior to adoption of the regulations.
5. The Commission may adopt the package of regulation amendments at the November hearing as long as no additional revisions are made at that time. If the Commission does make changes to the package of regulation amendments at the November hearing, an additional comment period will be required by the OAL.
6. After the Commission responds to all public comments in writing and adopts the regulations (targeted for November 2007), staff will submit the final rulemaking package to OAL, which has 30 days to approve or reject the Commission's proposed regulations. The OAL will approve the proposed regulations if they determine that they comply with the standard of review put forth by Government Code section 11349.1 for necessity, authority, clarity, consistency, reference and nonduplication.
7. After OAL approves the package, the amended regulations will be filed with the Secretary of State and will become legally effective. (Target date January 1, 2008)

#### STAFF RECOMMENDATION

Staff recommends that the Commission take public testimony and authorize revisions to the package of regulation amendments.

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#### MOTION

The staff recommends a **YES** vote on the following motion:

**MOTION:** *"I move that the Commission revise amendments to section 13055 and add amendments to section 13111 of the Commission's regulations."*

Passage of the above motion will result in adoption of the following resolution:

#### RESOLUTION

The Commission hereby revises proposed amendments to section 13055 and adds proposed amendments to section 13111 of the Commission's regulations and directs staff to submit the revised amendments to OAL and initiate the additional comment period required under the Administrative Procedure Act.

### COASTAL COMMISSION FILING FEE REVENUE

The Coastal Commission has been collecting permit filing fees since its inception. Exhibit J gives a summary of filing fees from FY 1976-1977 through FY 2005-2006. Exhibit K shows the projected revenue that would be generated if the fees are adopted as proposed. The average income in the 15 years of the current 1991 fee structure is \$456,336. The 15 year high is \$799,987 and 15 year low is \$424,840. The projected revenue if the filing fees are adopted as proposed is between \$2M and \$3.7M, annually. Since the passage of the Coastal Act of 1976, all filing fees collected by the Commission were deposited in the state General Fund from FY 1976-1977 through FY 1998-1999.

Starting in FY 1999-2000 legislation (Chapter 782, 1997) redirected all filing fees from the General Fund to the State Coastal Conservancy's Coastal Access Account. The purpose of the redirection of the filing fees was to use coastal filing fees for critical coastal access projects including operation and maintenance of access ways that can not be funded by bonds. Fines and penalties resulting from the resolution of coastal permit violations are deposited in the State Coastal Conservancy's Violation and Remediation Account.

In February 2004, the Legislative Analyst's Office (LAO) issued its analysis of the FY 2004-2005 Budget Bill and focused on the Coastal Commission's funding structure and its filing fees. The 2004 LAO report recommended that the Legislature take action to reduce the Commission's general fund allocation by \$5.8 million (the amount estimated to cover permitting and enforcement costs). The LAO also recommended that a special fund be set up to hold the increased filing fees and fund the Commission's work. The LAO recommended that all permit and penalty fees previously received by the Coastal Conservancy be directed to the proposed new special fund.

On March 10, 2004, the Commission sent comments to the LAO and Legislative Committees. The following is a brief synopsis of the comments.

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#### **Summary of the Coastal Commission's Position on the February 2004 LAO recommendation:**

- The Commission is **not opposed** to the Legislature raising fees for the Commission's regulatory work and directing a portion of the increased revenue to the General Fund.
- The Commission is **opposed** to a cost recovery special fund system that directly provides funding for the Commission's regulatory and enforcement program. The Commission is also **opposed** to a \$5.8 million General Fund reduction in the Commission's FY 04-05 budget.
- The Commission is **opposed** to the reduction or elimination of permit fees and violation penalties that are currently transferred to the State Coastal Conservancy.

During the subsequent legislative hearings in 2004, the legislative sub-committees agreed with the Commission's position that a full cost recovery special fund system was not the best approach. The legislative sub-committees did strongly encourage the Commission to increase its filing fees to be comparable to local government fees. The sub-committees also proposed budget trailer bill language to direct the Commission to raise its fees, exempt the Commission from the Office of Administrative Law process, and redirect all filing fee increases to the General Fund. The intent of the budget trailer bill language was to have increased filing fees go to the General Fund so that the Commission could be authorized additional resources because the increased filing fees would be deposited in the General Fund and could offset possible augmentations to the Commission's budget. The Conservancy would have kept a base amount of coastal filing fees each fiscal year. The budget trailer bill language did not make it through the conference committee and final FY 04-05 budget negotiations and so no changes were made and all Commission filing fees continued to go to the Coastal Conservancy access fund.

During the FY 05-06 budget process the legislative sub-committees approved augmentations to the Commission's budget. Once again there was budget trailer bill language that would have directed increased filing fees to the General Fund. The budget trailer bill language was not included in the final budget and the budget augmentations were vetoed by the Governor.

For FY 06-07 the legislative budget sub-committees encouraged the Commission to raise filing fees and approved a budget augmentation of 11 positions and proposed budget trailer bill language that would have redirected increased filing fees to the General Fund. The budget trailer bill language was not included in the final budget. The Governor vetoed three of the 11 legislatively approved positions. The Governor did approve a Commission budget augmentation of 8 positions and \$850,000 for FY 06-07.

For FY 07-08 (the fiscal year that ends June 30, 2008), the legislature approved a budget augmentation of \$150,000 for live webstreaming and \$380,000 for three staff analyst positions. The Governor sustained the \$150,000 for live webstreaming but vetoed the \$380,000 and three positions. The veto message states:

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"I am deleting the \$380,000 legislative augmentation for coastal enforcement. The California Coastal Commission has the authority to adjust its fees, and I am willing to consider augmentations that address the Commission's workload needs once fees have been adjusted to cover associated costs. Currently, however, the proposed augmentation would result in additional General Fund costs. This reduction is necessary in order to further build a prudent reserve in light of the various uncertainties in revenues and spending that we face this year. With this reduction \$15,529,000 still remains to support the Commission's coastal management program."

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All the Commission's filing fees currently go to the Coastal Conservancy's Coastal Access Account. The funds are used for critical coastal access projects and maintenance of access ways that cannot be covered by bond funds. Any redirection of increased permit fees to the General Fund would require legislative action.

The executive director may grant one extension of the three year deadline for good cause. A request for such an extension must be submitted to the executive director in writing at least 60 days prior to the deadline, outlining the reason for the request and the expected completion date. The extension shall not exceed one year.”

### **III. Section 13111**

On further scrutiny of the Commission’s regulations, staff has determined that placing a reference in section 13111 to the proposed fee for appeals is necessary to ensure the regulations are internally consistent, in light of the proposed changes. This change will clarify the regulations, so that someone reading section 13111 will be aware of the associated fees. The proposed language is attached in Exhibit H.

## **SUMMARY OF PROPOSED AMENDMENTS**

### **I. Background**

The Commission’s filing fees (authorized under Section 30620(c) of the Coastal Act and set forth in Title 14, Section 13055 of the Commission’s Administrative Regulations) have not been raised since 1991. The Commission’s current filing fees range from \$200 for administrative permits to \$20,000 for large industrial permits. These are substantially lower than the fees charged by local governments with certified LCPs.

Staff performed an extensive review of the 1991 filing fee update process. In 1991, the fees were raised for the first time since the Commission’s first fee structure was established in 1973. The filing fee update process of 1991 differed from the current process because then Governor Pete Wilson had declared a State Fiscal Emergency and requested additional revenue from all possible resources. Therefore the Commission developed the fees under the OAL’s Emergency Regulations process.

In 1991, the Commission’s fee update was relatively simple. The fee categories that had been created in 1973 were increased by a factor of 8, and a handful of new categories were created. The new categories included: separate fees for small, medium and large houses, residential grading fees, fees for lot line adjustments, amendments, extensions, reconsiderations, waivers, assignments, continuances and after-the-fact permits. In 1991, the Commission had considered a more moderate increase of 314%, which was the increase in inflation from 1973 to 1991 calculated using the California Consumer Price Index (CCPI). However, this option was rejected because it was determined to be too small of an increase, considering the increasing complexity of project review and numerous court cases which required more review of projects from the Commission and staff.

As in 1991, staff has concluded that an increase based on inflation is not sufficient to address the time and effort it takes to review projects in the current environment. The change in inflation from 1991 to 2007, calculated using the CCPI, is approximately 150%. Adjusting the

Commission's fees to reflect this small increase would result in fees from \$307 for an administrative permit, to \$30,725 for a large industrial permit.

If the Commission were to simply increase all existing fee categories by a factor of 8, as they did in 1991, some fees would be disproportionate to the time spent by staff to review the applications, and some fees would be disproportionate to each other. For example, the fee for a 12,000 square foot commercial building would be \$16,000 more than the fee for an 8,000 square foot commercial building. Exhibit N is a chart showing the 1991 fee update and the effect the exact same increase would have on the current fees.

Staff has performed a detailed analysis of filing fees which included a review of the feasibility of a cost recovery system, an examination of the Commission's FY 2005-2006 actions, and a survey of the filing fees of various government agencies. This detailed analysis is required by the OAL to justify amendments to the Commission's Administrative Regulations. The analysis also informed staff's determination of the most appropriate filing fees.

Staff has proposed two new provisions for fee reductions for affordable housing and for green building. These provisions are found in §13055(h)(2) and (h)(3) and are discussed below, in sections III.H.2 and III.H.3 of this report.

## **II. Summary of Research Performed by Staff**

### **A. Cost Recovery versus Flat Fees**

Many government agencies charge filing fees based on cost recovery. In these agencies, all staff involved in the review of a project track all the time spent on each filing, and the applicant is charged accordingly. Cost recovery systems cause more complicated applications to be charged more, and less complicated applications to be charged less. This puts the full burden of project review on the applicant. It can also result in much higher fees for projects that require review from scientists, lawyers or other specialists. A major drawback of cost recovery systems is that the cost to the applicant of staff review is very difficult to predict.

The Commission does not have the staff structure to support a cost recovery system. It would be time consuming for analysts to track their time on individual applications, it would require many additional staff members in the accounting department, and it may result in applicants disputing the amount of time spent analyzing their applications. For these reasons, staff has determined that a cost recovery system could disrupt the integrity of staff review, and would ultimately be the wrong choice for the Commission.

Flat fees are simple to administer and predictable for the applicant. Based on a comprehensive review of the Commission's review process and of comparable fees charged by local governments, staff has developed a package of appropriate flat fees to recommend for Commission consideration and approval.

## **B. Analysis of FY 2005-2006 Commission Actions**

Staff analyzed Commission actions for FY 2005-2006 (July 1, 2005 – June 30, 2006) as a sample year to determine the specific types and quantities of applications received each year. The research revealed that many Commission action items are not associated with any filing fee. These items include public agency filings, local coastal program (LCP) amendments, appeals, and federal consistency certifications.

A summary of the analysis of FY 2005-2006 Commission actions is attached as Exhibit O. As can be seen in Table 1, the Commission acted on 1,022 items. Of these, 627 were subject to a public hearing and 395 were not subject to a public hearing (e.g. waivers, immaterial extensions, etc.). Of the 627 subject to public hearing, 8% were appeals, 10% were major LCP amendments and 1% were consistency certifications.

Exhibit O also shows a detailed analysis of public agency action items and after-the-fact (ATF) action items. In Table 2, you can see that public agency applications account for 33% of the Commission's amendments, 27% of the regular items, 21% of the consent items, and 6% of the administrative items. The data also show a surprisingly high percentage of ATF permits. The category with the highest percentage of ATF permits is amendments, 25%, followed by appeals, 22%, regular items, 20% and administrative permits 6%.

### **1. Public Agency Applications**

Because a large percentage of Commission and staff review time is spent on public agency applications, staff considered the option of charging public agencies filing fees. However, Government Code section 6103 prevents state agencies from charging other governmental entities filing or processing fees. Several state agencies, including the Bay Conservation and Development Commission (BCDC) have statutory exemptions from section 6103 so that they can charge public agencies fees. The Commission would need its own statutory exemption from 6103 before it could begin charging public agencies filing fees.

### **2. Local Coastal Program Amendments**

The Coastal Act requires the Commission to certify amendments to LCPs before they take effect. Sometimes, local governments amend LCPs to update their development standards for large areas comprising many parcels or for the entire area subject to the LCP. Often, however, the primary motivation for an amendment to an LCP is to allow for a single development. In these instances, although the project developer/landowner is the primary beneficiary of the LCP amendment, that developer/landowner is not required to pay fees to the Commission for review of the amendment. Staff has determined that the sponsors of these projects should be required to pay filing fees to offset the cost of Commission and staff time expended in reviewing such "project-driven" LCP amendments.

As currently written, the Coastal Act does not allow the Commission to charge for "project-driven" LCP amendments. Public Resources Code section 30620(c)(1) states that the Commission may require payment of a fee for any filing *except* for "local coastal program



submittals.” An amendment to the Coastal Act would be required before the Commission could start charging for project-driven LCP amendments. Because a significant amount of the staff and Commission’s time and resources are spent on project-driven LCP amendments, staff recommends that the Commission consider pursuing legislation that would enable the Commission to collect fees for project driven LCP amendments.

### 3. Appeals and Revocations

In FY 2005-2006, 8% of the Commission’s public hearing action items were appeals. Appeals help the Commission ensure the Coastal Act is being upheld in areas where the local government has obtained permit authority. Staff explored ways to charge fees for appeals, and has determined that it would be inappropriate to do so. The appellant, not the applicant, files the appeal, and charging the appellant a fee for an appeal could unduly discourage future appeals and public participation. Several Commissioners disputed this conclusion during the July meeting, but others opined that fees for appeals would indeed have a chilling effect on public participation.

There are two circumstances in which charging for an appeal would undoubtedly be appropriate. One is when a CDP for an energy or public works project is denied by a local government, and the project proponent appeals that denial to the Commission. In this case, the applicant is filing the appeal. Subsection 13055(b)(5)(B) of the proposed regulations establishes a fee for appeals to the Commission pursuant to Public Resources Code section 30603(a)(5) of a denial of a major public works project or energy facility. Because the Commission does not charge public agencies filing fees, this would in no way affect public agency projects.

Section (b)(5)(B) also includes filing fees for appeals filed pursuant to Coastal Act section 30602 of a denial by a local government of a CDP prior to certification of an LCP. Pursuant to section 30602, all such denials can be appealed to the Commission.

Coastal Act section 30620(c)(1) specifically allows the Commission to charge filing fees for revocations. However, this would be similar to charging fees for appeals; a fee in this case may discourage requests for revocations which help the Commission uphold the standards of the Coastal Act. The Commission does not currently charge fees for revocations and staff is not recommending a change.

### 4. Federal Consistency Certifications

Under sections 307(c)(3)(A) and (B) of the Coastal Zone Management Act (CZMA), the Commission is authorized to conduct consistency reviews of projects that require a federal license or permit and affect the coastal zone. The CZMA requires an applicant for such a permit to submit to the Commission a “consistency certification.” These certifications require a significant amount of Commission and staff time to review and require the same level of review as all other CDP applications. However, there is currently no mechanism for charging a fee for the Commission’s review. In section (b)(5)(A), staff proposes to create a filing fee for federal consistency certifications. The fee amount would be the same as that for a coastal development permit. Fees for consistency review, however, cannot be required until this regulation amendment is approved by NOAA’s Office of Ocean and Coastal Resource Management

(OCRM) for incorporation into the California Coastal Management Program (CCMP). Once the package of amended regulations is approved by the Commission and OAL and is final, staff will submit the required request to NOAA for approval.

### **C. Survey of Government Agency Filing Fees**

The Commission's filing fees should be updated so that they are comparable to those charged by other state and local agencies. Staff performed a thorough analysis of other agencies' planning fees, which included fee types and amounts, and the authority that enables different agencies to charge fees. Staff also performed a full comparison between the Commission's current fees and the planning fees of the following five local agencies: County of Sonoma, County of San Mateo, County of Santa Barbara, City of Huntington Beach and City of Oxnard. These particular local governments were chosen for three main reasons: their fee categories are relatively similar to the Commission's; the majority of their fees are flat fees, not fees based on cost recovery; and, they represent both rural and urban areas of the coastal zone. Using this survey, staff has determined fee amounts for the Commission that are comparable to those of other local governments. A summary of the survey results is included in Exhibits P and Q. The entire fee study is included as Exhibit R.

#### **1. Survey Methodology**

The survey of local government planning fees was relied on to develop a general idea of what planning fees are in the coastal zone. A direct comparison of the fees was impossible because different agencies have different fee categories, and because services for each category are grouped into the fees in different ways. For example, the County of San Mateo charges separate fees for design review and water quality review, but these services are included within the Commission's current fees. To resolve this conflict, staff obtained a minimum and maximum fee from each of the five agencies for each of the Commission's fee categories. Then, the mean average of the minimum and maximum fees for each category was calculated. Staff also ~~conducted interviews with staff members from each of the agencies surveyed to ensure correct~~ interpretation of the fee schedules. The fee schedules of the five local governments are attached as Exhibits S through W.

It is important to note that the fee comparison did not include the local governments' fees for environmental review, and therefore portray the local government review fees below what they actually are. Because local governments are generally the CEQA lead agency, they charge fees for the preparation of CEQA documents. These fees are substantial, and are often charged on a cost recovery basis. Although the Commission is often a responsible agency, not the lead agency, staff still performs an in-depth review of the lead agency's document. Recent court cases have underscored the need for the Commission to continue to review CEQA documents carefully before making findings.

In some cases, often with seawalls and piers, the Commission does act as the CEQA lead agency and prepares functionally equivalent documents, pursuant to the certification that the Secretary of Resources has granted to the Commission pursuant to section 21080.5 of the CEQA.

However, these applications are not charged an additional fee on the basis of the Commission's status as lead agency. Instead, the CEQA review service is included in the normal fee.

### **III. Proposed Changes to Section 13055**

The proposed section 13055 is attached in Exhibit A and is divided into 9 subsections, (a) through (i). To clarify the regulations, staff is proposing to divide the filing fees into two major categories: subsection (a) will address filing fees for CDPs and subsection (b) will address filing fees for all other filings, such as waivers and extensions. The remaining subsections, (c) through (i), clarify and expand upon the fees that are stated in subsections (a) and (b).

#### **A. Filing Fees for Coastal Development Permits**

Subsection (a) of the regulations is divided into eight sections: administrative permits, detached single-family residential permits, attached single-family residential permits, grading permits, industrial and commercial permits, amendments, emergency permits, and temporary permits.

##### **1. Administrative Permits**

The proposed revision raises the fee for an administrative permit from \$200 to \$2,500. The purpose of this increase is to establish a fee that is based on a portion of the average costs that the Commission incurs in processing applications for administrative permits. In establishing new fee categories and levels that achieve this objective, the Commission has used fees currently charged by local governments for similar development categories as guidance. The proposed fee of \$2,500 is less than the mean average of \$3,474 obtained in the local government survey.

##### **2. Detached Single-Family Residences**

###### **Details**

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The current fee for homes less than 1,500 square feet is \$250 and the proposed fee is \$3,000. The fee for homes from 1,501 to 5,000 square feet is currently \$500 and the proposed fee is \$4,500. The fee for homes that are more than 5,001 square feet is currently \$1,000. Here, the proposed amendment creates an additional fee; the proposed fee for residences between 5,001 and 10,000 square feet is \$6,000, and the proposed fee for residences larger than 10,001 square feet is \$7,500.

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In subsection (a)(2)(B), a new fee structure is proposed for detached single family developments of more than four residences. For these applications, the fee is based on the size of the residences being built. For residences of 1500 square feet or less, the fee is either \$15,000 or \$1,000 per residence, whichever is greater. For residences between 1,501 and 5,000 square feet, the fee is either \$22,500 or \$1,500 per residence, whichever is greater. For residences between 5,001 and 10,000 square feet the fee is either \$30,000 or \$2,000 per residence, whichever is greater. And for residences of 10,001 square feet or more, the fee is \$37,500 or \$2,500 per residence, whichever is greater. For all residential development, there is a maximum fee of \$100,000. For

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November 30, 2007

**FINAL STATEMENT OF REASONS  
 FOR AMENDMENTS TO THE  
 CALIFORNIA COASTAL COMMISSION'S  
 FILING FEE REGULATIONS  
 (Title 14, Division 5.5, California Code of Regulations)**

**UPDATE TO THE INITIAL STATEMENT OF REASONS**

The Initial Statement of Reasons was made available to the public on September 14, 2007. The Commission made six revisions to the originally proposed amendments. These revisions are described below. The Commission adopted the amendments, as revised, on November 14, 2007. The final text of the regulations is attached.

**Revision 1**

The Commission approved an additional increase in fees for projects that include more than 100 cubic yards of grading. The reason for this revision is that the originally proposed fees were not high enough to reflect the complexity of review involved in grading projects, which substantially disturb coastal resources. This is because large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources. The grading fee schedule is in section 13055(a)(4), and is shown below.

The originally proposed fees for grading were:

Cubic Yards of Grading	Proposed Fee
51 to 100	\$500
101 to 1000	\$750
1001 to 10,000	\$1,000
10,001 to 100,000	\$1,250
100,001 or more	\$1,500

**Response:** The Commission has approved a grading fee schedule that reflects the increased complexity of review required for increased amounts of grading. Note that the fee for the smallest increment of grading has not been revised at all, and larger increments of grading have seen higher increases in fees. This is because large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources.

32) Comments 10B, 12C, 14B, 15B and 17B refer to the revision regarding indemnification.

**Response:** The proposed revision regarding indemnification is not a requirement for indemnification; it is a regulation that would prevent the Commission from requiring indemnification from applicants for single-family homes. The Commission has the authority under existing statutory and regulatory provision to require indemnification and thus may continue to require indemnification from applicants on a case-by-case basis, as necessary.

33) Comments 10C, 11D, 14C and 15C state that the revision to the proposed amendment which would reduce fees for green buildings confers too much discretion to the executive director.

**Response:** The revision for the green building reduction specifies criteria that an applicant must comply with before qualifying for the reduction. This criteria could present a substantial amount of information, especially if alternatives to the U.S. Green Building Council's LEED certification is utilized, and therefore, some discretion is appropriate. However, all applicants are able to appeal decisions of the executive director directly to the Commission, and the Commission has the authority to waive or reduce filing fees through section 13055(h)(1). Therefore, the minimal discretion that does exist is ultimately controlled by the 12-member Commission, and does not rest with one person.

34) Comment 12E states that all fees should be based on actual costs and should not be punitive or revenue based.

~~**Response:** A fee system based on actual costs is referred to as a cost recovery system. The Commission is not proposing to base fees on a cost recovery system at this time, in part, because there is no funding available to set up such a program. At the very least, a cost recovery system would require additional staff in the accounting department, and the Commission is unable to increase staff until its fees are raised as requested by the Governor. Moreover, the California Court of Appeals, in *Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4<sup>th</sup> 935, 944 held that it was not unreasonable for an agency to utilize the flat fee system in preference to a full cost recovery system.~~

The proposed fee increase does not in any way preclude the Commission from moving to a cost recovery system in the future. However, it should be noted that full cost recovery, which is a standard practice of many local governments, would result in far higher fees and unpredictable costs to the applicant.

The fees that are being proposed are neither punitive nor revenue based. The fees were developed by expanding and modifying the existing fee schedule, and are based on the proportionate complexity of review required for the average application from each fee category.

35) Comment 12F is a request for the Commission to publish justification for the fee increases prior to a public hearing.

**Response:** The Commission has published justification for the fee increases in the Initial Statement of Reasons and the staff reports which have been published before each public hearing on the matter.

36) Comment 12H states that the public should be given adequate time to express their thoughts on the proposed amendments.

**Response:** The Commission agrees that the public should be allowed to express their thoughts and provide comments on the proposed rulemaking. The rulemaking process which is put forth in the Administrative Procedure Act and administered by the Office of Administrative Law is very inclusive of public comments. The Commission has complied with all applicable laws and regulations. The proposed rulemaking was first in front of the Commission for a public hearing in July 2007. Since the Commission officially initiated the rulemaking process, there have been two official public comment periods: the first was a 45-day comment period and the second was a 15-day public comment period. The Commission is confident that the public has been sufficiently notified of the proposed rulemaking.

37) Comment 12J states that "fees are taxation in disguise and infringe on the property rights of every owner."

**Response:** In *Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4<sup>th</sup> 935, 944; the California Court of Appeals distinguished between fees and taxes, saying: "Ordinarily, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted, and most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." The court goes on to say that "Fees charged for the costs of regulatory activities are not special taxes under a California Constitution article XIII A analysis if the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and they are not levied for unrelated revenue purposes."

Further, the proposed fees will help the Commission to strengthen California's coastal program. The Commission's program regulates development along the coast to protect coastal resources and benefits both public and private property in the coastal zone.

38) Comment 13 states that the Commission does not have the statutory authority to impose an indemnification condition, rendering the exemption unnecessary.

**Response:** The Commission has the authority under existing statutory and regulatory provision to require indemnification and thus may continue to require indemnification from applicants on a

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**REVISIONS TO THE INITIAL STATEMENT OF REASONS**  
**FOR PROPOSED AMENDMENTS OF THE**  
**CALIFORNIA COASTAL COMMISSION'S**  
**FILING FEE REGULATIONS**

**(Prepared for comment period commencing January 23, 2008**  
**September 14, 2007 and ending October 29, 2007 February 7, 2008)**

The California Coastal Commission (hereinafter "Commission") proposes to amend various sections of the Commission's regulations in Chapters 5, 6 and 8 of Division 5.5 of Title 14 of the California Code of Regulations. These chapters include fees for filing applications with the Commission. The proposed amendments update the Commission's filing fees, reorganize the regulations for clarity, and clarify ambiguities. The majority of the Commission's fees are contained within section 13055 of the regulations. Other sections related to filing fees which are proposed to be amended are: 13111, 13169, 13255 and 13576.

The proposed amendments include the following:

1. Increased fee amounts
2. New fee categories for:
  - a. Federal Consistency Certifications
  - b. Boundary Determinations
  - c. Appeals pursuant to sections 30602 and 30603(a)(5) of the Coastal Act
  - d. Written exemptions from coastal development permits
3. Escalator clause, in proposed section 13055(c), which would allow the Commission to ~~update the fees each year according to inflation without undertaking the rulemaking process~~
4. Two new provisions for fee reductions in proposed sections 13055(h)(2) and 13055(h)(3): one for affordable housing and one for green building

The Coastal Commission has been collecting filing fees since its inception. The average annual income in the 16 years of the current 1991 fee structure is \$572,254. The 16 year high is \$799,987 and 16 year low is \$424,840. Since the passage of the Coastal Act of 1976, all application and other filing fees collected by the Commission were deposited in the state General Fund from FY 1976-1977 through FY 1998-1999.

Starting in FY 1999-2000 legislation (Chapter 782, 1997) redirected all permit fees from the General Fund to the State Coastal Conservancy's Coastal Access Account. The purpose of the redirection of the permit fees was to use coastal permit fees for critical coastal access projects including operation and maintenance of access ways that can not be funded from bond funds.

*California Coastal Commission*  
*Revisions to the Statement of Reasons*  
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Fines and penalties resulting from the resolution of coastal permit violation are deposited in the State Coastal Conservancy's Violation and Remediation Account.

All the Commission's permit fees currently go to the Coastal Conservancy's Coastal Access Account. Any redirection of increased fees to the General Fund would require legislative action. The Commission plans to seek legislation to redirect a portion of the increased fees to the general fund to be used to augment the Commission's baseline budget. Budget augmentations will be requested and are essential to support additional staff and operating expenses so that the Coastal Commission can meet its legal mandates under the Coastal Act and provide essential and timely services to the public.

The purpose of the amendments is to establish fees that are based on a portion of the average costs that the Commission incurs in processing permit applications and other filings. Currently, the Commission's filing fee revenue, which is directed to the Coastal Access Account, constitutes approximately 8% of its regulatory budget. The proposed amendments would increase the filing fee revenue so that it would constitute 20% to 36% ~~up to 50%~~ of the Commission's annual regulatory costs and budget. Because there are numerous categories of regulatory actions that the Commission cannot charge fees for, such as Local Coastal Program amendments and public agency applications, the Commission thinks that a target of no more than 50% of the Commission's regulatory costs is appropriate.

The proposed fees are not an exact portion of actual costs to the Commission for each permit. The Commission is unable to show actual costs spent per permit because to do so would require an entirely new accounting system, and new staff to implement that system. The Commission does not currently have funding to implement such a system, and such a system would be problematic, given the nature of the Commission's work.

It is also not possible to show actual costs per permit based on total annual costs. The is because the applications filed in a given year, are rarely granted a permit that same year. Therefore, costs in a given year, do not reflect the filings received in that year. Also, some permits require one year or less to review, and some require 2, 5 or even 10 years to review. Because the Commission has rejected the approach of a full cost recovery system, and is currently not capable of representing its actual costs per permit, the Commission has proposed to continue to implement its flat fee system. Although costs can vary widely for different applications of the same type, the fee is always the same. Because the Commission's projected filing fee revenue is only 20% to 36% of its annual costs, the Commission would not charge any given applicant a fee that is higher than the cost of review.

The Commission has increased its fees based on the existing fee structure. Some fees were increased more than others, based on the average complexity of each application type. The proposed fees were reviewed by a team of Commission staff members with a broad range of experience in permit and regulatory work to ensure that the fee structure is fair and commensurate with the complexity of review and level of work required. In creating the fee schedule, the Commission also considered public input. Thus, the Commission and its staff have built a fair and accurate fee structure.



*California Coastal Commission*  
*Revisions to the Statement of Reasons*  
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The current fees range from \$200 to \$20,000. The proposed increase in revenue would raise the filing fee revenue to between \$2M and \$3.6M. This is four to seven times the current revenue. If the Commission were to increase all fees by a factor of four to seven, the fees for each category would not be comparable to the Commission's associated costs. For example, a five-fold increase would raise the fees for both waivers and administrative permits from \$200 to \$1000. Although many waivers require more than \$1,000 in Commission costs, administrative permits generally require more staff time, and should be charged more. Therefore, in order to raise the fees, while maintaining low fees for filings that require minimal staff time, the range of fees is proposed to increase to \$250 for simple projects to \$250,000 for the largest, most complex projects. To distribute the fees based on relative Commission costs, while creating an overall revenue increase of 20% to 36%, the Commission increased some fees by a larger percentage than other fees.

The Commission has two major types of permits, administrative permits, and regular permits. Administrative permits generally do not receive special conditions, and regular permits generally do. Regular permits also generally have longer, more involved staff reports. There are also a number of procedural-type filings. These include: waivers, immaterial amendments, extensions, exemptions, continuances, and boundary determinations. These filings are generally handled at the staff level, and require limited input from technical and legal staff.

~~To establish appropriate fee amounts,~~ Commission staff first analyzed the complexity of applications that are received within each fee category. Fees for more complex applications are higher than fees for less complex applications. Elements of complexity that affect the proposed fee amounts include: the square footage of the proposed development; the total cost of development; the typical number of technical studies associated with the development; the typical number of special conditions associated with the average application; the time and expertise required to perform services applied for; and the impact of the development on coastal resources, which requires analysis under the Coastal Act.

Commission staff also conducted a survey of local governments which charge fees in the Coastal Zone for application review that is similar to the application review performed by the Commission. A detailed description of the survey can be found below in the section titled, "Technical Studies." A major difference between the planning fees of local governments and the Commission's filing fees is that the Commission's fees include the cost of environmental review, and local governments charge an additional fee for environmental review. Environmental review is a costly process that is often undertaken by consultants, which adds substantially to the cost of review. Nevertheless, this survey was used to ensure that the proposed fees are not excessive in comparison to those charged by local governments.

## **AMENDMENTS**

The following breaks the amendments down by subsection and describes the purpose and rationale for each of the proposed amendments.

*California Coastal Commission*  
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**13055(d)**

Subsection (d) is for after-the-fact (ATF) permits. ATF permits enable the Commission to authorize development that has been completed without a permit, when that development can be found to be consistent with the Coastal Act. The proposed fee for ATF permits is five times the normal fee. Local governments in the Coastal Zone charge from 2 to 9 times the regular filing fee for ATF permit authorization. This is because ATF permits require more review than normal permits. Often, more site visits than usual are required to analyze the site as it would have been before the unpermitted development occurred. It is far more difficult to assess environmental impacts and to devise conditions for mitigating environmental impacts after development has occurred. To ensure that the few ATF permits that do not require substantial staff time are not overcharged, the proposed regulations allow the executive director to reduce the ATF filing fee when appropriate. However, the fee would never be allowed to be less than two times the regular filing fee.

The proposed regulations also clarify that the ATF fee is only charged for the portion of the application which has been developed without a permit. This is important because applicants often request ATF approval of development at the same time that they apply for a larger development. For example, an already completed well might be applied for at the same time that an applicant applies for a permit to build a house. In this circumstance, the proposed regulations would require ATF fees only for the portion of the project that was carried out without a permit.

**13055(e)**

Under the Commission's current regulations, if an applicant requests a permit for a subdivision and construction of residences, the applicant is only charged the fee for review of the residences. This exemption from the fee for subdivision review is inconsistent with the staff time required to review the two elements of the project. A subdivision requires Commission and staff review time, regardless of when the residences are built. The proposed subsection (e) removes the exemption from subdivision fees when an applicant proposes both subdivision and construction of residences.

The existing regulations have the fee for subdivisions equal to the fee for single family residences, so that each new lot created by a subdivision is charged the same fee as a single family residence. However, the current regulations have three different fees for three different sizes of residences, and the regulation regarding subdivisions does not say which fee should be applied. To clarify this, the proposed revisions set forth a \$3,000 fee for each of the first four lots, and ~~\$500~~ \$1,000<sup>4</sup> for each additional lot. The fee of \$3,000 was chosen because it is the proposed fee for the smallest house on the fee schedule. The fee

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<sup>4</sup> The originally proposed fee for subdivisions was \$3,000 for each of the first four lots and \$500 for each additional lot. In the first regulation revisions, which were made available for public comment from October 30, 2007 through November 13, 2007, the Commission approved an additional increase so that the revised fee is \$3,000 for each of the first four lots and \$1,000 for each additional lot. The reason for this revision is that the originally proposed fee of \$500 for each lot over four lots was too low as compared to the average complexity of this type of application review. This revision is in section 13055(e) and can be found on page 5 of Exhibit A.