

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**W7g**

DATE: October 25, 2018

TO: Coastal Commission and Interested Persons

FROM: Christopher Pederson, Chief Counsel
Robin M. Mayer, Staff Attorney

SUBJECT: Nonmaterial Changes to Commission Regulations
Briefing and Possible Action
California Code of Regulations, Title 14, Section 13001 et seq.

SUMMARY OF STAFF RECOMMENDATION

The Commission's regulations are long overdue for an update. Many regulations date from the 1980's or earlier, and the last major rulemaking took place in 1999. This comprehensive proposal for nonmaterial changes seeks to modernize, clarify, correct, provide for electronic notification and website posting, and align the regulations more precisely to current provisions of the Coastal Act, as amended. (Pub. Resources Code, § 30001 et seq.). Several regulations are proposed to be updated to follow current provisions in the Government Code and CEQA, and some regulations provide additional notice of statutory language. The amendments would broaden communication options for the Commission, applicants, and the public. The proposal will help fulfill the Commission's current Strategic Plan and its anticipated update. Above all, the proposal seeks to make the regulations easier to understand and use by the Commission, staff, and the public. Some 160 regulations are proposed to be amended.

Once adopted by the Commission, legal staff will submit the proposed amendments to the Office of Administrative Law (OAL). OAL reviews proposals for nonmaterial changes according to the provisions of its own regulation at Title 1, Section 100. Thus, the proposed changes are also referred to as a "Section 100" rulemaking. As an example, the Commission's permit fees set by regulation 13055 are increased annually via the Section 100 procedures.

The governing standard for approving each change is that it does not materially alter a regulatory element. Section 100(a) provides several examples of a "change without regulatory effect," including but not limited to: organizational changes, repealing a provision no longer supported by a statute; aligning provisions to current statutes; and changing the authority and reference notes that follow each regulation. Many of the proposed changes to the Commission regulations are technical. However, many would also amend the text for purposes of clarity, updates, corrections, and more precise expression of statutory provisions. OAL requires a written statement of explanation for each change.

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Following review by OAL, the amended regulations, as approved, are filed with the Secretary of State and published in the California Code of Regulations. The new version of the regulations will be made available on the Commission website as well. If a proposed amendment is rejected, the change may be incorporated into regular rulemaking, a more elaborate process that includes publication of an initial notice, a public comment period, adoption of the final text, and OAL review for necessity and other standards. Staff plans to initiate a regular rulemaking in 2019, following OAL review of these proposals.

Staff recommends **adoption** of the proposed nonmaterial amendments to Commission regulations.

ADDITIONAL INFORMATION

Further information on the Nonmaterial Rulemaking may be obtained from Robin Mayer, Staff Attorney, at Robin.Mayer@coastal.ca.gov.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **adopt** the proposed amendments to Commission regulations in accordance with the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the proposed amendments for submittal to the Office of Administrative Law. The motion passes only by affirmative vote by a majority of the appointed membership of the commission.

Resolution:

The Commission hereby adopts the proposed amendments to Commission regulations for submittal to the Office of Administrative Law and finds they are consistent with the Coastal Act and other applicable law. Adoption of the proposed amendments is exempt from the California Environmental Quality Act because the proposal has no potential for causing a significant impact on the environment.

II. BACKGROUND

Section 30333 of the Coastal Act authorizes the Commission to adopt or amend regulations to carry out the purposes and provisions of the Act, and to govern procedures for the many different matters under the Commission's jurisdiction. Section 30333.1 further encourages periodic review of the regulations in order to make revisions "necessary and appropriate to simplify and expedite the review of any matter that is before the commission." Many of the proposals in this nonmaterial rulemaking aim to accomplish more expeditious review of the Commission's matters, which number in the hundreds every year.

The Commission's regulations are found in Division 5.5 of Title 14 of the California Code of Regulations. As a whole, the regulations implement, interpret, and make specific provisions of the Coastal Act, as well as the Government Code (chiefly, the Bagley-Keene Open Meeting Act and the Permit Streamlining Act), and the California Environmental Quality Act (CEQA). Regulatory provisions are to be construed liberally to accomplish the purposes and carry out the objectives of the Coastal Act. (§ 13003.)

The Office of Administrative Law (OAL) reviews regulations for more than 200 California agencies, including the Coastal Commission. Nonmaterial changes may be proposed through a streamlined procedure that does not require a formal public comment period, among other simplified approaches. OAL's procedures for the submittal and the standard for review of proposed nonmaterial changes are contained in Section 100, Title 1 of the California Code of Regulations. ([Exhibit 1.](#)) A submittal consists of regulation text, explanations, and other supporting documents. Proposed revisions in the regulation text must be expressed in underline/strikeout format, (additions underlined and ~~deletions struck out~~), and OAL requires an explanation for each and every proposed change. ([Exhibit 2.](#)) Exhibit 2 contains the full set of proposed changes for each regulation with explanations. Each explanation must justify why the proposed change "does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision." (Tit. 1, § 100(a).) For a quick understanding of the regulation changes, a summary of the proposed amendments by type is provided below.

Of particular note, many proposed changes substitute posting to the Commission website in lieu of direct mailing or allow for electronic notification where the recipient offers an e-mail address as part of contact information. Mailing is labor-intensive and expensive. In 2016, for example, the Commission's mailing costs ran to more than \$70,000. When even a single matter is controversial, postage costs can reach hundreds of dollars, and many types of matters (e.g., valid appeals, local coastal program amendments) have no avenue for reimbursement. The proposed changes would likely save thousands of dollars a year in the Commission budget, while simultaneously promoting transparency, efficiency, and convenience for the Commission, staff, local government and other agencies, applicants, appellants, interested persons, and the public generally.

OAL has thirty working days to conduct review of the proposed changes. (§ 100(c).) Changes that are accepted are filed with the Secretary of State, becoming effective on the Secretary's acceptance, and then published in the California Code of Regulations. The new regulations will be made available on the Commission website as soon as feasible. Changes that are rejected may be proposed in regular rulemaking, which is a more elaborate procedure that requires a notice to be published in the California Regulatory Notice Register, a 45-day public comment period, and a submittal of proposed regulations with a statement of reasons, a fiscal impact statement, all comments, and responses to comments. OAL conducts review of a regular rulemaking according to six standards, including clarity and necessity.

III. SUMMARY OF PROPOSED AMENDMENTS BY TYPE

Electronic notification

Example: § 13056. *Filing.*

(b) The executive director shall make the filing determination in writing within ten (10) working days, if feasible, but in no event later than thirty (30) calendar days after the date it is received in the offices of the commission during its normal working hours. The executive director shall mail or transmit by other reasonable means the filing determination to the applicant.

Rationale: Electronic communication is offered as an option where e-mail addresses are available. Generally e-mail is faster, more certain, more effective, and considerably less expensive than mailing a notice. There is no regulatory effect because the content of the notice is the same regardless of method and the recipients are the same. If a recipient prefers mailed notices he or she will receive them.

Proposed for: §§ 13015, 13016, 13020, 13056, 13059, 13060, 13063, 13102, 13107, 13110, 13111, 13112, 13138, 13143, 13144, 13151, 13153, 13169, 13181, 13182, 13183, 13191, 13192, 13320, 13329.1, 13333, 13368, 13515, 13519, 13524, 13550, 13552, 13555, and 13565.

Website posting

Example: § 13059. *Distribution of Staff Reports.*

The executive director shall distribute the staff report by mail or by any reasonable means to all members of the commission, to the applicant(s), to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to the proposed development and to all persons who specifically requested it. The executive director shall also post the staff report to the commission's website....

Rationale: The Executive Director posts all agendas, staff reports, exhibits, and timely comments for each matter considered at a meeting. In particular, the Government Code (§ 11125) requires agendas to be posted at least ten days in advance of a meeting, and most material posted is tied to an agenda item for convenient access. The Executive Director posts many other documents, such as notices of coastal development permits approved by local government that are appealable to the Commission. The proposed amendments require the Executive Director to post various documents, either in lieu of, or supplemental to, other types of notice. Certain notices nevertheless must be mailed (such as notices to neighboring landowners) or sent directly to interested persons. The proposed amendments do not affect those requirements.

Proposed for: §§ 13016, 13018.5, 13020, Ch. 4 note, 13059, 13060, 13063, 13012, 13110, 13143, 13153, 13156, 13183, 13193, 13238.2, 13317, 13332, 13355, 13515, 13523, 13524, 13525, 13532, 13544, 13544.5, 13547, 13550, 13627, and 13631.

Make a regulatory provision consistent with a changed California statute

Example: § 13113. *Grounds of Appeal.*

The grounds of appeal for any development appealable under Public Resources Code Section 30603(a) shall be limited to those specified in Public Resources Code Section 30603(b) ~~and (c).~~

Rationale: Several proposed amendments would update the regulations according to changes in statutes, including the Coastal Act, CEQA, the Bagley-Keene Open Meeting Act, the Permit Streamlining Act, etc. Here, the referenced subdivision of Coastal Act Section 30603 in the text no longer exists.

Proposed for: §§ 13066, 13071, 13113, 13116, 13256.2, 13502, and 13630.

Streamlining procedures

Example: Add § 13024.5. *Moving Items from Regular Calendar to Consent Calendar*

(a) When the proponent of a matter included on the regular calendar of an agenda is in agreement with the executive director's recommendation and the executive director is not

aware of any significant controversy regarding that matter, the executive director may move that item onto the consent calendar. Any item moved to the consent calendar shall be reinstated on the regular calendar at the request of any commissioner. A motion and vote to approve the consent calendar shall be deemed to include the motions and votes recommended by the executive director for each item included on the consent calendar.

Example: § 13544. *Effective Date of Certification of a Local Coastal Program.*

(c) The executive director reports the determination that the local government's action and notification procedures are legally adequate to the Commission at its next regularly scheduled public meeting and the Commission does not object to the executive director's determination. If a majority of the commissioners present object to the executive director's determination and find that the local government action does not conform to the provisions of the Commission's action to certify the LCP, the Commission shall review the local government's action and notification procedures pursuant to Articles 9-12 as if it were a resubmittal; and...

Rationale: Amendments are proposed to streamline procedures, not required by statutory language, that are redundant or inefficient. In the first example, the consent calendar is made available for any noncontroversial matter. Existing regulations allow for permit items to be placed on the consent calendar. Making the consent calendar available for other kinds of matters, such as extending the deadlines for review of a local coastal program submittal (§ 30517), would save considerable time at meetings and allow Commissioners to focus on items of importance.

In the second example, the Executive Director “checkoff” procedure for local coastal programs after certification is kept ministerial as Coastal Act describes. When the Commission approves certification with modifications (essentially, a conditional certification), the local government has six months to complete local action for acceptance of the modifications (§§ 13537, 13542). Coastal Act Sections 30512(b) and 30513 do not require Commission concurrence or any action following certification, they merely require conditional certification be delayed until the modifications are accepted by the Executive Director. The statute and regulation as amended promote finality and certainty. To ensure maximum notice of certification, the regulation requires the Executive Director to report final certification to the Commission.

Proposed for: §§ 13024.5, 13056, 13071, 13094, 13111, 13138, 13156, 13165, 13170, 13331, 13333, 13359, 13515, 13515, 13516, 13542, 13544, 13547, and 13634.

Clarity edits to remove or prevent ambiguities

Example: Add § 13008. Coastal Act.

“The Coastal Act of 1976” or “Coastal Act” means the California Coastal Act, Public Resources Code, Division 20, as amended to date.

Example: § 13105. *Grounds for Revocation.*

Grounds for revocation of a permit shall be:

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(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;
or

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

Rationale: Several clarity edits seek to prevent or remove ambiguities. The definition of the Coastal Act is to ensure all applications of the Act utilize the latest version as amended. The addition of “or” to the grounds for revocation clarifies one of the grounds is enough to potentially revoke a permit, where the Commission finds the grounds valid, in line with other regulations regarding revocation.

Proposed for: §§ 13008, 13094, 13105, 13115, 13156, 13214.7, 13255.2, 13502, 13511, and 13565.

Clarity edits to specify vague provisions

Example: § 13060 *Written comments*

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

Rationale: Several clarity edits seek to make vague provisions specific to ease application of the regulation and communicate a reasonable standard for compliance. Here, “prior to the day” of the hearing is vague. Receipt of comments by the close of business on Friday (or in case of a holiday, the previous working day) expresses the feasible amount of time for staff to process the comments. There is no regulatory effect as late comments may still be received at the meeting.

Proposed for: §§ 13012, 13060, 13111, 13115, 13139, 13144, 13163, 13169, 13172, 13185, 13315, 13340, 13355, 13502, 13544, 13547, 13552, 13627, and 13632.

Corrections, such as to cross-references or misstatements.

Example: § 13205. *Acknowledgment Hearing Procedure.*

(c) All other claims shall be processed in the manner provided by Sections ~~13080-13073,~~ 13074, and 13090-13096.

Example § 13142. *Criteria for Granting Permit.*

The executive director shall provide public notice of the proposed emergency action ~~allowed~~~~required~~ by Public Resources Code Section 30624, with the extent and type of notice determined on the basis of the nature of the emergency itself. The executive director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the executive director finds that:

Rationale: Dozens of cross-references are proposed to be amended to replace an inaccurate or obsolete reference with the correct regulatory or statutory provision. In the first example, some of the referenced regulations were repealed and a few were renumbered. Changes to cross-references do not materially alter a regulatory element. Other proposed amendments would correct the characterization of the underlying statute. In the second example, the statute allows, rather than requires, the issuance of an emergency permit. No regulatory element is affected.

Proposed for: §§ 13050, 13050.5, 13054, 13066, 13071, 13104, 13107, 13111, 13115, 13117, 13133, 13136, 13142, 13144, 13150, 13158, 13182, 13185, 13191, 13205, 13238.1, 13255.2, 13256.1, 13300, 13302, 13318, 13328.1, 13328.8, 13333, 13337, 13340, 13343, 13356, 13359, 13500, 13511, 13518, 13531, 13537, 13539, 13542, 13544, 13544.5, 13546, 13547, 13555, 13571, 13577, 13626, 13627, and 13632.

Supplemental notice of statutory requirements

Example: § 13111

(a) An appeal of a local government’s decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two (2) members of the Commission. The appeal must contain the following information:

...

(7) information on how each appellant participated in the local government action or otherwise is qualified as an “aggrieved person” as defined by Public Resources Code Section 30801;

(78) the specific grounds for appeal as described in Public Resources Code, Section 30603;

Rationale: In some proposed amendments, the statutory basis is directly referenced in the text or the statutory language incorporated. In this regulation, the citations provide supplemental notice to appellants of key requirements, which appear in different chapters of the Coastal Act. While most appeals have merit, many lack proper grounds or do not contain information about how appellants raised their concerns (exhaust issues) during local government consideration. The amendments would help appellants adhere to the requirements or when the appeal is not well-stated, the amendments would give staff another basis for gathering the needed information.

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There is no regulatory effect as the regulation directly incorporates the statute's citation or statutory language.

Proposed for: §§ 13018, 13018.5, 13019, 13020, 13111, 13136, 13238.1, 13502, 13565, 13566, and 13571.

Revising structure, syntax, grammar, spelling, or punctuation

Example: § 13116. *Withdrawal of Appeal.*

At any time before the Commission commences the final vote on an appeal, ~~an~~the appellant may withdraw the associated appeal. The withdrawal must be in writing or stated on the record and does not require Commission concurrence. On withdrawal of all appeals on a matter~~If the appellant withdraws the appeal~~, the action of the local government shall automatically become final.

Example: § 13577(i)

(1) The “first public road paralleling the sea” means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

[indent]

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

Rationale: Several proposed amendments would change the syntax for clarity or to improve accuracy. The example amendment takes into account the common possibility of multiple appellants. Changes to syntax do not materially alter a regulatory element. Additional amendments revise the organization or spacing for clarity. Organizational changes are without regulatory effect.

Proposed for: §§ 13105, 13163, 13166, 13214.7, 13241, 13255.2, 13328.9, 13329.3, 13342, 13345, 13353, 13357, 13358, 13365, 13530, 13550, 13554, 13565, and 13625.

Repealing a provision that has lost statutory authority

Example: § ~~13013.5. Copies and Certification.~~

~~*Copies of official records may be made and certified by the commission, the expense thereof to be borne by the person or party requesting the same.*~~

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~~*Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 6257, Government Code.*~~

Rationale: Government Code Section 6257 [certification] is repealed, and thus there is no statutory basis for the regulation. Currently, copies of records are provided to the public according to other provisions of the Public Records Act.

Proposed for: §§ 13013.5, 13050, 13062, 13068, 13091, and 13214 et seq, except 13214.7

Changing or adding an authority or reference citation in the ending note

Example: *§ 13165. Amendments to Administrative Permits*

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

Rationale: The Government Code requires that all regulations have an authority and reference note. (§ 11349.1(a)(2), (a)(5).) The authority note cites to the statutory provision that allows an agency to adopt the regulation. The reference note cites to the statutory provisions being implemented, interpreted, or made specific. Reference notes in particular aid in understanding the scope and purpose of regulations. Many Commission regulations lack a note (which if submitted today, would cause OAL to reject the regulation), and others have notes with citations that are inaccurate, incomplete, or imprecise. Changes to notes are not material and have no regulatory effect.

Proposed for: §§ 13018, 13018.5, 13019, 13020, 13024.5, 13050, 13050.5, 13052, 13053.5, 13060, 13066, 13067, 13071, 13104, 13107, 13111, 13112, 13115, 13116, 13117, 13136, 13137, 13139, 13153, 13163, 13165, 13166, 13169, 13172, 13173, 13183, 13193, 13204, 13214.7, 13216, 13217, 13218, 13219, 13221, 13222, 13223, 13224, 13231, 13234, 13241, 13242, 13243, 13244, 13245, 13247, 13256.2, 13320, 13337, 13359, 13502, 13511, 13518, 13525, 13531, 13548, 13565, 13566, 13571, 13600, 13610, 13626, 13627, 13628, 13631, 13635, 13645, 13646, 13647, and 13648.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that adoption of the proposed amendments is exempt from the California Environmental Quality Act because the proposal has no potential for causing a significant impact on the environment. (Cal. Code of Regs., tit. 14, § 15061(b)(3).)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS
(TO BE INCLUDED IN THE SUBMITTAL TO OAL)

- Office of Planning & Research, Notice of Exemption

- Exhibits to Written Explanations:
 - Excerpts from ENR Construction Cost Index, April 2018
 - FLANs posted August 9, 2018
 - Excerpts from Rulemaking 92-0623-01