

## CALIFORNIA COASTAL COMMISSION

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# W6d

DATE: May 31, 2019

TO: Coastal Commission and Interested Persons

FROM: Louise Warren, Acting Chief Counsel  
Robin M. Mayer, Staff Attorney

SUBJECT: Proposed Amendments to Commission Regulations  
Hearing and Possible Adoption  
California Code of Regulations, Title 14, Section 13001 et seq.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends adoption of proposed amendments to Commission regulations (Cal. Code of Regs., tit. 14, § 13001 et seq.), many of which were first presented to the Commission at the November 2018 meeting. This set of amendments is now proposed as a “regular” rulemaking. The proposed changes would generally update Commission regulations to provide for electronic noticing, align provisions to current law, streamline procedures, and make the regulations easier to use and understand.

The amendments are part of regulation changes that the Commission adopted in November 2018, and were then proposed as nonsubstantive changes to the Office of Administrative Law (OAL). OAL accepted many of the previously-adopted changes as nonsubstantive but not all, and advised staff to re-propose this set as a regular rulemaking with a notice and comment period. The Notice was published on April 26, mailed to 147 interested persons, and emailed to all those who subscribe to Commission agenda announcements. Publication opened the 45-day public comment period, which ends on June 10, 2019.

To further encourage public participation, staff created a rulemaking page on the Commission website, <https://www.coastal.ca.gov/rulemaking/> that contains the Notice of Proposed Action, the Express Terms (text in underline/~~strikeout~~ format), the Initial Statement of Reasons, supporting materials, and a comment button that links to [rulemaking@coastal.ca.gov](mailto:rulemaking@coastal.ca.gov). Staff is also accepting written comments sent by mail during the comment period.

Once the Commission has adopted the proposed amendments, legal staff will prepare the adopted amendments, the administrative record and other required material for submittal to the Office of

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Administrative Law (OAL). OAL reviews proposals for regular rulemaking within 30 working days. The proposed amendments are evaluated for clarity, necessity, consistency with and nonduplication of other law, the Commission’s authority to regulate for the terms expressed, and “reference” – noted citations to the statutes that are implemented, interpreted, or made specific.

Following review by OAL, the amended regulations, as approved, are filed with the Secretary of State and published in Title 14 of the California Code of Regulations. The new version of the regulations will be made available on the Commission website as soon as feasible. Staff anticipates all approved changes to be effective as of August 1, 2019, but that date may be extended.

Staff recommends **adoption** of the proposed amendments to Commission regulations. The motion and resolution are on p. 3 of this report.

### **ADDITIONAL INFORMATION**

For documents related to the rulemaking, go to the Commission’s rulemaking webpage at <https://coastal.ca.gov/rulemaking>. Comments may be sent to: [rulemaking@coastal.ca.gov](mailto:rulemaking@coastal.ca.gov), or mailed to Rulemaking, California Coastal Commission, 45 Fremont St. #2000, San Francisco, CA 94105.

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**EXHIBITS**

[Exhibit 1-Notice of Proposed Action](#)

[Exhibit 2-Express Terms \(text in underline/~~strikeout~~ format\)](#)

[Exhibit 3-Initial Statement of Reasons \(rationale for each change\) and exhibits](#)

[Exhibit 4-Supporting Materials](#)

**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 Public Resources Code authorizes the Commission to adopt or amend regulations to carry out the purposes and provisions of the Coastal Act, and to govern procedures for considerations 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

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proposals in this 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, the California Environmental Quality Act (CEQA), and the Government Code (chiefly, the Bagley-Keene Open Meeting Act and the Permit Streamlining Act). 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 two hundred California agencies, including the Coastal Commission. "Regular" rulemaking changes are proposed as required by the California Administrative Procedure Act (Gov. Code, § 113040 et seq.) and OAL regulations (Cal. Code of Regs., tit. 1). Requirements include a 45-day public comment period, a hearing for public comment, and submittal of the administrative record and other materials for OAL review.

OAL has 30 working days to conduct review of the proposed changes. Changes are reviewed according to six standards: clarity, necessity, consistency with and nonduplication of other law, the Commission's authority to regulate for the terms expressed, and "reference" – noted citations to the statutes that are implemented, interpreted, or made specific.

Changes that are accepted are filed with the Secretary of State, and once effective they are published in Title 14 of 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 a future rulemaking that may incorporate suggestions from OAL or make other changes to ensure acceptance. Staff will request that approved amendments be effective as of August 1, 2019, but that date may be extended according to the Secretary of State's quarterly schedule.

### **III. PROPOSED AMENDMENTS BY TYPE**

A summary of the proposed amendments by type is provided as follows:

#### **Generalizing communication methods**

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: Generalizing communication methods is offered to allow for e-mail where the recipient has supplied an e-mail address. Generally e-mail is faster, more certain, more effective,

and considerably less expensive than mailing a notice. The content of the notice is the same regardless of method. If a recipient prefers mailed notices, he or she may so request, and Commission staff will send them by regular mail.

Proposed for: §§ 13015, 13016, 13020, 13054, 13056, 13059, 13060, 13063, 13107, 13110, 13111, 13112, 13143, 13151, 13153, 13169, 13181, 13182, 13191, 13192, 13320, 13329.1, 13333, 13368, 13515, 13519, 13524, 13532, 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 Bagley-Keene Open Meeting Act requires agendas to be posted at least ten days in advance of a meeting. (Gov. Code, § 11125.) Most material posted is tied to an agenda item. Other postings, such as notices of appealable developments, help publicize and provide convenient access to important matters not necessarily on the agenda. Some postings act in lieu of direct 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 mailing requirements.

Proposed for: §§ 13016, 13018.5, 13020, Ch. 4 note, 13059, 13060, 13063, 13102, 13110, 13143, 13153, 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: § 13066. *Order of Proceedings.*

*(b2) The chairperson may allow rebuttal testimony by the applicant ~~in accordance with Public Resources Code section 30333.1(a).~~*

Example: § 13256.2. *Commission Action on Boundary Adjustment.*

*Within 49 working days of the filing of a request for a boundary adjustment the Commission shall conduct the public hearing and take action in substantially the same manner as provided in Sections 13057-13096. The Commission shall adopt a resolution regarding the request for an adjustment to the coastal zone boundary....*

Rationale: Proposed amendments would update the regulations according to changes in statutes, including amendments to the Coastal Act. In the first example, the referenced provision no longer exists. In the second example, the review period has changed from 49 days to 49 working days, in accordance with amendments to Section 30315 of the Public Resources Code.

Proposed for: §§ 13066, 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 coastal development 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, would save considerable time at meetings and allow Commissioners to focus on more important items.

In the second example, the Executive Director "checkoff" procedure for local coastal programs after certification is kept ministerial, as the 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 the regulation as amended, promote finality, efficiency, and certainty. To ensure maximum notice, the regulation requires the Executive Director to report post-certification local action to the Commission.

Proposed for: §§ 13024.5, 13056, 13066, 13094, 13111, 13156, 13165, 13170, 13258, 13329.1, 13333, 13515, 13535, 13542, 13544, 13547, 13633, and 13634.

### **Clarity edits to remove or prevent ambiguities**

Example: § 13054. *Identification of Interested Persons/Submission of Envelopes/Posting of Site.*

*(e) Pursuant to Sections 13105(b) ~~13104 through 13108.5~~, the commission ~~shall~~may revoke a permit if it determines that the permit was granted without proper notice having been given.*

Rationale: Several clarity edits seek to prevent or remove ambiguities. In the example, the applicable regulation provision is called out rather than several sections; “shall” is amended to “may” in order to be consistent with other regulations about revocation and to express the Commission’s discretion to revoke a permit.

Proposed for: §§ 13052, 13054, 13094, 13115, 13156, 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 Friday holiday, the previous working day) expresses the feasible amount of time for staff to process the comments. Late comments are nevertheless distributed or reported at the meeting.

Proposed for: §§ 13012.1 (addition), 13053.5, 13060, 13110, 13111, 13115, 13139, 13142, 13153, 13163, 13169, 13172, 13181, 13184, 13185, 13256.1, 13318, 13320, 13329.1, 13337, 13502, 13525, 13544, 13547, 13552, 13627, and 13632.

**Corrections**, such as to cross-references or misstatements.

Example: § 13117. *Qualifications to Testify Before Commission.*

*Only the applicant, the appellant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at ~~at~~ the substantial issue ~~any~~ stage of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners pursuant to Sections 13060-~~13061~~.*

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, the cross-reference to section 13061 is proposed to be deleted as that regulation is repealed. Other proposed amendments would correct the characterization of the underlying statute. In the first example, “substantial issue” replaces “any,” as it is only the substantial issue stage of an appeal where issues are limited. (See Pub. Resources Code, § 30625(b)(2).) In the second example, the statute allows, rather than requires, the issuance of an emergency permit.

Proposed for: §§ 13050.5, 13052, 13054, 13066, 13067, 13111, 13112, 13117, 13142, 13150, 13181, 13185, Appendix A, 13191, 13255.2, 13256.1, 13333, 13337, 13340, 13359, 13511, 13515, 13531, 13537, 13544, 13544.5, 13547, 13555, 13571, 13627, 13628, 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: The proposed amendments would directly cite relevant statutes or incorporate the statutory language. In the example, the proposed amendments provide supplemental notice to appellants of key requirements scattered 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 (i.e., exhausted issues) during the local government’s action. A poorly-stated appeal creates needless work of staff and frustration for the appellant. The proposed amendments would help appellants adhere to the requirements and give staff a further basis for gathering the needed information.

Proposed for: §§ 13018.5, 13020, 13053.5, 13073, 13111, 13172, 13181, 13320, 13329.3, 13353, 13502, 13511, 13565, 13566, and 13571.

### **Revising structure, syntax, grammar, spelling, or punctuation**

Example: § 13329.1. *Applications.*

*(a) Applications in case of emergency shall be made by in writing ~~letter~~ to the appropriate local official designated by the local government or, if time does not allow, in person or by telephone ~~if time does not allow~~.*

*(b) The following information should be included in the request:*

*... (5) The circumstance during the emergency that appeared to justify the courses ~~cause(s)~~ of action taken, including the probable consequences of failing to take action.*

Rationale: Several proposed amendments would change the syntax for clarity or to improve accuracy. In the example, “in writing” replaces “letter” to clarify any writing is accepted; “if time does not allow” is placed to ensure the clause governs only “in person or by telephone,” and “courses” replaces “causes” of action to generalize and avoid the legal term “causes of action.”

Proposed for: §§ 13053.5, 13163, 13166, 13255.2, 13329.1, 13353, 13355, 13531, 13550, and 13565.

### **Repealing a provision that has lost statutory authority**

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

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~~*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: Several amendments remove provisions that no longer have statutory authority. In the example, Government Code Section 6257 regarding certification is repealed; 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, 13066, 13359, 13550, and 13630.

### **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 Administrative Procedure Act requires that all regulations have an authority and reference note. (Gov. Code, § 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.

Proposed for: §§ 13018.5, 13020, 13050.5, 13052, 13053.5, 13060, 13066, 13067, 13073, 13107, 13111, 13112, 13115, 13117, 13139, 13153, 13163, 13165, 13166, 13169, 13172, 13183, 13193, 13255.2, 13256.2, 13320, 13337, 13359, 13511, 13525, 13531, 13565, 13566, 13571, 13627, 13628, and 13631.

## **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

- Office of Planning & Research, Notice of Exemption