

**CALIFORNIA COASTAL COMMISSION**

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**Tu 10d****MEMORANDUM**

June 19, 1998

TO: Coastal Commissioners

FROM: Ralph Faust, Chief Counsel  
Dorothy Dickey, Deputy Chief Counsel  
Ann Cheddar, Staff Counsel  
Amy Roach, Staff Counsel

SUBJECT: **Adoption of Proposed Revisions to Portions of  
Chapters 5 and 6 of the Commission's Permit Regulations**

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**I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt proposed amendments to the coastal development permit regulations (Chapters 5 and 6 of Title 14 of the California Code of Regulations) as set forth in Exhibit 1 to this staff report and as modified in Sections IV and V of this staff report. At its June 8, 1998 hearing, the Commission considered the revisions set forth in Exhibit 1, with several nonsubstantial changes to those revisions that staff had identified in its staff report dated May 21, 1998. At the same hearing, staff recommended additional changes to the proposed amendments, several of which were nonsubstantial and several of which triggered the need for an additional 15-day public notice and comment period prior to adoption. The Commission indicated its intent to adopt the proposed revisions as set forth in Exhibit 1, with the changes described in the May 21, 1998 staff report and with the additional changes suggested by staff at the June 8 hearing. The Commission directed staff to circulate the required 15-day notice and schedule the adoption hearing for the July agenda.

Since the June 8, 1998 hearing, staff has identified several additional changes that are also necessary to clarify certain of the proposed revisions. The majority of these changes are nonsubstantive changes to improve grammar and clarity. However, two of the changes are minor substantive changes. These minor substantive changes were included within the required 15-day notice. Sections IV and V of this staff report contain all suggested changes to the proposed revisions as set forth in Exhibit 1. Section IV identifies the changes that triggered the need for a 15-day comment period. Section V identifies the changes that are purely nonsubstantial or grammatical and therefore do not require any additional notice prior to adoption. Staff has mailed notice of a 15-day comment period. The notice is attached as Exhibit 2. The 15-day comment period will be complete as of the date of the July adoption hearing. Staff recommends that the

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Commission adopt the proposed revisions to Chapters 5 and 6 as set forth in Exhibit 1 and as modified in this staff report.

**II. MOTION**

We recommend that the Commission vote to adopt the proposed amendments to its permit regulations as set forth in Exhibit 1 and as modified in this staff report. The motion and resolution are:

**Motion:**

*I move that the Commission adopt the proposed amendments to Chapters 5 and 6 of the Commission's regulations as set forth in Exhibit 1 and as further modified by the staff report.*

Staff recommends a YES vote. A majority of the appointed Commissioners is required to pass the motion. Approval of the motion results in adoption of the amendments as set forth in Exhibit 1 and as modified in this staff report, and adoption of the resolution of approval.

**Resolution:**

The Commission hereby adopts amendments to Chapters 5 and 6 of the Commission's regulations as proposed in Exhibit 1 and as further modified by this staff report. No alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**III. BACKGROUND**

At its January 13, 1998 hearing, the Commission considered text of proposed amendments to portions of Chapters 5 and 6 of its regulations and instructed staff to carry out the various rulemaking procedures that must be satisfied prior to adoption of the amendments. Accordingly, staff undertook the steps required by the Administrative Procedure Act (APA) (Government Code § 11340 *et. seq.*). Those steps included publishing a notice of intent to adopt regulatory amendments in the California Notice Register on February 20, 1998.

Staff also mailed notice of the Commission's intent to adopt the proposed amendments to interested persons as required by the APA, and prepared the various other documents required to be made available concurrently with the proposed amendments. Staff initially scheduled a public hearing for adoption of the proposed amendments on April 9, 1998. The Commission postponed that hearing to June. The staff report for the June hearing, which is dated May 21, 1998 included a response to the three written comments that had been received as of that date. On June 4, 1998,

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staff received a package containing over 130 written comments from Norbert and Stephanie Dall. The majority of these comments addressed the Commission's regulations generally and thus did not specifically address staff's proposed revisions. Staff responded to those comments that specifically addressed the proposed amendments at the June 8, 1998 hearing. Staff also suggested several additional changes to the proposed amendments, some of which were in response to the relevant comments from the Dalls.

At the conclusion of the June 8 hearing, the Commission indicated that it intended to adopt the proposed amendments with the changes that were included in the May 21, 1998 staff report and with the several additional changes that were suggested by staff at the June 8 hearing. In addition, since the June 8, 1998 hearing, staff has identified several additional changes that are necessary to ensure the proposed revisions are written as clearly as possible. These additional changes are either nonsubstantial or minor substantive changes.

The APA limits the Commission's ability to adopt proposed amendments that are different from those that have been made available for the 45-day notice and comment period (which are those set forth in Exhibit 1). The law allows the Commission to adopt the proposed amendments with revisions that are "solely grammatical" or "nonsubstantial." (Government Code § 11346.8(c)). However, substantive revisions to the amendments that are minor (*i.e.*, "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action") must be made available for an additional public comment period of 15 days. Substantive changes that are major must be republished in the Notice Register and made available for an additional public comment period of 45 days.

All of the minor changes made at or after the June 8 hearing have been circulated for an additional 15-day comment period as required. The 15-day comment period will conclude at the July adoption hearing. The remaining step that the Commission must complete before adopting the proposed amendments is to consider any comments received in the 15-day comment period. This step can be completed at the Commission's July hearing. Once this step has been completed, the Commission can adopt the proposed amendments.

After Commission adoption of amendments, the amendments must be submitted to the Office of Administrative Law (OAL) for review and approval.<sup>1</sup> If the amendments are approved by OAL, they will become legally effective 30 days after they are filed with the Secretary of State.

**IV. SUMMARY OF PROPOSED AMENDMENTS**

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<sup>1</sup> The Office of Administrative Law has 30-working days to review the amendments under the APA. If the Office of Administrative Law does not approve the amendments under the APA, it could return them for further Commission action, which could trigger additional public notice and comment periods.

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As we have stated in prior staff reports, the proposed amendments consist largely of limited modifications to existing coastal development permit regulations. The amendments would reorganize sections governing procedures for staff processing of permits and for Commission action on permits in order to provide more understandable, streamlined processes. For example, sections covering treatment of written public comments that are currently scattered throughout the regulations would be combined into one section. Similarly, various sections addressing Commission review of staff recommendations would be combined into one section governing the Commission's vote on staff recommendations. In addition, redundant procedures would be eliminated. For example, the regulations regarding staff's preparation of application summaries would be incorporated into the regulations regarding preparation of staff reports.

The majority of the regulations governing applicant and permittee requirements and permit exclusions would be amended to clarify a number of ambiguities that have become apparent during implementation of the regulations. For example, the revisions would clarify that permit amendments are subject to the same information filing requirements as permit applications, and that approved permits can be extended even if they have not been issued. Clarification of the ambiguities would make the regulations easier for applicants to understand and would save staff time. Several of the proposed revisions introduce new streamlining measures that would save time for applicants. For example, currently, minor amendment and extension applications that qualify for administrative approval are required to be referred to the Commission for hearing if a member of the public objects to administrative approval of the application. The revisions would allow the Executive Director to approve such applications administratively despite receipt of an objection if the Executive Director concludes, subject to Commission review, that the objection does not raise valid Coastal Act issues.

The proposed amendments do not include changes to regulations governing: vested rights, urban land exclusions, administrative permits, de minimis waivers, categorical exclusions, minor adjustments to the coastal zone boundary, revocation of permits, and appeal of locally issued coastal development permits. The staff is in the process of developing proposed changes to regulations governing revocation and appeals. Such changes would be presented to the Commission at a future date for purposes of commencing a separate rulemaking proceeding.<sup>2</sup>

### **V. Minor "15-Day Notice" Modifications to Proposed Amendments**

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<sup>2</sup> The Commission has already adopted amendments to portions of Chapter 5: Subchapter 8 (cease and desist orders) and Subchapter 9 (restoration orders); OAL has approved those changes effective February 1998. The Commission has also recently adopted amendments to portions of Chapters 1-3 (General Provisions, Meetings, and Officers and Staff) of the Commission's regulations. These amendments were submitted to OAL for their review and approval.

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At or subsequent to the June 8, 1998 hearing, staff identified changes to the proposed amendments that triggered the need for an additional 15-day comment period. These changes affect procedural requirements but they are sufficiently related to the original proposed amendments that the public was on notice that they might occur. These changes are identified below. Newly proposed language appears in ***bold italic underline***. Language which would be newly deleted appears in ***~~bold italic strikeout~~***. Language originally proposed for deletion which is now proposed to be retained appears in ***bold italic***. Language originally proposed to be added which is now proposed for deletion appears in ***~~bold italic strikeout~~***.

**A. Changes to Proposed Amendment to Section 13054.**

- 1) **Revise proposed amendment to section 13054 so that the amendment of the term “parcel” is made consistently throughout the section and to clarify that the Executive Director’s authority to waive the requirement to provide stamped envelopes extends only to envelopes addressed to persons identified in subsections (a)(1) and (2).**

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site. Notification Requirements.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for notice to adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartments or condominium and each residence within a condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed.

(2) the addresses of all owners of and all parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel ***of real property of record*** on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s). ~~the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited.~~

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\_\_\_ This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above. ~~parcels described above.~~ Separate stamped envelopes shall be addressed to "owner," ~~and to~~ "occupant," or the name of the interested person, as applicable. ~~except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel.~~ The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement for addresses identified under subsections (a)(1) and (2) above and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations. ~~upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file.~~

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

(~~b~~d) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also ~~and~~ as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to ~~so post the completed notice form and~~ sign the declaration of posting, the executive director of the commission shall refuse to file the application, ~~or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.~~

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

Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

**2) Summary of Reason for Changes to Proposed Amendment to Section 13054**

As indicated in the initial statement of reasons for the amendments, the revisions to section 13054 are intended to clarify that the term "parcel" as used in this section refers to real property of record, not an assessor's tax parcel. The amendments as initially drafted clarified the term "parcel" in subsection (a)(1) but did not include a parallel change in subsection (a)(2). The above revision makes the parallel change in subsection (a)(2). The revision within subsection (b) is necessary in light of the changes made at the June 8 hearing to section 13063. As explained below, the changes to that section revise the proposed amendments so as to allow the executive director to substitute newspaper notice for direct mailed notice only for neighboring property owners and residents. Section 13054 requires applicants to provide stamped envelopes not only for neighboring landowners and residents but also for people who the applicant knows are interested, such as people who testified at local level hearings. Under the changes to section 13063, the executive director is required to send direct mailed notice to persons the applicant knows to be interested. Therefore, section 13054 should be revised to clarify that the Executive Director cannot waive the requirement to provide envelopes for such persons.

**B. Changes to Proposed Amendment to Section 13063.**

- 1) Revise proposed amendment to section 13063 regarding distribution of notice as follows so that only property owners and occupants within 100 feet of the perimeter of the parcel of real property of record may receive substitute newspaper notice rather than direct mailed notice:**

§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall provide mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, to all persons who have requested it, and to all persons known or thought by the executive director to have a particular interest in the application, including those specified in Section 13054(a).; The notice shall contain the following elements:

(1) ~~the filing of the application pursuant to Section 13056;~~ (2) ~~the~~ The number assigned to the application;

(3) ~~a~~ A description of the development and its proposed location;

(4) ~~The~~ The date, time and place at which the application will be heard by the commission;

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~~(54) ¶The general procedure of the commission concerning hearings and action on applications and;~~

~~(65) ¶The direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the California Coastal Act of 1976; and that testimony relating solely to neighborhood and local concerns is not relevant and will not be permitted by the chairperson.~~

(6) A statement that staff reports will be distributed as set forth in section 13059.

~~(b) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall also mail the written notice identified in subsection (a) to all other persons known to have a particular interest in the application, including those specified in section 13054(a). The executive director may instead direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written notice required by this subsection if the executive director determines:~~

~~(b) In lieu of providing mailed notice to persons specified in section 13054(a)(1)-(2) as required by subsection (a) above, the executive director may direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written mailed notice if the executive director determines:~~

~~(1) It is reasonable to expect adequate or better notice to interested parties through publication; and~~

~~(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.~~

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

~~(c) Where a public agency or other person identified in this section receives the notice required by sections 13015-13017, a separate notice is not required pursuant to this section.~~

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

**2) Summary of Reason for Changes to Proposed Amendment to Section 13063**

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The suggested revisions to section 13063 of the Commission's regulations include the ability of the executive director, in specific circumstances, to direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project rather than mail individual notice to all known interested persons. As further revised, proposed section 13063 would instruct that only the two categories of known interested persons identified in subsections 13054(a)(1) and (2), i.e., property owners and occupants within 100 feet of the perimeter of the parcel of real property of record, may qualify for the above-identified substitute notice. The applicant, the affected local government, all persons who request notice, those persons who testify at the local level and all other known interested persons would always receive individually mailed notice.

**C. Changes to Proposed Amendment to Section 13090.**

- 1) Revise proposed amendment to section 13090 regarding a Commission vote as indicated below to: (a) add missing words to subsection (a); (b) eliminate an unnecessary reference to the word "final"; (c) conform all references to the "public testimony portion of the public hearing"; (d) replace the word "verbal" with the word "oral"; and (e) reorganize subsection (c) to eliminate unnecessary language and make the subsection easier to understand.**

§ 13090. Voting--After Recommendation.

~~The commission shall not vote upon an application until it has received a staff recommendation under one of the three alternative procedures set forth in Section 13081-13083.~~

(a) A vote on an application may be taken only at a properly noticed public hearing after *the* commission *has* received the *final* staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

(1) If the commission is prepared to vote immediately upon conclusion of the *public testimony portion of the* public hearing, the executive director shall provide an *verbal-oral* recommendation and summary of proposed findings.

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(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a *final* staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) *give due consideration respond to:*

(i) ~~(1)~~ testimony and other evidence presented at the public hearing, and

(ii) ~~(2)~~ comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report.

(3) At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner as provided for staff reports in section 13066. ~~(d) Under either of the two alternative procedures described in subsection (c), Immediately following the presentation of the staff recommendation, the Commission shall obtain public testimony in the manner the persons who testified at the hearing conducted pursuant to section 13066 or their representatives shall have an opportunity to state their views on the recommendation briefly and specifically. The order of presentation shall be the same as that~~ provided for in section 13066.

~~(d)(e)~~ Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1, and 30622, Public Resources Code.

**2) Summary of Reason for Changes to Proposed Amendment to Section 13090**

The existing provisions of section 13090 limit the ability of the Commission to vote on an application until after it has received a staff recommendation. Under both the existing and proposed regulation, a staff recommendation may be provided by the executive director in writing in the staff report, orally upon conclusion of the public testimony portion of the public hearing, or at a subsequent hearing. As further revised, the proposed revisions to section 13090(c) clarify that following the staff recommendation, Commission shall again obtain public testimony from those

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persons identified in section 13066 only if the Commission puts the vote over to a subsequent hearing. The Commission need not again obtain public testimony if the Commission votes at the same meeting public testimony has already been obtained. The additional revisions would also conform all references to the "public testimony portion of the public hearing in proposed subsections (b) and (c). Finally, the additional revisions would: (a) add missing words to subsection (a); (b) eliminate an undefined reference to the word "final" in subsection (a) and (c); (c) replace the word "verbal" with the word "oral" in subsection (c); and (d) replace the phrase "give due consideration" with the phrase "respond." These additional revisions would eliminate ambiguity and improve the clarity of proposed section 13090.

**D. Changes to Proposed Amendment to Section 13109.5**

**1) Revise proposed amendment to section 13109.5 regarding the hearing on reconsideration requests to eliminate a proposed change in a cross-reference:**

§ 13109.5. Hearing on Reconsideration.

(a) The executive director shall schedule a hearing on the reconsideration request ~~At the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. to the applicant and all persons the executive director has reason to know would be interested in the permit reconsideration, t~~The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original ~~regional commission or~~ commission decision shall be afforded a reasonable time to address the merits of the request.

(c) ~~The commission shall vote on the request at the same meeting.~~

(~~d~~) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, ~~it shall be considered a new permit application and the application shall be processed as a new application in accordance with Ssections 13050-13120 and Ssections 1315613145-~~13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 30621 and 30627, Public Resources Code.

**2) Summary of Reason for Change to Proposed Amendment to Section 13109.5**

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The change to proposed section 13109.5 would eliminate an incorrect cross-reference contained within the proposed regulation. As further revised to eliminate the proposed incorrect change to cross-references, the revised reference would return to the language of the existing regulation.

**E. Changes to Proposed Amendment to Section 13166.**

- 1) Revise proposed amendment to section 13166 to clarify the definition of the term “material amendment” in subsection (b), insert a nonsubstantial clarifying edit to subsection (a)(1), and eliminate repetitiveness in subsection (c).**

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) ~~Applications for amendments to previously approved developments shall be filed with the commission.~~ ~~(1) The executive director shall reject a~~ An application for an amendment to an approved permit shall be rejected if he or she determines that in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of an partially approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. *If timely submitted, t*The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

(2b) For those applications accepted, if the executive director shall determines that whether or not a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources *or and* public access to and along the shoreline, the amendment shall be deemed is a material amendment touching to the permit. Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all persons ~~parties~~ the executive director has reason to know may be interested in the application.

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(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing/publishing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of objection to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

~~(3c) If the executive director determines that the proposed amendment is a material change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission in accordance with the procedures of Subchapter 1. after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.~~

~~(4) Unless the proposed amendment has been found to be immaterial, the commission shall~~ **approve the amendment if it finds, determine** by a majority vote of the membership present, ~~whether the proposed development with the proposed amendment is consistent with the requirements~~ **policies of Chapter 3 of the California Coastal Act or a certified local coastal program if applicable.** of 1976. ~~The commission shall approve the amendment if it finds that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject to reasonable conditions. The decision shall be accompanied by findings in accordance with section 13096.~~

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(~~b~~d) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(~~e~~e) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code section 30609.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609, and 30620, Public Resources Code.

**2) Summary of Reason for Changes to Proposed Amendment to Section 13166**

As stated in the initial statement of reasons for this rulemaking, the amendments to section 13166 are intended to define the term "material amendment" as those amendments that have the potential for adverse impacts on coastal resources or public access. This definition parallels the Coastal Act standard for granting of de minimis waivers from permit requirements. The proposed amendments were inadvertently written to define "material amendment" as one that has the potential for adverse impacts to coastal resources and public access rather than coastal resources or public access. The revision corrects this inadvertent error. Subsection 13166(a)(1) is also revised to clarify that an appeal of the executive director's decision to reject an amendment application will only be considered if submitted within 10 days. The revisions as initially drafted stated this but addition of the words "if timely submitted" makes the language even clearer. The revisions to subsection 13166(c) simply improve the readability of the section without changing substantive requirements. The amendments as initially drafted were intended to clarify the standard for Commission approval of amendments while retaining the structure of the subsection. However, upon further review, it appears that retaining the structure of subsection is unnecessary and results in repetition. Therefore, revisions are proposed to eliminate the repetition without affecting the standard for approval of amendments.

**VI. Nonsubstantial/Grammatical Modifications to Proposed Amendments.**

Staff has identified several nonsubstantial changes that should be made to the proposed amendments. These are based in part upon written comments received from the public. These changes do not affect the substance of the proposed amendments -- they do not change requirements applicable to the Commission or the regulated community. Therefore, they can be adopted by the Commission without triggering the need to recirculate the proposed amendments for additional public notice and comment. The modifications are identified below. For clarification, the modifications are divided into those identified in the May 21, 1998 staff report (subpart A below) and those that were made at or after the June 8, 1998 (subpart B below). Newly proposed

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language appears in **bold italic underline**. Language which would be newly deleted appears in **~~bold italic~~**. Language originally proposed for deletion which is now proposed to be retained appears in ***bold italic***. Language originally proposed to be added which is now proposed for deletion appears in **~~bold italic~~**.

**A. Modifications Previously Identified in May 21, 1998 Staff Report**

**1) Revise proposed amendment to Section 13055(g) as follows so that it is easier to understand:**

(g) 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 ~~an application is filed as an administrative calendar application but subsequently scheduled for another calendar~~ by the executive director or ~~removed from the administrative calendar~~ by 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 applicant shall pay the difference between the administrative calendar fee and~~ the regular fee. The regular fee is the fee determined pursuant to sections (a)(2)-(15), (b)-(f) above. The ~~Such~~ 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 that requires~~ payment of the ***additional*** fee prior to issuance of the permit.***

**2) Add word "calendar" to proposed amendment to section 13056(d) as reflected below so that all such references are uniform:**

(d) An applicant may appeal to the commission ~~A~~ a determination by the executive director that an application form is incomplete ~~may be appealed to the commission for its determination as to whether the permit application may be filed.~~ The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) ***calendar*** days and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination. ~~The executive director shall cause a date of receipt stamp to be affixed to all applications for permits on the date they are so received and a stamp of the date of filing on the date they are so filed.~~

- 3) **Revise proposed amendment to Section 13067(c) by separately numbering the requirements for ease of the reader as reflected below:**

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or large materials may satisfy this requirement by: (1) submitting accurate reproductions or photographs of the models or other large materials and ~~by~~ (2) agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

- 4) **Revise proposed amendment to Section 13158(e) as follows, so that it is easier to understand:**

(e) A permit shall not be issued pursuant to section 13158(c) unless the applicant has satisfied all prior to issuance conditions. Prior to issuance conditions are those conditions that are identified in the permit as conditions that must be complied with prior to issuance of the permit. No permit containing conditions that must be satisfied prior to issuance shall be issued for acknowledgment until all such conditions have been satisfied. Following commission approval of a permit that contains prior to issuance conditions, the executive director shall ~~notify send~~ the permit applicant ~~a notice of commission approval that identifies of~~ those conditions that ~~have been designated as prior to issuance conditions. must be satisfied before the permit can be issued for acknowledgment.~~

- 5) **To reflect a legislative renumbering within section 21080.5 of the California Environmental Quality Act ("CEQA"), change the CEQA citation in section 13162 as follows:**

§ 13162. Notice of Permits.

Notice of the commission approval issuance of a permit shall also be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code section 21080.5(~~bd~~)(~~#2~~)(E).

- 6) **Replace the phrases: "the Coastal Act of 1976," "the California Coastal Act," and "the California Coastal Act of 1976" with the phrase: "the Coastal Act" in all sections that are proposed to be amended.**

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- 7) **Revise the format of proposed amendment to Section 13055(fees) to set forth permit application fees in a tabular form.**

**B. Modifications Made At or After the June 8, 1998 Hearing**

- 1) **Make the proposed amendment to section 13053(e) more specific by inserting the relevant subsection of Government Code Section 65941 as follows:**

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c)

- 2) **Revise amendment to § 13055(a)(12) to eliminate the term “standard” because it is unnecessary.**

(a) Permit filing and processing fees, ~~to be paid by check or money order at the time of the filing of the permit application,~~ shall be as follows:

.....

(123) Two hundred dollars (\$200) for a “de minimis” waiver of a coastal development permit application pursuant to section 30624.7 of the Coastal Act and for a “~~standard~~” waiver pursuant to sections 13250(c) and 13253(c) of these regulations. . . .

- 3) **Revise proposed amendment to subsections (a)(1) and (2) of Section 13056 regarding the filing of permit applications to eliminate unnecessary words and make those subsections easier to understand:**

(a) A permit application shall be submitted on the form ~~or format~~ issued pursuant to Sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to Section 13055, shall be deemed 'filed' after having been received and found in proper order by the executive director of the commission. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:

(1) A date of receipt reflecting the date they are ~~or were~~ received; and

(2) A date of filing reflecting the date it is ~~or was~~ filed.

- 4) **Revise proposed amendment to subsection (b) and (c) of Section 13056.1 regarding reapplication so that the subsections are easier to understand:**

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§ ~~13109~~ 13056.1. Reapplication

(b) ~~The executive director shall reject the application for filing when~~ If the executive director ~~has~~ determined~~s~~ that an application is for “substantially the same” development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, ~~the executive director shall reject the application for filing.~~

(c) ~~Where~~ If the executive director ~~has~~ determined~~s~~ that ~~the an~~ application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

- 5) Revise proposed amendment to Section 13057 to: (a) more clearly reflect that the staff report will be in writing; (b) correct the citation to CEQA in section 13057(c)(2) which has been renumbered; and (c) add a missing word to subsection (c)(5):**

§ 13057. ~~Contents~~ Preparation of Staff Reports

(a) The executive director shall prepare a staff *written* report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the California Coastal Act of 1976;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the California Coastal Act of 1976;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the California Coastal Act of 1976;

(6) Staff's recommendation, including specific ~~written~~ findings, prepared in accordance with subsection (c).

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...

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific ~~written~~ findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the California Coastal Act of 1976 including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific ~~written~~ findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(~~i~~)(A) of the Public Resources Code.

(3) ~~Written~~ Responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that *the* development will be in accordance with the Coastal Act.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607, and 30620, Public Resources Code.

- 6) Revise proposed amendment to Section 13072(b) regarding amended applications to make the section easier to understand and to reference “the” public hearing rather than “a” public hearing, consistent with subsection (a):**

§ 13072. Procedures for Amended Application.

(b) If at *a the* public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the commission may vote on the amended application at that public hearing *where if*:

(1) Adequate public notice has already been provided and

(2) The proposed amended project was adequately reviewed during *a the* public hearing.

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Note: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

**7) Revise proposed amendment to Section 13103 regarding hearings on consent calendar items so that the section is easier to understand:**

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners ~~object to any item on the consent calendar and request that such an item be processed individually as a separate application, scheduled for public hearing on the regular permit calendar, such the~~ item shall be removed from the consent calendar ~~and shall thenceforth be processed as a single application.~~ If any item is removed from the consent calendar, the public hearing ~~on said the item shall ordinarily be deemed~~ continued until it can be scheduled ~~for an individual public hearing on the regular permit calendar.~~

**8) Revise proposed amendment to section 13109.2 regarding initiation of reconsideration proceedings to clarify in subsection (a) which district office the reconsideration request should be directed to and to add a missing word in subsection (b):**

(a) Any time within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the ~~regional~~ commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the ~~executive director of the commission~~ appropriate district office at which the original permit application was filed within 30 days of the final vote.

(b) The executive director shall prepare a staff report with a recommendation on the merits of the request for reconsideration. The staff report shall analyze whether the request satisfies the grounds for reconsideration provided in Public Resources Code section 30627. The staff report shall be distributed to the persons and in the manner provided for in section 13059.

**VII. MATERIALS AVAILABLE FOR REVIEW UPON REQUEST**

The following documents concerning the proposed amendments are available upon request (by contacting Jeff Staben at (415) 904-5220):

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- 1) Staff Report dated May 21, 1998, containing copies of, and staff responses to, comments received prior to May 21, 1998,
- 2) Notice of the Commission's Intent to Amend Portions of Chapters 5 and 6 of the Commission's Regulations.
- 3) Initial Statement of Reasons for proposed revisions to portions of Chapters 5 and 6 of the Commission's regulations.
- 4) "Testimony on Commission Staff-Proposed Revisions and Petition for Rulemaking," submitted by Norbert and Stephanie Dall, dated May 30, 1998 (received in the Commission's offices on June 4, 1998)