

28. EMERGENCY AMENDMENT AND REPEAL OF REGULATIONS IN 2 CAL. ADM. CODE SECTIONS 2901-2915 AND 2920-2923 REGARDING THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS - W 20528.

After consideration of Calendar Item 26 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT AN EMERGENCY EXISTS WITHIN THE MEANING OF SECTION 11421(b) OF THE ADMINISTRATIVE PROCEDURE ACT RELATIVE TO CHANGES IN RULES AND REGULATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, THE STATE GUIDELINES; AND CHAPTER 688, STATUTES OF 1973.
2. ADOPTS, UNDER SUCH EMERGENCY FINDING, THE PROPOSED CHANGES IN REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; HAVING TO DO WITH OBJECTIVES, CRITERIA AND PROCEDURES FOR EVALUATION OF PROJECTS AND THE PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.
3. DETERMINES THAT THERE ARE NO NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO SECTION 2231 OF THE REVENUE AND TAXATION CODE.
4. AUTHORIZES THE DIVISION TO TAKE SUCH STEPS AS MAY BE NECESSARY AND APPROPRIATE, INCLUDING PUBLICATION AND MAILING, TO MAKE PERMANENT SAID CHANGES IN RULES AND REGULATIONS, PURSUANT TO SAID ADMINISTRATIVE PROCEDURES ACT, COVERING THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.

Attachment:

Calendar Item 26 (12 pages)

EMERGENCY AMENDMENT AND REPEAL OF REGULATIONS IN 2 CAL. ADM. CODE
SECTIONS 2901-2915 AND 2920-2923 REGARDING THE
EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS

On September 21, 1973, the Governor approved emergency legislation (Chapter 688/1973) which made important amendments to Public Resources Code Sections 6370 and 6371. In effect, the new law makes the Commission's environmental procedures for leasing State lands subject to the California Environmental Quality Act (CEQA), whereas, previously Section 6371 controlled. The detailed changes are as follows:

1. In all leasing transactions, there must be compliance with Division 13 of the Public Resources Code (CEQA) and implementing rules and regulations adopted by the Secretary for Resources and by the Commission.
2. Recreational pier permits are no longer entirely exempt from environmental impact report requirements.
3. The Commission is no longer specifically required, as a prerequisite to the issuance of a lease, to make a finding at a public meeting of no significant detrimental environmental effect.
4. The preparation of an environmental impact report by the Commission is no longer required for every lease approval. Under CEQA, various exemptions will now apply and the lead agency principle will permit preparation of the report by others, where mutually agreeable.

As a result of the foregoing, it is necessary that the Commission's regulations be amended on an emergency basis in order to reflect the changes in procedures. Accordingly, the Division recommends:

1. Finding that an emergency, within the meaning of Section 11421(b) of the Administrative Procedure Act (A.P.A.) exists;
2. Adoption, on an emergency basis, of the Amendments to and Repeal of Regulations attached as Exhibit "A" and filing same as required by A.P.A.; and
3. Authorization for the Division to undertake, pursuant to the regular procedures in the Administrative Procedure Act, the steps necessary, including publication and mailing, to adopt within 120 days permanent regulations.

Section 11421(b) of the A.P.A. allows emergency procedures when necessary for the immediate preservation of the general welfare. The facts constituting an emergency within this meaning of the Administrative Procedure Act are as follows:

CALENDAR ITEM NO. 26. (CONTD)

1. The Commission's leasing functions cover mineral extraction operations, utility lines, sewer outfalls, structures and rights-of-way for oil and gas pipelines and other matters bearing upon the welfare of the people of the State. If this leasing function is hindered, delayed or interfered with for any period of time, then an emergency exists.
2. The enactment of Chapter 688, an emergency law, requires immediate adoption of regulations for implementation thereof in order to follow-through with intent of the Legislature and give meaning to its action.

- EXHIBITS:
- A. Amendments of 2 Cal. Adm. Code, Art. 10 and repeal of Article 11.
 - B. Detailed changes and amendments to Article 10 and repeal of Article 11.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN EMERGENCY EXISTS WITHIN THE MEANING OF SECTION 11421(b) OF THE ADMINISTRATIVE PROCEDURE ACT RELATIVE TO CHANGES IN RULES AND REGULATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, THE STATE GUIDELINES; AND CHAPTER 688, STATUTES OF 1973.
2. ADOPT, UNDER SUCH EMERGENCY FINDING, THE PROPOSED CHANGES IN REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; HAVING TO DO WITH OBJECTIVES, CRITERIA AND PROCEDURES FOR EVALUATION OF PROJECTS AND THE PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.
3. DETERMINE THAT THERE ARE NO NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO SECTION 2231 OF THE REVENUE AND TAXATION CODE.
4. AUTHORIZE THE DIVISION TO TAKE SUCH STEPS AS MAY BE NECESSARY AND APPROPRIATE, INCLUDING PUBLICATION AND MAILING, TO MAKE PERMANENT SAID CHANGES IN RULES AND REGULATIONS, PURSUANT TO SAID ADMINISTRATIVE PROCEDURES ACT, COVERING THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.

Attachment: Exhibit "A"

EXHIBIT "A"

W 20528

ORDER BY THE STATE LANDS COMMISSION RELATING TO THE
EMERGENCY REPEAL AND ADOPTING AMENDMENTS TO
REGULATIONS REGARDING THE EVALUATION OF PROJECTS AND
PREPARATION OF ENVIRONMENTAL IMPACT REPORTS

After proceedings had in accordance with provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5), and pursuant to authority granted in Sections 6371 and 21082 of the Public Resources Code, and to implement, interpret, or make specific Sections 6370 through 6377, and 21000 through 21174 of the Public Resources Code consistent with the Guidelines for Implementation of the California Environmental Quality Act of 1970 (Div. 6, Title 14, California Administrative Code) adopted by the California Resources Agency pursuant to said Section 21083 of the Public Resources Code, and more specifically to implement the provisions of Chapter 688, Statutes of 1973, the California State Lands Commission hereby adopts and repeals its regulations in California Administrative Code, Title 2, Division 3, as follows:

ARTICLE 10

REGULATIONS FOR PRESERVING AND ENHANCING THE ENVIRONMENT

2901. AUTHORITY AND PURPOSE.

The authorities for regulations contained in this article are Division 13 of the Public Resources Code, California Environmental Quality Act (CEQA); Division 6, Part 1, Chapter 4.5 of the Public Resources Code, hereafter referred to as State Guidelines; and the purpose is to prescribe implementing regulations and procedures.

2902. APPLICABILITY.

This article is applicable to all actions of the Commission except where inconsistent with law and regulations of the Commission.

2903. PURPOSE AND SCOPE.

(a) Purpose. To prescribe procedures for the orderly evaluation of projects coming before the Commission and for the preparation of environmental documents.

(b) Scope. These regulations do not necessarily repeat definitions, policies, and procedures contained in CEQA or in the State Guidelines; they should be read together.

2904. INTENT.

It is the intent of the Commission in any action it takes to comply fully with the legislative findings and declarations set forth in Public Resources Code Sections 21000 and 21001. To that end, this article and the procedures set forth herein shall be administered to effect that legislative policy.

2905. DEFINITIONS AND ABBREVIATIONS.

Unless otherwise defined herein, words used in this article shall have the meaning ascribed to them in the State Guidelines. In addition, the following definitions not contained in the State Guidelines are:

- (a) Commission - The California State Lands Commission.
- (b) Division - The State Lands Division.
- (c) Applicant - A person or other entity desiring action by the Commission.
- (d) Application - A written proposal submitted by an Applicant for Commission action.
- (e) EDS - Environmental Data Statement which is used by the Division in conducting its initial studies.
- (f) DEIR - Draft Environmental Impact Report.
- (g) EIR - Environmental Impact Report.
- (h) Environmental Documents - Any document or documentation affecting Commission action, including EDS's, DEIR's, EIR's, Negative Declarations, proposed Exemptions, Notices of Completion and Notices of Determination.
- (i) Calendar Item - A statement of facts and staff recommendation for Commission action.

2906. LEAD AGENCY.

(a) Public Agency applicants for Commission action shall be the Lead Agency for the project, if no other agency is so designated, and will perform the duties prescribed in Section 15066 of State Guidelines. (See 14 Cal. Adm. Code 15038 for definition of public agency.)

(b) The State Lands Commission shall be the Lead Agency for projects to be undertaken by a non-governmental person who is an applicant for Commission action, unless another agency has been so designated, and for projects to be directly undertaken by the Commission.

2907. ENVIRONMENTAL DOCUMENTS.

Unless specifically exempt by law, State Guidelines or these Regulations, an applicant for Commission action under this article shall prepare an environmental document according to the following schedule:

(a) When Commission is Not the Lead Agency

Applicants for Commission action that may have a significant effect on the environment, and not otherwise exempt, shall prepare, or cause to be prepared, a Draft Environmental Impact Report or Negative Declaration and forward the requisite numbers of copies to:

- (1) Office of Planning and Research (State Clearinghouse), Office of the Governor.
- (2) The appropriate metropolitan Clearinghouse.
- (3) The State Lands Division, as an exhibit to the Application for Commission action.

When circulation by the Clearinghouse is completed, the Applicant shall incorporate all comments received into a Final EIR and forward two copies to the Division, together with a certified copy of the Notice of Determination.

(b) When Commission is the Lead Agency

An Applicant for Commission action not otherwise exempt shall initially prepare, or cause to be prepared, an Environmental Data Statement and file two copies with the Application for Commission action. The EDS shall contain the information necessary to enable the Commission to evaluate the project and to prepare, or cause to be prepared, a DEIR, a Negative Declaration or take other appropriate action. Content and criteria of the EDS shall be as follows:

(1) Project and Its Location. Give the name of the project and its location. Generally, two maps or drawings should be submitted. One should show the general vicinity of the proposed project; i.e., nearby landmarks, roads, and other features that would make clear its relation to the general vicinity. The other, preferably topographic, should show the project in detail; i.e., the location of buildings, fills, dredge area, dikes, public access area, etc.

(2) Statement of Purpose of the Project. Briefly describe what the project is intended to achieve (e.g., new piers for shipping, new park, shoreline development, etc.)

(3) General Description of the Project. Describe the principal features of the project (e.g., exact size of proposed fills, exact scope of proposed dredging, extent of proposed shoreline public access, etc.). Technical engineering detail is not required; the goal is to provide a clear, concise description of the work proposed.

(4) Present Environment. Describe the physical environment as it now exists, before commencement of the project. Describe both the immediate area of the project and all nearby areas that the project might affect. Provide sufficient information (e.g., existing plants and wildlife, present uses of the property, etc.) to permit a clear evaluation of the environmental alterations that the proposed project would make. Present social and economic conditions should be discussed.

(5) Environmental Impact of the Proposed Project. Describe all the environmental impacts, beneficial and adverse, anticipated from the project. Both short-term and long-term effects should be described. For example, a proposed project might require construction of a sewage outfall line through a marsh. The primary environmental impact would be destruction of marsh plants and loss of wildlife habitat in the area through which a trench would be dug for the sewer line. This impact would be only short-term if the marsh could be restored after the sewer line had been installed. But a secondary, longer-range environmental effect of the project might be additional development in nearby open areas, development that could not take place without adequate sewer service.

(6) Any Adverse Environmental Effects That Cannot be Avoided If the Proposal is Implemented. Describe (i) significant environmental impacts of the proposed project that are harmful but cannot be reduced in severity and (ii) those that are harmful and can be reduced but not eliminated. If the project involves significant and harmful environmental impacts that cannot be eliminated or substantially reduced, explain why the project should be allowed to proceed. Significant and adverse environmental impacts include reducing the surface area or water volume of a bay, increasing air or water pollution, producing hazards to health, damaging the habitats of fish and wildlife, etc.

(7) Mitigation Measures Proposed to Minimize the Impact. Describe measures proposed to mitigate any harmful environmental effects of the proposed project. Explain whether the proposed mitigation significantly reduces the harmful environmental impacts. If several alternatives for mitigation have been considered, describe them separately and briefly, and explain why the recommended alternative was chosen.

(8) Alternatives to the Proposed Action. Describe (i) alternatives to the proposed project, e.g., building it in a different location, deferring construction, not building it at all (this alternative must be specifically discussed); and (ii) alternative designs for the project (e.g., different size, different shape, different construction material, etc.) and explain why the proposed alternative was chosen.

(9) The Relation Between Local Short-term Uses of Man's Environment and the Maintenance and Enhancement of Long-term Productivity. Explain the cumulative and longer-range effects of the proposed project. Do they enhance or do they reduce the state of the physical environment, from the perspective that each generation is trustee of the earth's land, water, and air for future generations? Describe in detail any aspects of the project that narrow the range of options for future generations.

(10) Any Irreversible Environmental Changes That Would be Involved if the Proposed Action Should be Implemented. Describe any irretrievable commitment of resources involved in the project. Examples: Filling, or leveling a hill, may generally be considered permanent.

(11) The Growth-Inducing Impact of the Proposed Action. Discuss the ways in which the proposed action could affect, directly or indirectly, economic or population growth. Discuss also the probable impacts, both desirable and undesirable, on the total environment of such growth. If the proposed action will have no growth-inducing impact, this should be stated and the reason given for the conclusion.

(12) Water Quality Aspects. With respect to water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards, reference to the certification should be made.

(13) Economic and Social Factors. Describe these factors if present and explain how they relate to the environmental impacts of the proposed action and to the alternatives.

In addition, the EDS shall discuss the extent of the conformity of the proposed project with all legally applicable environmental quality standards. The EDS shall deal fully with not only the alternative courses of action to the proposal, but also, to the maximum extent practicable, the environmental effects of each alternative. Further, the EDS shall specifically discuss plans for future development related to the application under consideration. The above-listed factors should be considered to be illustrative and not necessarily inclusive. The EDS shall include a list of persons responsible and their qualifications, for compiling the information as to a given area of environmental concern, and a discussion of the methods and procedures used to produce the information.

(c) An applicant may elect to file the requisite number of copies of a complete Draft Environmental Impact Report, in lieu of the EDS, if the Division determines such action to be acceptable.

2908. DETERMINING SIGNIFICANT EFFECT.

When the Commission is Lead Agency, the Division shall conduct an initial study in order to determine whether the project may have a significant effect on the environment. If the Division recommends and the Commission finds that the proposed action will have no possible significant effect, no further action under CEQA or these regulations is required.

2909. NEGATIVE DECLARATION.

(a) Applicants for Commission action claiming that a proposal is a non-project, a ministerial project, an emergency project, or is categorically exempt, must provide documentary evidence to show such status as an exhibit to the Application. If any of the conditions enumerated in 14 Cal. Adm. Code 15082 are found to exist, and the proposal is not otherwise exempt, the Division will then initially determine whether a Negative Declaration is appropriate and make recommendation to the Commission.

(b) A Negative Declaration is required if a project which ordinarily would be expected to have a significant effect on the environment is surrounded by peculiar circumstances which nullifies such significance. While the Negative Declaration should not exceed one page in length, it should be supported by ample background and study material.

2910. EXEMPTIONS FROM REQUIREMENTS OF CEQA.

The following activities or projects which may become the subject of a proposed Commission action are declared to be exempt from the provisions of CEQA; provided that such action shall not authorize substantial change in an existing structure or facility, or in the use thereof.

(a) Categorical Exemptions

Class 1. Any existing structure or facility that is in an acceptable state of repair and there is no evidence of record to show injury to adjacent property, shoreline erosion, or other types of environmental degradation. This is intended to cover actions of the Commission which in effect authorize continued operation, repair, maintenance or minor alteration of any existing public or private structure, facility, land fill or equipment which meets the above criteria.

Class 2. Replacement or reconstruction of an existing structure or facility on the same site and substantially for the same purpose and capacity; including, but not limited to piers, wharves, floats, buried pipelines and appurtenances, aerial cables, conduits, boathouses, bridges, dolphins and roads.

Class 3. New construction of small structures; including, but not limited to:

(1) An uncovered pier, float or dock that will occupy no more than 1,000 square feet of tide and submerged land, including the area of use;

(2) A floating dock or boathouse, restricted to non-commercial or recreational use, that will occupy no more than 3,000 square feet of tide and submerged land, including the area of use;

(3) A single small boat mooring buoy;

(4) A floating platform used solely for swimming;

(5) Buoys for delineating a safety area or designating speed zones; provided that public navigational and fishing rights are not affected.

Class 4. Minor Alterations to Land. Periodic maintenance dredging operations, including, but not limited to, wharf, marina and navigational projects.

Class 5. Minor encroachment permits; including, but not limited to, rebuilding or repair of levees or other protective structure, including minor dredging for material.

Class 6. Information Collection.

(1) A core hole drilling operation to obtain foundation design data, to gather geological, physical, chemical, or biological information precedent to environmental clearance; or core hole drilling for purposes of mineral evaluation under Public Resources Code Section 6401(b).

(2) Minor excavation and depositional operation for scientific studies in the aquatic environment.

(b) Ministerial Projects.

(1) Rights-of-Way issued pursuant to Public Utilities Code Sections 7553, 7901, and 10155.

(2) Reservations of lands for highways or for the protection of or material for highways, pursuant to Streets and Highways Code Section 101.5.

(c) Emergency projects as described in 14 Cal. Adm. Code 15071. In addition, a right of entry permit is exempt if the Division determines it to be necessary for investigating the emergency and for implementation of projects (e.g., dike, breakwater, firebreak, etc.) that are found to be necessary to mitigate the emergency.

(d) Non-project. The following types of proposals or activities which may appear on the Commission's agenda are non-projects and therefore exempt:

(1) A sale, lease or permit which does not authorize or present a plan for any physical structure, improvement or change in the environmental setting. Examples: An ecological preserve; a sale of land to a buyer who certifies that he has no plan for development; a water hole site for the enhancement of wildlife; an underwater park; a wilderness area.

(e) Settlements of title and boundary problems by the Commission and exchanges of land or leases issued in connection therewith are exempt from the provisions of CEQA by Public Resources Code Section 6371.

2911. GENERAL PLAN FOR USE OF LAND.

An Applicant to purchase State land shall submit a general plan which shall be a comprehensive description of the current and proposed use thereof. This description will include, but not necessarily be limited to, the following:

(a) Description of all structures or land improvements that may exist on the State land and their current use.

(b) Dated photographs showing all existing structures and appurtenances and the general area.

(c) Statement of the primary objective, purpose or reason for the proposed use.

(d) Description of proposed construction, to include new structures, land improvements, or alterations to existing improvements, and use.

(e) Plans and elevations of (1) existing structures, and (2) proposed construction.

(f) A copy of the city or county building, variance, or use permit required for all operations and structures, existing or proposed, on the State land.

(g) Beginning and completion dates for proposed construction, prospecting, mining, etc.

An EDS may be required by the Division after the Plan has been reviewed.

2912. TIME ELEMENT FOR THE REVIEW OF EIR'S

Sixty (60) calendar days shall be allowed for the review of DEIR's by public agencies and the general public, and thirty (30) calendar days shall be provided for public and private response to a final EIR before a decision on the project is made by the State Lands Commission.

2913. PUBLIC HEARINGS.

Whenever, due to unusual circumstances, it is determined that a public hearing on the environmental aspects of a proposed Commission action is indicated, the Commission shall determine whether a regular meeting of the Commission will suffice or whether a special hearing at a time and location that will elicit the greatest response from the affected public is indicated. If a special hearing is found desirable, it shall be held in full compliance with Section 15165 of the Guidelines.

2914. EXPENSES

An Applicant for a Commission action will be required to defray all costs and expenses in connection therewith, including the cost of surveys to provide environmental data, and expenses incurred in preparing, processing or reviewing an environmental document. Such requirement is a condition for the action requested and therefore not mandated within the purview of Revenue and Taxation Code Section 2231. The following minimum rates are established and they do not include expenses that are unrelated to environmental considerations.

(a) Non-governmental Persons Applying for Commission Action.

<u>Type of Action</u>	<u>Minimum Amount</u>
Commercial or Industrial Lease	\$200
Non-Commercial Lease	160
Right-of-Way	160
Grazing or Agricultural Lease	100
Salvage Permit	160
Protective Structure Permit	200
Recreational Pier or Use Permit	80
Extractive and Exploratory Lease or Permit	100
Action Not Listed Above	100

(b) The above rates apply even though the Applicant provides an EDS which must be evaluated and processed by the Division. If the Division is required to prepare or cause to be prepared an EIR without Applicant having submitted an EDS, a minimum initial deposit of \$1,500.00 will be required with the application for Commission action. The costs of preparing and processing a DEIR, EIR or Negative Declaration, as appropriate, shall be paid from such deposit. If the costs exceed the deposit, the Applicant shall remit such excess costs upon demand, and if the actual costs are less than such deposit, the unexpended portion shall be refunded.

(c) The above actions and rates therefore include applications for lease renewals, amendments, assignments or subletting approvals, where such action may cause significant effect to the environment.

2915. AVAILABILITY OF ENVIRONMENTAL DOCUMENTS.

Environmental documents prepared by the Division shall be available for public inspection at the Office of the Division upon request during normal working hours. Copies shall be made available to the general public for the actual cost to the Commission in meeting requests for the copies.

ARTICLE 11

Repeals Article 11 (Sections 2920 to 2923, inclusive).