

MINUTE ITEM

This Calendar Item No. 36
was approved as Minute Item
by the State Lands
Commission by a vote of 4
to 0 at its 8/20/81
meeting.

CALENDAR ITEM

36

8/20/81
W 22649.3
Horn
Mochon
Blazak

REVIEW AND MODIFICATION OF REGULATIONS IN
TITLE 2, DIVISION 3, CHAPTER 1,
ARTICLES 6.5, 10 and 11

Pursuant to the Commission's authorization of January 26, 1981, (Minute Item No. 38) and in compliance with AB 1111 (Government Code Section 11340, et seq.). Staff has conducted a review of the Commission's environmental regulations. In keeping with the spirit and intent of AB1111, staff proposes substantial changes to the regulation, and in the case of Article 6.5 (Coastal Regulations) outright repeal.

Notice of the proposed changes was published in the Notice Register on April 15, 1981. Notices were also published in major regional newspapers and mailed directly to persons who previously expressed interest in these regulations. Public hearings were held in Sacramento, Long Beach, Monterey, and Eureka on June 2, 3, 4, and 9, respectively.

The purpose of these hearings was to provide the public with ample opportunity to make statements, contentions, or arguments, both oral and written, regarding the proposed changes. No persons appeared at the public hearings to offer comments in opposition to the proposals.

A summary of the process called a "Final Statement of Reasons" is attached hereto as Exhibit "B" and by reference made a part hereof.

Based upon the materials contained in the rule-making file, together with comments received during the public hearing process, staff believes that the regulations proposed for adoption meet the statutory requirements of "necessity", "authority", "clarity", "consistency" and "reference".

- EXHIBITS:
- A. Proposed changes to Title 2, Division 3, Chapter 1, Articles 6.5, 10 and 11.
 - B. Final Statement of Reasons.

CALENDAR ITEM NO. 36 (CONTD)

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT THERE HAS BEEN COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.4 (PUBLICATION AND NOTICE) AND 11349.7 (REVIEW) FOR THE PURPOSE OF MODIFYING ITS REGULATIONS IN TITLE 2, DIVISION 3, CHAPTER 1.
2. DETERMINE THAT THERE ARE NO STATE-MANDATED COSTS OR SAVINGS TO ANY STATE AGENCIES OR LOCAL AGENCIES OR SCHOOL DISTRICTS IN THESE REGULATIONS THAT REQUIRES REIMBURSEMENT UNDER SECTION 2231 OF THE REVENUE AND TAXATION CODE INASMUCH AS COMPLIANCE WITH THESE REGULATIONS BY GOVERNMENTAL ENTITIES IS OPTIONAL.
3. APPROVE FOR FILING WITH THE OFFICE OF ADMINISTRATIVE LAW THE FINAL STATEMENT OF REASONS ATTACHED HERETO AS EXHIBIT "B", WHICH STATEMENT IS MADE IN COMPLIANCE WITH GOVERNMENT CODE SECTION 11346.7.
4. APPROVE AND ADOPT FOR FILING WITH THE OFFICE OF ADMINISTRATIVE LAW THOSE CHANGES TO ITS REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, WHICH CHANGES SHALL BE EFFECTIVE 30 DAYS AFTER FILING WITH THE SECRETARY OF STATE.
5. AUTHORIZE STAFF TO TAKE ALL STEPS NECESSARY TO GIVE EFFECT TO THE ABOVE APPROVALS, DETERMINATIONS AND ADOPTIONS.

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REPEAL ARTICLE 10

EXHIBIT A
W 22649.3

ADOPT NEW ARTICLE 10 TO READ:

ARTICLE 10

REGULATIONS FOR THE IMPLEMENTATION OF THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

2901. Authority and Purpose

These regulations are promulgated pursuant to the requirements of Section 21082 of the Public Resources Code and Section 15050 of the California Administrative Code to provide the State Lands Commission with definitions and procedures for orderly and consistent evaluations of projects that are subject to the requirements of the California Environmental Quality Act. (CEQA) (Public Resources Code Sections 21000, et seq.).

Note: Authority cited: Public Resources Code Section (hereafter PRC) §21082.

Reference: 14 California Administrative Code Section (hereafter CAC) §15050.

2902. Applicability of the State EIR Guidelines

The State EIR Guidelines (14 California Administrative Code Sections 15000, et seq.) are hereby incorporated by reference as though set forth herein in full.

Note: Authority cited: PRC 21082, 21083.

Reference: CAC §15050(e).

2904. Statutory Exemptions

The following Commission activity shall be considered ministerial:

The issuance of a patent upon presentation of a valid Certificate of Purchase.

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Note: Authority cited: PRC 21082, CAC 15073(a).

Reference: PRC 7729, CAC 15050(c)(1)(B), 15073(a).

2905. Categorical Exemptions

(a) Class 1: Existing Facilities

(1) Remedial, maintenance and abandonment work on oil and gas and geothermal wells involving the alteration of well casings, such as perforating, cementing, casing repair or replacement, installation or removal of down-hole production equipment, cement plugs, bridge plugs, and permanent packers or packers set to isolate producing intervals.

(2) Commission action involving existing structure or facility that is in an acceptable state of repair. 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 or facility, land fill or equipment which meets the above criteria. The Commission may exclude from this class any structure that has been erected without written authorization in the form of a lease or permit from the State Lands Commission.

(b) Class 2: Replacement or Reconstruction

Replacement or reconstruction of deteriorated or damaged structures on State lands.

(c) Class 3: New Construction of Small Structures

(1) A pier, floating dock, or boathouse, that will occupy no more than 3,000 square feet of State land.

(2) A pier, floating dock, or boathouse, for non-commercial use by more than one applicant, applying jointly,

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where all the applicants are littoral (next to the shore) landowners, such as homeowner's associations, and the littoral parcels are next to one another, that will occupy the following areas of State lands:

<u>Number of Adjacent and Littoral Landowners</u>	<u>Area of Use</u>
2	4,000 sq. ft. or less
3	4,750 sq. ft. or less
4	5,250 sq. ft. or less
5 or more	6,000 sq. ft. or less

(3) Small boat mooring buoys.

(4) A floating platform used solely for swimming.

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

(d) Class 4: Minor Alteration to Land

(1) Grazing of livestock where disturbance of soil does not occur.

(2) Rebuilding or repair of levees or other protective structure. Minor dredging of material for above purposes.

(3) Removal of derelict or hazardous structures on State waterways or school lands.

(4) Minor periodic maintenance dredging for existing docks and marinas.

(5) Replanting of timber on previously harvested, burned, or barren areas of school lands where extensive site preparation is not permitted.

(e) Class 6: Information Collection

(1) Core hole drilling operations to obtain foundation design data, to gather data and information for environmental documentation where minimal or no disturbance of the land surface results.

(2) Core hole drilling for the purposes of mineral evaluation pursuant to Public Resources Code Section 6401(b) where minimal or no disturbance of the land surface results.

(3) Surface or underwater biological, geological, geophysical, cultural (archeological/historical), and geochemical surveys where minimal or no disturbance of the land surface results.

(4) Temperature survey holes where minimal disturbance of the surface results.

(5) Wind or water current, temperature, or other monitoring devices.

(6) Salvage exploration where no disturbance of the environment is contemplated.

(f) Class 7: Actions by Regulatory Agencies for Protection of Natural Resources

(1) Lease or permits to public agencies or conservation organizations for wildlife preservation activities, or to the State Department of Parks and Recreation for historical or other cultural activities. Construction activities are not included in this exemption.

(2) Timber harvesting of burned or diseased timber on school lands in accordance with the Forest Practices Act (Public Resources Code, Sections 4511, et seq.).

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(g) Class 16: Transfer of Ownership of Land in
Order to Create Parks

Lease and permits to persons and public agencies for the development of public parks including alterations to the land for such purposes.

Note: Authority cited: PRC §21084; CAC 15100 et seq.

Reference: CAC 15100, 15100.2(c), 15101 (Class 1),
15102 (Class 2), 15102 (Class 3),
15104 (Class 4), 15106 (Class 6),
15107 (Class 7), 15116 (Class 16).

2906. Adequate Time for Review and Comment

The review period for the final EIR shall be 15 days.

Note: Authority cited: PRC 21104, CAC 15160(a).

Reference: CAC 15160(a).

2907. Reimbursement for the Preparation of Environmental Documents

Reimbursement for environmental processing costs to be charged any applicants including the costs of preparing environmental documents for a lease or permit shall be based upon actual costs connected with such processing costs. Additional information relative to the collection of these costs may be found in Article 1 of this Chapter.

Note: Authority cited: PRC 21089.

Reference: CAC 15053.

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REPEAL ARTICLE 11

ADOPT NEW ARTICLE 11 TO READ:

ARTICLE 11

REGULATIONS PROTECTING ENVIRONMENTALLY SIGNIFICANT LANDS.

2951. Authority and Purpose

These regulations are adopted pursuant to Public Resources Code Section 6370 in order to provide for the permanent protection of lands within Commission jurisdiction which possess significant environmental values.

Note: Authority cited: Public Resources Code Section (hereafter PRC), §6370; §6370.1.

Reference: PRC §6370; §6370.1.

2952. Significant Lands Inventory

Pursuant to Public Resources Code Section 6370.2, the Commission prepared a report entitled "Inventory of Unconveyed State School Lands and Tide and Submerged Lands Possessing Significant Environmental Values," approved December 1, 1975. This report shall be available to the public and shall herein be referred to as the "Significant Lands Inventory."

Note: Authority cited: PRC § 6370; §6370.2.

Reference: PRC §6370; §6370.2.

2953. Definitions

(a) Environmentally significant lands: Lands within the jurisdiction of the Commission within which environmentally significant values have been identified.

(b) Significant environmental values: Those features or characteristics which have been identified pursuant to Public Resources Code Section 6370.1, the criteria for which are set forth in the Significant Lands Inventory.

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(c) Use Classification: A classification system designed to provide permanent protection to identify significant environmental values, more particularly described in the Significant Lands Inventory.

Note: Authority cited: PRC §6370; § 6370.1.

Reference: PRC §6370; §6370.1.

2954. Permanent Protection of Environmentally Significant Lands Through CEQA

Projects which will affect environmentally significant lands will be subject to review by the use of the CEQA process under the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.); the State EIR Guidelines (14 California Administrative Code Sections 15000, et seq.); and the Commission's Regulations for the Implementation of the California Environmental Quality Act (Article 10 of this Chapter).

In order to provide permanent protection to environmentally significant values, projects must be designed to be consistent with the use classifications assigned under the Significant Lands Inventory or pursuant to Public Resources Code Section 6219. If such consistency cannot be accomplished through mitigation or alteration of the project, the project must be denied. The Commission may not apply Section 15089 of the State EIR Guidelines, regarding a Statement of Overriding Considerations, to approve a project which cannot be made consistent with the use classification assigned to the subject parcel.

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Note: Authority cited: PRC §6370, §6219.

Reference: PRC § 6370, §6219.

REPEAL ARTICLE 6.5.

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STATEMENT OF REASONS

(Government Code Section 11346.6, 11346.7)

California Administrative Code
Title 2, Division 3, Chapter 1,
Articles 6.5, 10 and 11

Division 6 of the P.R.C. (specifically sections 6205, 6301, 7301, 7361 and 7501) vest the State Lands Commission with exclusive jurisdiction over the State's tidelands, submerged lands, swamp and overflowed lands, "school" and "lieu" land and the activities thereon. P.R.C. sections 6370 et seq., 21000 et seq. (CEQA) and 30402 (Coastal Act) requires the Commission to take into consideration the environmental consequences of its action in the leasing/permitting of State lands.

Pursuant to this authority the Commission has adopted rules and regulations governing the orderly evaluation and protection of significant resources under its jurisdiction.

With the passage of AB 1111 (Chapter 567, Statutes of 1979) the Commission is directed to review its existing regulations to determine if they comport with the criteria set forth in the Statutes (G.C. Section 11349.1). Staff has determined that the regulations as currently in effect, do not meet the statutory standards. Staff has therefore conducted analyses of the Commission's environmentally oriented regulations and has proposed certain changes and in one instance repeal of existing regulations. In its analysis staff has reviewed existing laws and other administrative regulations governing environmental processing of projects.

In arriving at the conclusion to repeal existing Article 6.5 staff examined the provisions of the Coastal Act together with the existing processes set-up at the local, regional and state level for permitting projects within the Coastal Zone. Staff finds that PRC Section 30402 requires the Commission conform its leasing/permitting activities within the Coastal Zone to provisions of the Coastal Act but does not require the Commission to adopt rules and regulations to carry out its duties and responsibilities in such regard. Staff feels that the Commission is carrying out its legal requirements through CEQA and coordinating with local and state bodies involved with carrying out Coastal Act policies. The need for a separate coastal regulation has not been demonstrated.

Article 10 is being modified to incorporate by reference the State EIR Guidelines and to tailor the general provisions of the guidelines to the specific operations of the Commission.

Much of the existing Article 10 is repetitious of the EIR Guidelines and CEQA and should be eliminated.

Article 11 is being modified to relate it to the CEQA process. P.R.C. Section 6370 requires the Commission to adopt regulations necessary to assure permanent protection to those lands identified as containing significant environmental characteristics. Staff has found that the existing CEQA process provides a sound procedure for determining if a proposed project will impact such lands. CEQA also provides a mechanism for mitigating the effects of projects on significant lands.

Unlike CEQA, Article 11 provides that if a project on significant State lands cannot be consistent with the use classification assigned under the Significant Lands Inventory the project must be denied. Through existing processes staff feels that the intent of the Significant Lands Act will be carried out.

On April 15, 1981, notice of proposed changes to the Commission's Administrative Regulations was published in the Notice Register. Concurrently, notice was published in the Sacramento Union, Eureka Times Herald, Monterey Peninsula Herald and the Los Angeles Herald Examiner. Notice was also mailed to those persons who indicated interest in the Commission's environmental regulations (in excess of 200+ persons). In accordance with the published notice, hearings were held in Sacramento on Tuesday June 2, 1981, at 2:00 p.m. and 7:00 p.m.; Long Beach on Wednesday June 3, 1981, at 2:00 p.m. and 7:00 p.m.; on Thursday June 4, 1981 in Monterey at 2:00 p.m. and 7:00 p.m.; and on Tuesday June 9, 1981 in Eureka at 2:00 p.m. and 7:00 p.m. No persons appeared at the hearing to offer comments in opposition to the proposed regulation changes.

The notice provided that written comments would be received by the Commission until June 12, 1981, in order to be considered in the rule-making file. Chevron U.S.A., Inc. asked for and received an extension until July 10, 1981 to make a written response.

Chevron commented only on proposed Section 2954 of Article 11 dealing with denial projects that cannot be made consistent with the use classification assigned to the subject parcel. Chevron argues that such a denial lacks statutory authority or reference. They argue that a balancing of benefits as described in Section 15089 (14 Cal. Adm. Code) is in the best public interest. They argue that harm to the environment does not stand alone in any decision making process regarding land or water use. Chevron went on to suggest amending the section to read as follows, beginning with the second to the last sentence:

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"... If such consistency cannot be accomplished through mitigation or alteration of the project, the project must be denied unless the Commission makes a finding of overriding consideration in accordance with Section 15089 of the State EIR Guidelines..." [Delete rest of paragraph in proposed Section 2954]."

The State Lands Commission's interpretation of P.R.C. Section 6370 is that the Legislature intended that the lands designated by the Commission as possessing significant environmental values would be accorded maximum protection against any environmental damage and would not be subject to the "balancing" provision of CEQA or its implementing guidelines. This interpretation is based upon the following factors.

First, Sections 6370 et seq. were originally passed by the Legislature separately from and were signed into law shortly after initial enactment of CEQA. Section 6370 provides a specific mandate with regard to a particular type of State-owned land, and thus prevails over any inconsistent or less restrictive general legislation.

Second, Section 6370 charges the Commission with a duty to assure permanent protection of lands designated as containing significant environmental values. The clear implication of this language, considered in light of the fact that it was enacted in addition to CEQA legislation, is that such lands were to be accorded protection above and beyond that provided by CEQA.

Therefore, in response to the legislative directive to provide such protection, the Commission feels that it is necessary to require project consistency with use classifications set forth in the Significant Lands Inventory, without reference to balancing of needs or overriding consideration permitted in the normal CEQA process.

While Chevron argues that P.R.C. Section 6370 "simply does not authorize the exclusion of the balancing or weighing of benefits as described in Section 15089 of the State EIR Guidelines"; we believe that Section 6370 expressly does not authorize the balancing of benefits.

For these reasons we feel that Section 2954 as written, correctly interprets and makes specific the legislative mandate in P.R.C. Section 6370.