

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

June 6, 2008

TO: Commissioners and Alternates
FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Ellen Sampson, Staff Counsel (415/352-3610 ellens@bcdc.ca.gov)
SUBJECT: **Staff Report on Proposed Changes in Permit Application Fees and Other Amendments To Title 14, Division 5, Appendix M**
(For Commission consideration on June 19, 2008)

Summary

On May 2, 2008, the Commission published proposed changes to the Commission's permit application fees regulations. On June 19, 2008, the Commission will hold a hearing on these changes. Public comments will be accepted through 5:00 p.m. on Thursday June 19, 2008. The Commission may vote on the proposed regulations at its next meeting.

The goal of the proposed amendments is to attempt to recover 20 percent of the total cost of the Commission's regulatory program as directed by the Legislature. To accomplish this goal, the proposal would change both the fees and the process to periodically revise the fees as needed to achieve the goal. In general, fees for smaller or less costly projects would decrease, while fees for the most expensive projects would increase. The fees would be re-evaluated every five years. The fees could increase or decrease, depending on whether the average fees collected over the prior five years were less than or more than an amount equal to 20 percent of the total cost of the Commission's regulatory program.

Staff Report

Background. The State Legislature has directed the Commission to recover 20 percent of the cost of its regulatory program through the collection of permit application fees. In 2004, the Commission raised its permit fees and provided for an annual adjustment in order to achieve this goal on a year-to-year basis. The existing regulation requires fees to be recalculated every year by comparing the amount of fee revenue taken in for the prior fiscal year with the total regulatory program costs for the new fiscal year. Over the past few years, proposed projects have been low in number and many have been relatively small. As a result, the fee revenues have been lower than expected. Also, each year the Commission's total program costs tended to



Making San Francisco Bay Better

rise. Since 2004 when the current regulation was enacted, the revenue collected has been only about 10 percent of our total program costs.

The Commission staff surveyed a five-year history of major permits, and a two-year history of minor permits and permit amendments. The staff learned that the very largest projects do not occur every year but only periodically, and that the cost for projects of all sizes varies considerably and unpredictably. Further, the permit history showed that unless the fees were revised, the Commission would not likely achieve the 20 percent target revenue in future. This information, along with comments received from a series of public workshops, helped the staff develop the proposed, revised regulation.

Proposal Details. The Commission proposes to change the current schedule of fees in two ways: change the fee structure; and change the way fees would be recalculated to meet the 20 percent target revenue.

Fee Structure. The proposed regulation would create more categories of projects based on the total project cost (TPC). As the TPC increases, so would the application fee. This new array of projects based on TPC would apply to applications for major and most minor permits and for permit amendments. Fees for small minor projects, regionwide permits and time extensions, would be fixed. Fees for lower-cost projects would decrease. Fees for the higher-cost projects, generally over \$10 million, would increase.

The staff expects an increase in the average application fees to generate the 20 percent target revenue. Projects that are smaller or are low cost, however, would experience a decrease in permit fees. Lowering the fees will keep the fees collected in proportion to the cost and type of project. For example, one abbreviated regionwide permit authorizes routine repair and maintenance of outfall pipes, and another regionwide permit authorizes the replacement of those pipes. The existing regulation would require a \$460 application fee for the small repair project, and \$960 to replace the pipe. The staff believes those fees are too high given the minor nature of the work. The new regulation would therefore lower these fees to \$100.

On the other hand, very large or expensive projects currently require a relatively small fee given the extensive work required by the staff and Commission to review, analyze, and approve the project. Generally, the proposed fee schedule would raise fees for projects costing more than \$10 million. The staff generally spends more time with the larger, more complex project applications (such as an application to replace the East Span of the Bay Bridge) than the smaller, lower-cost projects (such as an application for a single boat dock). Larger projects generally raise more issues of law and policy and require more analysis, legal support, staff time spent in meetings and in public hearings and undertaking review of the project for compliance, among other activities. Because the fees would still be a small percentage of the TPC and the net increase in fees over existing levels is an even smaller percentage of TPC, the cost impact would not be significant.

In conclusion, the proposed fee structure would be in better proportion to the amount of staff and Commission time necessary to process the applications, yet is still expected to generate the target revenue over time.

Fee Recalculation at Five-Year Intervals. To achieve the target revenue equal to 20 percent of the Commission's regulatory program costs, the Commission should periodically re-calculate the fees to reflect changes in the Commission's program costs. The proposed regulation would provide for a re-calculation every five years rather than every year. This would allow the collection of fee data over a number of years, would allow the revenues to include the occasional very large projects, and would balance years that experience a low volume of permit applications with higher-volume years.

The proposed formula to recalculate fees is as follows:

1. Identify the average revenue from fees generated over the prior five years;
2. Identify the fiscal year with the highest regulatory program cost from the prior five years and calculate 20 percent of that cost. This is the target revenue;
3. Divide the target revenue by the average fee revenue. This is the "adjustment factor"; and
4. Change the permit application fees by multiplying each fee by the adjustment factor.

Fees could decrease or increase depending on the history of fees and regulatory program costs over five years. If the average revenue generated is within five percent of the target revenue, the fees would not change. The re-calculation of fees would be based on identifiable data (fee revenues collected and the cost of the regulatory program) and would not be a discretionary calculation.

Text of Proposed Changes is Available. The text of the proposed regulatory changes is attached. The text and an initial statement of reasons for the proposed changes are posted on the Commission's web site at www.bcdc.ca.gov or can be obtained by contacting Ellen Sampson of the Commission staff.