

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Chief Counsel Report
(For Commission consideration on January 3, 2019)

This memo summarizes the plans of the Legal Division for the coming year and concentrates on issues beyond the daily legal support for the Executive Director and other staff.

Karen Donovan, BCDC's new Enforcement Attorney, will start at the Commission on January 7th. I will remain involved in enforcement matters both to train and supervise Karen, but I expect that she soon will assume the lead role as Commission enforcement counsel. She will work with enforcement staff to initiate formal enforcement proceedings and to bring those matters to the Enforcement Committee and full Commission for consideration and resolution.

As my role in enforcement matters is reduced, I plan to concentrate on finishing and implementing a comprehensive review of the Commission's regulations. This will prompt a series of rulemaking packages containing proposed amendments to the regulations. Although amendments have been made to various Commission regulations over the years, it appears that most of the regulations have not been reviewed or amended in a systematic way since 1987. For this reason, many of the regulations need to be updated. Some of the changes will be relatively straightforward. For example, the regulations have not been amended to recognize that the Commission has a website, and therefore do not require, or allow for, information or documents to be made available to the public by electronic posting. Similarly, the regulations require that the Commission provide notices or other information solely by first-class mail and do not allow for email communication. However, my review of many of the regulations also has identified a number of potential regulatory changes that may significantly alter the way that the Commission and its staff will operate, and that would provide greater clarity or greater specificity as to regulatory requirements and procedures.

The first proposed amendments to the Commission's regulations would affect the Commission's permit application fees. Commissioners may recall that on February 1, 2018, the Commission held a public hearing to consider a staff report and recommendation to commence the rulemaking process to double the existing permit application fees. Following the public hearing, the Commission voted to approve the staff's recommendation to initiate the rulemaking process to amend the Commission's permit application fees. I have almost completed that rulemaking package and anticipate that the notice of proposed rulemaking and associated documents will be issued for review by the Commission and the public within the next month.

Next, I plan to turn to preparing proposed amendments to the Commission's permit application form, which is established by regulation, and to the associated regulations governing the application process for major permits, administrative permits, and permit amendments. As part of that rulemaking package, we likely will include proposed amendments to:

1. Update certain regulations to allow for or require posting of information or documents on the Commission's website;
2. Allow for notices or other information to be provided by email; and
3. Provide greater clarity or greater specificity as to regulatory requirements and Commission procedures.

Given the relatively large number of regulations involved, it is possible that we will propose amendments to the regulations to address all of these issues in two or more rulemaking packages, rather than in a single rulemaking package.

Finally, I plan to prepare proposed amendments to the Commission's regulations governing administrative enforcement actions based on a comprehensive review and evaluation of those regulations. The proposed amendments would provide greater clarity or greater specificity concerning both formal enforcement proceedings and the regulations governing standardized fines.

In summary, over the next year or two, I expect to develop and present to the Commission for its consideration a series of three or four rulemaking packages to comprehensively update the Commission's regulations. To do so successfully, staff will ask Commissioners to hold public hearings on these issues and discuss how best to make the Commission's regulatory structure both more responsive to the public and more efficient.