

San Francisco Bay Conservation and Development Commission

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Agenda Item #10

January 10, 2020

TO: Commissioners and Alternates

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SUBJECT: **Staff Report on Rulemaking to Amend Permit Application Fees,
Title 14 of the California Code of Regulations, Division 5, Appendix M**
(For Commission consideration on January 16, 2020)

Staff Recommendation

The Executive Director recommends that the Commission re-adopt the proposed amendments to its permit application fees regulations (Title 14 of the California Code of Regulations, Division 5, Appendix M) attached to this staff report. The proposed amendments to the Commission’s permit application fees regulations are identical to the amendments previously adopted by the Commission on October 17, 2019.

Summary

On March 1, 2019, the Commission published proposed amendments to its permit application fees regulations that are codified at Title 14 of the California Code of Regulations, Division 5, Appendix M. The Commission held a public hearing on those proposed changes on April 18, 2019 and accepted public comments through April 19th.

On October 4, 2019, the Commission issued a “Staff Report on the Rulemaking to Amend Permit Application Fees” that: (1) summarized the rulemaking process to amend the permit application fees regulations; (2) responded to public comments on the originally proposed amendments; and (3) described the recommended revisions to the originally proposed amendments that were made as a result of the public review process. A revised version of the proposed amendments incorporating the recommended revisions was attached to the Staff Report. Thirteen days later, on October 17th, the Commission adopted the revised proposed amendments.

In November, Commission staff submitted the adopted amendments to the permit application fees regulations and the complete rulemaking file to the Office of Administrative Law (“OAL”) for review in accordance with the Administrative Procedure Act. In December, OAL informed Commission staff that the full text of the revised proposed amendments had not been made



available for public review at least 15 days before the Commission adopted the amendments, as required by Government Code section 11346.8(c), and, therefore, it was necessary for the Commission to provide an additional 15-day public review period.

On December 24th, the Commission issued a notice of an additional public review period on the proposed amendments to its permit application fees regulations. The notice stated that the written comment period closes on January 13, 2020, and that any comments should address, and be limited to, the proposed revisions to the originally proposed amendments. The notice also described each of the revisions to the originally proposed amendments.

Amend Appendix M as follows:

Legend of Proposed Amendments:

1. Amendments Proposed with Notice of Proposed Rulemaking (Originally Proposed Amendments)
Additions to Existing Text Shown in Underscore: Example
Deletions to Existing Text Shown in Strikeout: ~~Example~~

2. Revised Proposed Amendments Subject to Additional 15-Day Public Review Period
Additions to Existing Text Shown in Double Underscore: Example
Deletions to Existing Text Shown in Double Strikeout: ~~~~Example~~~~

Title 14, Division 5, Appendix M

Appendix M

Commission Permit Application Fees

(a) All applicants for a Commission permit, permit amendment or amendment to an application shall submit as part of the application an application fee as identified in the following sections.

(b) Permit Application Fees.

(1) Except as provided in subparagraph (b)(2), the following permit application fees shall be effective until ~~December 31, 2013~~ June 30, 2026 or until the Executive Director recalculates the fees under subsection (c), whichever is later.

<i>Type of Permit Application</i>	<i>Application Fee</i> 2008—2013 <u>2020-2026</u>
Abbreviated Regionwide Permit	\$100 <u>200</u>
Regionwide Permit	\$100 <u>200</u>
Time Extension for any permit	\$150 <u>300</u>
Nonmaterial Amendment To a Minor <u>an</u> <u>Administrative</u> Permit Other Than a Time Extension With a Total Project Cost (TPC) of:	
—Less than \$5,000	\$100 <u>200</u>
—\$5,000 to \$50,000	\$150 <u>300</u>
—\$50,001 to \$100,000	\$200 <u>400</u>
—\$100,001 to \$600,000	\$300 <u>600</u>
—\$600,001 to \$100 million	0.050 <u>.10</u> % of TPC
—more than \$100 million	\$100,000 <u>200,000</u>

Nonmaterial Amendment To a Major Permit Other Than a Time Extension With a TPC of:

—Less than \$5,000	\$100 <u>200</u>
—\$5,000 to \$50,000	\$150 <u>300</u>
—\$50,001 to \$100,000	\$200 <u>400</u>
—\$100,000 to \$600,000	\$600 <u>1,200</u>
—\$600,001 to \$100 million	0.100 <u>0.20</u> % of TPC
—more than \$100 million	\$100,000 <u>200,000</u>
Material Amendment to permit	Same as for first time application
Material Amendment to application	75% of original application fee
Emergency Permit	Same as for project as if not an emergency

~~Minor~~Administrative Permit with a total project cost (TPC) of:

—Less than \$5,000	\$150 <u>300</u>
—\$5,000 to \$50,000	\$175 <u>350</u>
—\$50,001 to \$100,000	\$350 <u>700</u>
—\$100,001 to \$600,000	\$1,050 <u>2,100</u>
—\$600,001 to \$10 million	0.120 <u>0.24</u> % of TPC
—\$10,000,001 to \$50 million	\$12,000 <u>24,000</u> or 0.100 <u>0.20</u> % of TPC, whichever is greater
—\$50,000,001 to \$100 million	\$50,000 <u>100,000</u> or 0.080 <u>0.16</u> % of TPC, whichever is greater
—\$100,000,001 to \$300 million	\$80,000 <u>160,000</u> or 0.060 <u>0.12</u> % of TPC, whichever is greater
—\$300,000,001 to \$600 million	\$180,000 <u>360,000</u> or 0.040 <u>0.08</u> % of TPC, whichever is greater
—more than \$600 million	\$240,000 <u>480,000</u>

Major Permit with a total project cost (TPC) of:

—Less than \$50,000	\$350 <u>700</u>
—\$50,000 to \$100,000	\$700 <u>1,400</u>
—\$100,001 to \$200,000	\$900 <u>1,800</u>

—\$200,001 to \$300,000	\$1,100 <u>2,200</u>
—\$300,001 to \$600,000	\$1,200 <u>2,400</u>
—\$600,001 to \$10 million	0.200 <u>0.40</u> % of TPC
—\$10,000,001 to \$50 million	\$20,000 <u>40,000</u> or 0.170 <u>0.34</u> % of TPC, whichever is greater
—\$50,000,001 to \$100 million	\$85,000 <u>170,000</u> or 0.140 <u>0.28</u> % of TPC, whichever is greater
—\$100,000,001 to \$300 million	\$140,000 <u>280,000</u> or 0.110 <u>0.22</u> % of TPC, whichever is greater
—\$300,000,001 to \$600 million	\$330,000 <u>660,000</u> or 0.080 <u>0.16</u> % of TPC, whichever is greater
—more than \$600 million	\$600,000 <u>1,200,000</u>

(2) From the effective date of this regulation or July 1, 2020, whichever is later, through June 30, 2022, permit application fees shall be 75% of the amounts stated in subparagraph (b)(1). All fees calculated under this subparagraph (b)(2) shall be rounded up to the nearest dollar.

(c) Calculation of Permit Fees for Subsequent Years.

- (1) For ~~each five~~ the three-year period ~~following the effective date of this regulation, commencing in 2013, ending on June 30, 2025, and thereafter for the four-year period ending on June 30, 2029 and for each subsequent four-year period,~~ the Commission will calculate:
 - (A) the average fiscal year revenue generated from fees collected over the prior ~~five~~ three years;
 - (B) the highest fiscal year total regulatory program costs (TRP) over the prior ~~five~~ three years;
 - (C) ~~twenty~~forty percent of the highest TRP (“target revenue”).
- (2) If the average revenue generated from fees is within five percent of the target revenue, then the Executive Director will not recalculate new fees ~~from the following five years~~ according to the method specified in subparagraph (c)(4) and the existing fees shall remain in effect until the Executive Director next recalculates new fees as provided in subparagraph (c)(1).
- (3) If the average revenue generated from fees is more than five percent higher or lower than the target revenue, then the Executive Director will calculate new fees according to the method specified in subparagraph (c)(4).

(4) Calculation Method. If new fees will be calculated pursuant to subparagraph (c)(3), the Executive Director shall use the following method.

(A) No earlier than ~~July~~ September 1 and no later than ~~October~~ December 31 of ~~2013~~2025, and in ~~five~~ four-year increments thereafter, the Executive Director shall calculate the fees that will apply to applications received in the following ~~five~~ four ~~calendar~~ fiscal years.

(B) The fees shall be calculated in the following way:

(i) Divide the target revenue derived from subparagraph (c)(1)(C) by the average revenue generated from fees derived from subparagraph (c)(1)(A). This is the adjustment factor.

(ii) Adjust the permit application fees by multiplying each fee by the adjustment factor.

(5) The “total regulatory program costs” (TRP) shall be based on the amount of revenue appropriated to support the Commission’s regulatory program in the Budget Act for that fiscal year. The total regulatory program costs shall be calculated by: (A) identifying the direct costs for employee compensation, contracts, and equipment and facilities that are allocated to the Commission’s permit and enforcement activities; (2) adding to the direct costs the indirect costs such as administrative, legal, and other support allocated to the regulatory program; and (3) subtracting any reimbursements, grants, abatements or other income received to support regulatory program activities.

(6) The adjusted fees shall be effective on ~~January 1~~ July 1 of the following calendar year and shall remain effective for ~~five~~ four years or until the Executive Director calculates the new fees, whichever is later. All calculated figures shall be rounded up to the nearest dollar.

(d) Total Project Cost.

(1) “Total project cost,” means all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission’s jurisdiction.

(2) The total project cost for an amendment to a permit shall consist of only the total project cost of the subject matter of the amendment application.

(3) The Commission shall use the cost stated by the applicant in the application to BCDC to determine the total project cost unless the Executive Director determines that the amount stated does not appear to include the total project or to reflect accurately all project costs.

(4) Whenever the Executive Director determines that the stated project cost does not appear to include the total project cost or to reflect accurately all project costs, he or she shall return the application unfiled and state his or her reasons for concluding that the total project is not included or why the stated cost does not accurately reflect all

project costs or the Executive Director shall hold the application unfiled until the applicant verifies the total cost figures by having an estimator selected by the Executive Director and prepaid by the applicant review and certify as complete and accurate all project costs.

(e) Fee Reduction for Project Costs Paid by a Grant from the San Francisco Bay Restoration Authority. For an application for a Major Permit, an Administrative Permit, or a Material Amendment to a Major or Administrative Permit for a project for which all or a portion of the Total Project Cost would be paid with a grant from the San Francisco Bay Restoration Authority from Bay Area Regional Measure AA (2016) funds, the amount of such grant shall be subtracted from the Total Project Cost and the difference shall be used in determining the permit application fee under section (b).

~~(e) Fees for Projects Involving More than One Category. Projects involving two (2) or more categories, (i.e., shoreline construction and filling as part of one (1) project), will not be charged the total of the fees that would be due if each part of the project were considered as a separate application. Rather, the fee is the single amount due under highest fee category into which the project falls.~~

(f) When Fees are to be Paid. All fees shall be paid before the ~~Commission~~ Executive Director files a permit application. No fees shall be charged for preliminary inquiries and requests for information prior to the filing of an application.

(g) Refunds.

(1) A ~~\$100~~200 refund of an administrative permit application fee shall be made if the application is withdrawn prior to the mailing of the administrative listing for the application. No refund shall be made for an administrative permit application after listing.

(2) For all other fees, the first ~~\$200~~400 hundred dollars is not refundable and the remainder shall be refunded if the application is withdrawn prior to mailing notice of a public hearing either on whether the application is complete or on whether the project is consistent with the applicable Commission policies but shall not be refunded after the notice of the public hearing has been mailed.

(h) Fees in Special Circumstances.

(1) The fee for resubmitting an application that had earlier been denied by the Commission or withdrawn by the applicant before a Commission vote shall be seventy—five percent (75%) of the fee that would be charged for a new application covering the same work. Such fee shall be in addition to the fee charged for the original application.

(i) Fees for Applications Arising from an Enforcement Investigation.

(1) The Commission shall double all relevant application fees if the Executive Director determines that the applicant submitted the application in response to an investigation by the staff or the Commission of a possible violation of the McAteer—Petris Act, the Suisun Marsh Preservation Act, or the terms or conditions of a permit.

(2) Applications shall be presumed to have arisen out of an enforcement investigation if the staff prepared a written enforcement report prior to the applicant presenting the application for filing.

(j) Appeal of Fee Determination.

- (1) Any person who believes a fee charged is not correct under these regulations may appeal to the Commission any objection that the applicant, the Executive Director, and the Chair cannot resolve.
- (2) Pending resolution of the amount of the fee, the applicant shall pay the fee that the Executive Director assesses and shall file a letter explaining why the fee is incorrect.
- (3) When an applicant appeals a fee, the Commission shall determine the correct fee at the time it votes on the application or at the time for commenting on the administrative listing, whichever applies.

Note: Authority Cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(b) and (c), Government Code; and Section 29520(b), Public Resources Code.