

# San Francisco Bay Conservation and Development Commission

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**TO:** Enforcement Committee

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**SUBJECT: Item 6 – Briefing on Permit Process and Permit Special Conditions**

In preparation for the Enforcement Committee briefing on October 23, 2019, where staff will brief the Committee on the permit process and permit special conditions, we have prepared the following summary of the conditions that may appear in the permits that are issued by BCDC. This memorandum focuses on conditions that require follow up action by the permittee after the permit is issued.

## I. BCDC Permits

BCDC issues different types of permits depending on the type of project at issue. The three main types of permits are: (1) major permits; (2) administrative, or minor, permits; and (3) regionwide permits. BCDC's regulations detail the process for applying for these permits, and the website has links for the standard permit application form for each type of permit.

Pursuant to section 66632(f) of the McAtter-Petris Act, the Commission must take action upon a permit application, by either granting or denying the permit, within 90 days after it files the application. Section 66632 also states that permits shall be granted if the Commission finds and declares that a project is either (1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the Bay Plan. This section further states that to effectuate these two purposes, "the commission may grant a permit subject to reasonable terms and conditions including the uses of land or structures, intensity of uses, construction methods and methods for dredging or placing of fill." In addition, Section 66632 allows the Commission to adopt regulations allowing for the issuance of permits by the Executive Director, and, using this authority, BCDC has adopted the regulations that apply to minor permits and regionwide permits.

## II. Permit Terms and Conditions

Consistent with these requirements, to assure full compliance with the Commission's laws and policies, Section 10503 of BCDC's regulations specifies that permits may include terms and conditions concerning any subject that is within the scope of the McAtter-Petris Act, Suisun Marsh Preservation Act, Bay Plan, Special Area Plans, Suisun Marsh Protection Plan, or certified Local Protection Program for Suisun Marsh. This includes terms and conditions relating to alternatives or measures to reduce or offset adverse impacts on the Bay's resources, priority use areas, and public access areas. Section 10503 also states that the



terms and conditions must specify dates by which a project involving the placement of fill or extraction of materials shall commence and be completed. In addition, the section states that the terms and conditions of a permit bind future owners and possessors of the subject property unless the Commission sets an expiration date or provides that the conditions apply only to the applicant or a specifically named party.

With the exception of regionwide permits, the permits issued by BCDC generally include terms and special conditions tailored to the project that is being authorized. There are, however, standard conditions that staff has developed, as well as certain general types of special conditions that are typically included, as appropriate, in BCDC permits. Some conditions mirror requirements in BCDC's regulations.

Among the standard conditions that BCDC includes in its permits are the following:

1. A condition stating that the permit will not take effect unless the permittee executes an original of the permit and returns it to the Commission within 10 days of issuance and stating that work may not be done until the acknowledgment is executed and returned. This mirrors the requirements in Section 10525.
2. A condition requiring a Notice of Completion and Declaration of Compliance to be returned to BCDC within 30 days following completion of the authorized work. This mirrors the requirement in Section 10540.
3. A condition requiring permittees and transferees to execute and submit a permit assignment if there is any transfer of any interest in any property covered by the permit.
4. A condition stating that the permit terms and conditions run with the land and bind future owners.
5. A condition establishing that violation of any of the terms of the permit is grounds for revocation.
6. A condition establishing that the permittee grants permission to staff to conduct site visits to verify that the project is being and has been constructed in compliance with the authorization and conditions in the permit.

As appropriate, the special conditions in a permit may also include the following:

1. Conditions requiring submission of plans, including, as appropriate, construction staging, engineering, architectural, public access, and other plan information and drawings, and establishing that work shall not be commenced until the required plans and drawings are submitted. These conditions typically also require plans to be accompanied by a letter requesting approval and establish the criteria that will govern BCDC approval. In addition, a condition may include provisions requiring appropriate design professionals to certify that work has been approved in conformance with the approved plans.

2. A condition requiring contractor certification that the contractor has read and understands the conditions of the permit. This generally must be submitted prior to grading or construction.
3. A condition requiring the permittee to prepare a legal instrument acceptable to BCDC to dedicate or permanently guarantee rights for the public in designated public access areas and requiring the permittee to record the instrument after approval by BCDC. The conditions typically require an exhibit showing the area to be reserved, along with a legal description.
4. A condition allowing the imposition of reasonable rules and restrictions in public access areas and establishing that any limitations, rules, and restrictions must first be approved by BCDC.
5. Conditions requiring installation and maintenance of public access areas and improvements, and describing the specific features that must be maintained, including, for example, planting, benches, trash containers, and lights.
6. For projects with required view corridors, a condition requiring preparation of a legal instrument dedicating to a public entity other than BCDC the relevant area and restricting it as open space for visual access. This condition typically requires submission of the instrument to BCDC for review and recordation following BCDC approval.
7. For development projects where ownership may ultimately be transferred to individual homeowners or for other projects where transfer of the property may reasonably be anticipated, a condition requiring the permittee to record the permit or a notice referring the permit on all parcels affected by the permit and to provide evidence of recordation to BCDC.
8. A condition establishing that prior to occupancy or use of any authorized improvements, the permittee must submit a Notice of Completion and Compliance and request an inspection of the project site. This condition may also establish that the permittee may not occupy or use the improvements until BCDC staff have inspected the site and confirmed that any compliance problems have been resolved.

All permits, including regionwide permits, also include a condition stating that BCDC has an enforcement program and that the Commission may issue cease and desist and civil penalty orders if violations are discovered.

BCDC also utilizes specific special conditions for specific types of projects (e.g. marinas), and the conditions in BCDC-issued permits vary based on both the project at issue and timing of the authorization.