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TO: Commissioners and Alternates

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SUBJECT: **Staff Briefing on Proposed Amendments to the Commission's Permitting Regulations**
(For Commission consideration on May 15, 2025)

Executive summary

The Commission meeting on May 15, 2025 will include a staff briefing on proposed amendments to the Commission's permitting regulations. Staff will invite input from Commissioners and the public before preparing the materials required to initiate the formal rulemaking process.

The proposed amendments would:

- **Streamline and improve the regionwide permit program**
- **Expand use of administrative permits for habitat projects**
- **Reduce permitting burdens for straightforward and routine activities**
- **Make other updates to clarify and improve permitting rules**

Contents

Introduction

The Commission's permitting regulations establish the procedures and standards for issuing permits under the McAteer-Petris Act and the Suisun Marsh Preservation Act. The amendments proposed here are designed to streamline permit processing for straightforward projects, improve clarity and accessibility for applicants and the public, and accelerate habitat restoration and nature-based adaptation projects.

Why these amendments are being proposed

The proposed amendments to the permitting regulations are in response to recent work staff has undertaken to improve the effectiveness, efficiency, and transparency of BCDC's permitting program.

In 2024, staff completed a year-long assessment of BCDC's permitting process and developed a roadmap identifying targeted improvements for the program. The roadmap incorporates recommendations from the mission-based review of BCDC's permitting program by the Department of Finance at the Executive Director's request. The proposed amendments will incorporate recommendations from the mission-based review to redraft regulations in plain language to make permit rules more comprehensible to the applicants and the public, and to update the Commission's permit application forms.

The roadmap also reflects actions called for in:

- **The Bay Adapt Joint Platform.** Action 7 in the Joint Platform calls for simplifying and streamlining regulatory processes to accelerate the adoption of climate adaptation projects, particularly habitat restoration and nature-based solutions.
- **BCDC's 2023-2025 Strategic Plan.** Goal 2 of the Strategic Plan calls for modernizing the regionwide permit program, and for aligning permitting tools with the Commission's climate resilience goals.

The proposed amendments are also consistent with statewide efforts to improve permitting processes. The final report from the Assembly Select Committee on Permitting Reform, chaired by Assemblymember Buffy Wicks, identified best practices for permitting reform including prioritizing agency objectives and workload, providing a clear and straightforward permit application process, and establishing specific timeframes for reviewing permits.

To continue to advance the roadmap, staff anticipate bringing forward additional proposals in 2026 to update the rules and permit application forms for major and administrative permits.

Summary of proposed amendments

The tables below summarize the issues addressed by the proposed amendments. A more detailed discussion of each issue is provided later in the report. You can jump directly to this detailed discussion by clicking on the hyperlinked text.

1. Streamline and improve the regionwide permit program

Issue	Proposed amendment
The regionwide permit and abbreviated regionwide permit programs are too similar, causing confusion for applicants.	Repeal abbreviated regionwide permit regulations and consolidate under a single streamlined regionwide permit program to simplify adoption and reduce confusion for applicants.
Regulations lack detail and clarity.	Expand the regulations to add clear, step-by-step procedures for adopting, amending, and revoking regionwide permits, and applying for coverage.
Regulations do not define what a regionwide permit is.	Define regionwide permits as a category of minor repairs or improvements with no significant impact, to ensure consistent interpretation and alignment with environmental review standards.
Regionwide permits are not authorized within the Suisun Marsh.	Expand regionwide permit applicability to cover all areas under BCDC jurisdiction, including areas governed by the Suisun Marsh Preservation Act.
Application requirements are unclear and confusing.	Create a streamlined application to apply for coverage under regionwide permits.
Regulations do not account for site-specific factors that should result in denying coverage.	Authorize the Executive Director to deny regionwide permit coverage for projects that could harm Bay resources.
Regulations are not always easy for applicants to understand.	Redraft regionwide permit regulations in plain language.

2. Expand use of administrative permits for habitat projects

Issue	Proposed amendment
Too few habitat projects are eligible for administrative permits, creating unnecessary burdens for projects of regional importance.	Expand the use of administrative permits to allow habitat restoration and enhancement projects up to 1,000 acres, helping larger-scale climate adaptation and restoration projects move forward more efficiently.
Nature-based shoreline protection projects are treated the same as traditional gray infrastructure.	Allow an additional 2,500 square feet of fill for administrative processing of shoreline protection projects that incorporate nature-based solutions.

3. Reduce permitting burdens for straightforward and routine activities

Issue	Proposed amendment
Whether a permit is required for certain activities in the shoreline band is not clearly defined, leading to confusion and sometimes permitting projects with little or no potential for adverse impacts.	Define specific de minimis activities within the shoreline band that do not require a permit.
Regulations exempt material extraction for environmental or seismic testing but do not clearly exempt incidental restoration activities, such as backfilling or sealing small-diameter borings and monitoring wells.	Expand the exemption to include backfilling and sealing small-diameter borings and monitoring wells following authorized extraction activities.

4. Make other updates to clarify and improve permitting rules

Issue	Proposed amendment
Permit types are not clearly defined, and applicants do not have guidance for selecting the correct permit.	Add a new chapter that defines the types of permits available, provides clear guidance on selecting the appropriate permit, and groups related permitting provisions in one place for easier navigation.
Rules for calculating regulatory deadlines are unclear.	Add a new section that explains how to calculate regulatory deadlines, including how to treat weekends, holidays, and other non-business days.
The term "substantial change" is not clearly defined.	Provide more definition and clarity around the term "substantial change" and when it applies.
Lack of clarity that Commission jurisdiction is not static and can change over time.	Clarify that the Commission's jurisdiction is determined based on existing conditions when the nature of an area has changed due to permitted work, failure to maintain human-made works, or natural events such as sea level rise.
Procedures for processing and noticing administrative and emergency permits need clarification.	Update procedures to clarify the scope of administrative permits, improve transparency by requiring notice of Executive Director permitting actions, and clarify references and terminology.
Lack of clarity about the Commission's continuing jurisdiction over certain areas.	Clarify that areas of the Bay and certain waterways remain subject to the Commission's jurisdiction even if filled or altered under a Commission permit.
Lack of notice when the Executive Director approves nonmaterial amendments to administrative or major permits.	Require the Executive Director to notice approval of nonmaterial amendments to administrative and major permits as part of the administrative listing provided to the Commission and the public.

Next steps

Following the staff briefing, staff may revise the proposed regulatory text based on input received from Commissioners and the public. The next step would be to initiate the formal rulemaking process under California's Administrative Procedure Act. Staff would issue a Notice of Proposed Rulemaking, which would be distributed to interested parties and posted on the Commission's website. The Notice of Proposed Rulemaking would start a 45-day public review and comment period and provide notice of a public hearing to be held on the proposed amendments at a future Commission meeting prior to the close of the comment period. Staff would also submit the Notice of Proposed Rulemaking and supporting materials, including an Initial Statement of Reasons, to the Office of Administrative Law.

Following the comment period, staff would collect and review the public input and prepare a Final Statement of Reasons, which includes responses to public comments. If substantive changes are made to the proposed amendments based on public feedback, an additional 15-day public review period is required. The Commission would then vote at a Commission meeting whether to adopt the proposed amendments. If the Commission adopts the amendments, staff would then submit the rulemaking package to the Office of Administrative Law for its review.

The process will take approximately 6 to 9 months, depending on the level of public input received and the scope of changes that may be made to this proposal.

Detail on proposed amendments

This section provides a more detailed explanation of the issues addressed by the proposed amendments, organized by the four main areas of improvement. A discussion of the possible impacts of the amendments on permitting costs and application fee revenue is included at the end.

1. Streamline and improve the regionwide permit program

Summary of existing regulations

In 1986, the Commission adopted regulations that establish procedures to be followed in adopting and issuing regionwide permits. 14 C.C.R. §§ 11700-11716. The Commission has used regionwide permits to authorize specific categories of activities which the Commission has determined will have no substantial impact on areas within the Commission's McAteer-Petris Act jurisdiction.

To obtain coverage under an adopted regionwide permit, an applicant submits a "notice of intent to proceed" providing specified information about their project. The regulations require the Executive Director to determine within 30 days whether the applicant's notice is complete. If so, the Executive Director must within 14 days: (1) approve or disapprove the notice, basing his or her decision solely on the proposed project's consistency with one or more regionwide permits; and (2)

if the notice is approved, grant coverage under and issue a copy of the regionwide permit to the applicant.

The Commission first adopted a set of regionwide permits in December 1986. Since that time, it has amended many of the regionwide permits at least once and has discontinued the use of others. There are currently eight adopted regionwide permits. These permits are posted on the Commission's website.

In 1996, the Commission adopted regulations that establish procedures to be followed in adopting and issuing abbreviated regionwide permits. 14 C.C.R. §§ 11717-11720. Like regionwide permits, the Commission has used abbreviated regionwide permits to authorize specific categories of activities which the Commission has determined will have no substantial impact on areas within its McAteer-Petris Act jurisdiction.

To obtain coverage under an adopted abbreviated regionwide permit, an applicant submits a "notice of intent to proceed" providing specified information about their proposed project. The regulations require the Executive Director to determine within 30 days whether the applicant's notice is complete. If so, the Executive Director must within seven working days: (1) approve or disapprove the notice, basing his or her decision solely on the proposed project's consistency with one or more abbreviated regionwide permits; and (2) if the notice is approved, grant coverage under and issue a copy of the abbreviated regionwide permit to the applicant.

The Commission first adopted a set of three abbreviated regionwide permits in December 1996. Since that time, it has amended each abbreviated regionwide permit once. The three adopted abbreviated regionwide permits are posted on the Commission's website.

The abbreviated regionwide permit regulations were intended to provide a more streamlined approach for submitting a notice of intent to proceed, in comparison to the approach for regionwide permits, so that the timeframe for approval of projects covered by an abbreviated regionwide permit could be shortened. In 1996, when the abbreviated regionwide permit regulations were adopted, an applicant submitting a notice of intent to proceed for a project covered by a regionwide permit was required to complete only Part I of the Commission's permit application form (Appendix D to the regulations). The Commission determined that Part I of this form required an applicant to provide more information than needed for an abbreviated regionwide permit. Therefore, in adopting the abbreviated regionwide permit regulations, the Commission also adopted a notice of intent to proceed form, as Appendix N to the regulations, that identifies the limited information required to apply for an abbreviated regionwide permit.

The relatively brief notice of intent to proceed form (Appendix N) to apply for coverage under an abbreviated regionwide permit was intended to reduce the time spent by applicants and staff in processing projects covered by abbreviated regionwide permits. The review time for completed notices of intent to proceed for abbreviated regionwide permits is slightly shorter than for the corresponding notices for regionwide permits. After the Executive Director determines a notice of

intent to proceed for an abbreviated regionwide permit is complete, he or she must approve or disapprove the notice within seven working days. In contrast, after the Executive Director determines that a notice of intent to proceed for a regionwide permit is complete, he or she much approve or disapprove the notice within fourteen days.

In 1998, the Commission amended the Appendix D application form to eliminate the Part I and Part II designations in the earlier form, consolidate certain categories of necessary information, and require an applicant seeking coverage under a regionwide permit to complete the entire form. However, the regionwide permit regulations were not amended and continue to state that an applicant seeking coverage under a regionwide permit is required to complete only Part I of the Appendix D form, which no longer exists. Thus, the regionwide permit regulations and Appendix D are inconsistent, resulting in ambiguity and confusion regarding the information required to apply for coverage under a regionwide permit.

Issues addressed by the proposed amendments

1. The regionwide permit and abbreviated regionwide permit programs are too similar, causing confusion for applicants.

The regulations establish two permit programs, one for regionwide permits and another for abbreviated regionwide permits. Under each program, the Commission's adoption of a permit is governed by an identical standard, which is that it has determined the authorized activities "will have no substantial impact" on areas within its McAteer-Petris Act jurisdiction. Having two different permit programs for similar categories of activities that have been authorized under an identical standard is confusing to permit applicants and the public.

The abbreviated regionwide permit regulations were intended to provide a more streamlined approach for submitting a notice of intent to proceed under an abbreviated regionwide permit. In comparison to regionwide permits, the timeframe for approval of projects covered by an abbreviated regionwide permit could be shortened. However, the differences in staff review and processing time are minimal. As noted above, after the notice of intent to proceed under an abbreviated regionwide permit is complete, the Executive Director must approve or disapprove the notice (and if the notice is approved, must grant coverage under the abbreviated regionwide permit) within seven working days; this corresponds to nine or sometimes ten working days (if there is a state holiday during the review period). In contrast, after a notice of intent to proceed under a regionwide permit is complete, the Executive Director must approve or disapprove the notice (and if the notice is approved, must grant coverage under the regionwide permit) within fourteen days. The somewhat shorter processing time for abbreviated regionwide permits is not substantial.

There are differences in the information required to be submitted in a notice of intent for a regionwide permit versus an abbreviated regionwide permit, with considerably more information required for a regionwide permit. Nevertheless, the confusion on the part of permit applicants that

results from having two different permit programs for similar categories of activities outweighs any benefits associated with the lesser information requirements to apply for coverage under an abbreviated regionwide permit. Moreover, the current differences in the information required to apply for coverage under a regionwide permit versus an abbreviated regionwide permit have been considered in developing the amended regulations to consolidate the two programs and to revise, clarify, and streamline the information required to apply for coverage under a regionwide permit.

Retaining abbreviated regionwide permits as a separate category of permits is problematic in that the abbreviated regionwide permit program is relatively small and little used in comparison to the regionwide permit program. In 1996, the Commission adopted both the abbreviated regionwide permit regulations and three abbreviated regionwide permits. In the almost 30 years since then, the Commission has never expanded use of the program. Continuing the abbreviated regionwide permit program is unnecessary in that each of the categories of activities authorized by the three existing abbreviated regionwide permits comes within the scope of, and could be authorized under, the regionwide permit program.

For these reasons, the regulations governing abbreviated regionwide permits will be repealed in their entirety, and the Commission will adopt a new set of amended regulations governing regionwide permits only. The purpose of this change is to replace the existing regulations establishing two different permit programs—one for regionwide permits and a second for abbreviated regionwide permits—with an amended set of regulations for a single permit program for regionwide permits. The benefits will include clarifying and streamlining the process for the Commission to adopt regionwide permits to authorize specific categories of activities which it has determined will not have a significant impact on areas within its jurisdiction. Another benefit will be to eliminate the confusion on the part of permit applicants and the public regarding the similarities and differences between the regionwide permit and abbreviated regionwide permit programs.

In proposing to repeal the abbreviated regionwide permits regulations, staff was sensitive to the shorter time period for review of a notice of intent for an abbreviated regionwide permit (seven working days) in comparison to the review time for a notice of intent for a regionwide permit (14 days). To streamline the amended regionwide permit process and preserve the benefit to applicants from the shorter processing time for abbreviated regionwide permits, under the amended regionwide permit regulations, the Executive Director must approve or deny an application for coverage under a regionwide permit within 10 days after determining that the application is complete. This timeframe is four days shorter than the current review period for a regionwide permit notice of intent and approximately only one or two days longer than the current review period for an abbreviated regionwide permit notice of intent. Staff believes that 10 days is the shortest reasonable time period to allow the Executive Director and staff an adequate opportunity to review and evaluate a complete application for coverage under a regionwide permit.

As for the existing differences in the information required to be submitted when seeking coverage under a regionwide permit versus an abbreviated regionwide permit, those differences have been considered in developing the amended regionwide permit regulations that will specify the information required to apply for coverage under a regionwide permit.

2. Regulations lack detail and clarity.

The existing regulations are brief and provide little information about the processes followed by the Commission to adopt a regionwide permit, by an applicant to seek coverage under a regionwide permit, and by the Executive Director to approve or deny coverage under a regionwide permit. For example, the regulations authorize the Commission to adopt regionwide permits, but do not specify the required contents of a regionwide permit, provide for public notice or comment on a proposed regionwide permit, specify the Commission vote require to adopt a regionwide permit, or provide for the Commission to amend or revoke a regionwide permit. Similarly, the regulations do not indicate whether an applicant can apply for coverage under multiple regionwide permits or appeal the Executive Director's determinations that an application for coverage is missing required information or to deny coverage under a regionwide permit.

There is also a terminology problem regarding the process of seeking coverage under a regionwide permit that is pervasive throughout the regulations. Specifically, prior to commencing a project that the project sponsor believes is authorized by a regionwide permit (or abbreviated regionwide permit), the project sponsor is required to submit a "notice of intent to proceed" containing specified information. The term "notice of intent to proceed" is misleading and confusing because it implies that once the notice is submitted, the project sponsor may proceed with their project. However, this is not the case—a project sponsor may not proceed with an activity covered by a regionwide permit simply by providing notice of intent to do so. Rather, a "notice of intent to proceed" is functionally an application to be covered by a regionwide permit (or abbreviated regionwide permit) that is reviewed by the Executive Director for completeness and, if found to be complete, for the Executive Director to then determine whether to approve or deny coverage under the regionwide permit.

As noted above, the existing regulations governing regionwide permits will be repealed in their entirety, and the Commission will adopt in their place a new set of amended regulations governing regionwide permits. Given the extensive proposed changes, proceeding in this manner will be clearer to the public than amending a few of the existing regulations with underscoring to show new text and strikeout to show deleted text, and adding numerous new sections that have no counterpart in the existing regulations.

The amended regulations will provide much more detail as to how the Commission adopts, amends, or revokes a regionwide permit, how a project proponent applies for coverage under a regionwide permit, and how the Executive Director reviews an application for coverage under a regionwide permit. The amended regulations will also clarify the information required to apply for coverage under a regionwide permit. These changes will improve the transparency of the permitting program, including Commission adoption of a regionwide permit, the process to be

followed by an applicant to seek coverage under a regionwide permit, and Executive Director review of an application for such coverage. The amended regulations will also clarify an applicant's rights and responsibilities in seeking coverage under a regionwide permit.

To achieve these objectives, the existing regionwide permit regulations, which consist of only nine sections in two Articles, will be repealed and replaced with a new, amended set of regulations consisting of 30 sections in five Articles. Below are the titles of the Articles and sections of the amended regionwide permit regulations:

Article 1: About Regionwide Permits
§ 11700. Terms Used in This Chapter.
§ 11701. Availability of Adopted Regionwide Permits.
§ 11702. How to Apply to be Covered Under a Regionwide Permit.

Article 2: How the Commission Adopts or Amends a Regionwide Permit

§ 11710. Contents of a Proposed Regionwide Permit or Amended Regionwide Permit.
§ 11711. Public Notice and Opportunity for Review and Comment.
§ 11712. The Executive Director Will Provide Public Comments to the Commission.
§ 11713. How the Commission Votes to Adopt or Amend a Regionwide Permit.
§ 11714. Amendment of a Regionwide Permit Does Not Affect a Project Covered Under the Permit.

Article 3: How the Commission Revokes a Regionwide Permit
§ 11720. The Executive Director Will Prepare a Proposed Resolution to Revoke a Regionwide Permit.
§ 11721. Public Notice and Opportunity for Review and Comment.
§ 11722. The Executive Director Will Provide Public Comments to the Commission.
§ 11723. How the Commission Votes to Revoke a Regionwide Permit.
§ 11724. Revocation of a Regionwide Permit Does Not Affect a Project Covered Under the Permit.

Article 4: Applying to Be Covered Under a Regionwide Permit
§ 11730. Check if Your Project Qualifies to Be Covered Under a Regionwide Permit.
§ 11731. You Can Apply to Be Covered Under Multiple Regionwide Permits.
§ 11732. You Cannot Apply to Be Covered Under a Regionwide Permit if Your Project Includes Activities that Are Not Authorized Activities Described in a Regionwide Permit.
§ 11733. How to Apply to Be Covered Under a Regionwide Permit.
§ 11734. How Your Application Will Be Reviewed.
§ 11735. You Can Appeal if Your Application Is Found Incomplete.
§ 11736. How a Decision is Made to Approve or Deny Your Application.
§ 11737. If Your Application is Approved.
§ 11738. If Your Application is Denied.

§ 11739. You Can Appeal if Your Application is Denied.

Article 5: Regionwide Permit Application
§ 11740. Form of Application.
§ 11741. Application Fee.
§ 11742. Applicant and Property Owner Information.
§ 11743. Project Information.
§ 11744. Fill Information.
§ 11745. Information for Projects Involving Maintenance Dredging and Beneficial Reuse or Disposal of Dredged Sediment.
§ 11746. Information for a Regionwide Permit that Requires an Adaptive Management, Monitoring, or Mitigation Plan.

The amended regulations will not use the term "notice of intent to proceed," and will refer instead to applying for coverage under a regionwide permit. This change in terminology will improve the clarity of the permitting process by accurately identifying the nature of a prospective permittee's submission as an application to obtain coverage under a regionwide permit, and clarify that an applicant may not proceed with a proposed project unless and until the Executive Director reviews the application and approves coverage under the regionwide permit.

3. Regulations do not define what a regionwide permit is.

The regulations do not define the term "regionwide permit." Instead, section 11700 currently provides, in part, that the Commission may issue a regionwide permit or an abbreviated regionwide permit to authorize a specific category or categories of activities that "will have no substantial impact" on areas within its McAteer-Petris Act jurisdiction, "including but not limited to routine repair and maintenance of existing structures located with San Francisco Bay, a managed wetland, or a certain waterway and routine repair, maintenance, and improvements to structures located within the shoreline band."

The absence of a definition has resulted in a lack of clarity regarding this type of permit. In addition, the references in section 11700 to "routine repair" and "routine repair, maintenance, and improvements," has led to confusion between those activities that may be authorized by a regionwide permit and those activities that are "minor repairs or improvements" that may be authorized by an administrative permit.

The term "minor repairs or improvements" comes from Government Code section 66632(f) and sections 10600 through 10602 of the regulations. Government Code section 66632(f) provides, in part, that the Commission may provide by regulation for the issuance of permits by the Executive Director, without compliance with the procedures for major permits, in cases of emergency or for "minor repairs to existing installations or minor improvements made anywhere within the area of jurisdiction of the commission."

Section 10600 of the regulations defines an administrative permit as a permit issued for minor repairs or improvements. Section 10601 describes numerous categories of activities that are minor repairs or improvements when conducted in the different areas of the Commission's McAteer-Petris Act or Suisun Marsh Preservation Act jurisdiction. Section 10602 describes numerous dredging and disposal projects that constitute minor repairs of improvements that may be authorized administratively.

Section 11700 does not refer to activities authorized by a regionwide permit or an abbreviated regionwide permit as "minor repairs or improvements." However, every adopted regionwide permit and abbreviated regionwide permit contains a finding that the activity or activities authorized by the permit are minor repairs or improvements, including a citation to one or more subsections of sections 10601 or 10602. Thus, the Commission has adopted regionwide permits and abbreviated regionwide permits only to authorize certain categories of activities that are in fact minor repairs or improvements as described in or within the scope of sections 10601 and 10602, and which would otherwise need to be authorized by an administrative permit. This situation has created ambiguity and resulted in confusion as to the activities for which an applicant may seek coverage under the more streamlined and less burdensome procedures applicable to a regionwide permit or an abbreviated regionwide permit, or instead must apply for an administrative permit.

In addition, the standard for adoption of a regionwide permit under section 11700—that the Commission has determined that the specified category of activities will have no "substantial" impact on areas within its McAteer-Petris Act jurisdiction—is ambiguous. This is because the term no "substantial" impact is not consistent with the standard terminology used in the California Environmental Quality Act (CEQA) for evaluating the potential environmental impacts of a project, which is whether the project will have a "significant" impact. *See, e.g.,* Pub. Res. Code §§ 21002, 21002.1, 21068, 21080.5

The amended regulations will adopt a definition of a regionwide permit in new section 10303. Section 10303 will define a regionwide permit as "a permit the Commission has adopted to authorize a specific category of activities that are minor repairs or improvements which the Commission has determined will have no significant impact on areas within the Commission's jurisdiction."

This definition will clarify for prospective permit applicants that the specified activities authorized under a regionwide permit are "minor repairs or improvements" as that term is used in sections 10601 and 10602. This definition will also change the terminology of the standard for adoption of a regionwide permit from will have no "substantial" impact to will have no "significant" impact" on areas within the Commission's jurisdiction. This is not a substantive change in the standard but rather a clarification for consistency with the terminology for assessing potential environmental impacts under CEQA.

The benefit of adopting both a definition of a regionwide permit and a revised definition of an "administrative permit" in new section 10302 (discussed below) is to clarify the distinctions between the activities that may be authorized under a regionwide permit or must be authorized by an administrative permit. The distinction is that the specified activities that are minor repairs and improvements authorized by a regionwide permit may be conducted under the streamlined procedures for obtaining coverage under a regionwide permit because the Commission has determined that those specified activities will have no significant impact on areas within its jurisdiction. For all other minor repairs or improvements described in sections 10601 or 10602, a prospective permittee must apply for an administrative permit.

4. Regionwide permits are not authorized within the Suisun Marsh.

Existing section 11700 provides, in part, that the Commission may issue a regionwide permit or an abbreviated regionwide permit to authorize throughout its McAteer-Petris Act jurisdiction specific categories of activities that the Commission has determined will have no substantial impact on areas within its McAteer-Petris Act jurisdiction. Thus, the current regionwide permit program applies only in areas of the Commission's jurisdiction under the McAteer-Petris Act. Limiting the regionwide permit program to specified activities conducted within the Commission's McAteer-Petris Act jurisdiction is unnecessary, unjustified, and confusing. This is because: (1) in many areas of the Suisun Marsh, including areas subject to tidal action and managed wetlands, the Commission has overlapping jurisdiction under both the McAteer-Petris Act and the Suisun Marsh Preservation Act; and (2) sections 10601 and 10602 describe minor repairs or improvements with respect to activities conducted in areas subject to the Commission's jurisdiction under the McAteer-Petris Act or Suisun Marsh Preservation Act.

Given that the standard for adoption of a regionwide permit will be that the Commission has determined the specified activities will have no significant impact, as discussed above, there is no justification to distinguish between areas subject to the Commission's jurisdiction under the McAteer-Petris Act versus the Suisun Marsh Preservation Act. A determination of no significant impact is dependent on the nature of their activities and their associated environmental impacts, not on the source of the statutory authority for the Commission's jurisdiction. Specified activities authorized by a regionwide permit within an area of the Commission's McAteer-Petris Act jurisdiction should and can also be authorized by a regionwide permit when conducted within an area of the Commission's Suisun Marsh Preservation Act jurisdiction.

As noted above, the new definition of regionwide permit will state that a regionwide permit authorizes specified activities that the Commission has determined will have no significant impact on "areas within the Commission's jurisdiction." This broad reference to areas "within the Commission's jurisdiction," in contrast to the limiting references in existing section 11700 to the Commission's McAteer-Petris Act jurisdiction only, is intended to expand the applicability of the regionwide permit program to all areas of the Commission's jurisdiction, under both the McAteer-Petris Act and Suisun Marsh Preservation Act. This change will streamline the Commission's permitting process for specified activities authorized under a regionwide permit in Suisun Marsh

and promote consistency in permitting under the McAteer-Petris Act and the Suisun Marsh Preservation Act.

5. Application requirements are unclear and confusing.

There is ambiguity and uncertainty regarding the information that an applicant seeking coverage under a regionwide permit is required to submit to enable the Executive Director to determine whether to approve or deny coverage under such a permit.

In 1990, the Commission adopted a consolidated permit application form, as Appendix D of its regulations, to be used by applicants for permits for any major project, minor repair or improvement, or routine maintenance. The form contained an introductory "Application Checklist" and consisted of two parts specifying various types of information: Part I had 12 numbered sections (1 through 12); and Part II had 10 additional numbered sections (13 through 22).

The Application Checklist contained four columns: the first listed various information items or documents and the next three columns indicated which of those items or documents were required to be submitted when applying for a permit for a major project, a minor repair or improvement, or routine maintenance, respectively. The Application Checklist indicated that for routine maintenance projects (that is, for activities covered by a regionwide permit) a permit applicant was required to complete Part I of the application form and was not required to complete Part II. In contrast, applicants for a major permit or an administrative permit were required to complete both Parts I and II. Also, the Application Checklist indicated that for routine maintenance projects, an applicant was not required to provide information on any local government approval or environmental documentation.

As part of the same rulemaking package that adopted the Appendix D application form, section 11711, entitled "Contents of Notice of Intent to Proceed," was also amended. As amended in 1990, existing section 11711(a)(1) requires a notice of intent to proceed under a regionwide permit to contain a "fully completed application form, Part I only, as set out in Appendix D of the regulations."

In 1998, Appendix D was amended to eliminate the Part I and Part II designations in the earlier application form and replace the earlier form's 22 numbered sections with 12 numbered "Boxes." The 12 Boxes of the amended form specified substantially similar information as the earlier form but in a reorganized format. In the amened Application Checklist, the column headings were changed to refer to a major permit, administrative permit, or regionwide permit, rather than to the type of project as in the 1990 Application Checklist. The amended Application Checklist stated that an applicant for any of the three types of permits was required to complete the entire application form. The amended Application Checklist continued to indicate that, as in the 1990 version, an applicant for a regionwide permit was not required to provide information on any local government approval or environmental documentation. The regionwide permit regulations were not amended in 1998.

Appendix D was last amended substantively in 2008. As amended at that time, the current application form has nine numbered boxes specifying substantially similar information as the earlier 1998 form but in a reorganized format.

As part of the 2008 amendments, a parenthetical clause was added beneath the titles of six of the nine Boxes stating, "must be completed by all applicants." This clause was added to Boxes 1 (Property Owner and Applicant Information), 2 (Total Project and Site Information), 5 Public Access Information, 7 (Information on Government Approvals), 8 (Environmental Impact Documentation), and 9 (Public Notice Information). In contrast, the information specified in Boxes 3 (Fill Information), 4 (Shoreline Band Information), and 6 (Dredging and Mining Information) needs to be provided only when such information is applicable and relevant to the applicant's project.

The 2008 amendments included certain changes to the Application Checklist. As amended at that time, the current Application Checklist continues to state that an applicant for any of the three types of permits—major, administrative, or regionwide permit—is required to complete the entire application form. The Application Checklist also continues to indicate that an applicant for a regionwide permit is not required to provide information on any local government approval or environmental documentation. However, the Application Checklist was amended in 2008 to provide that when applicable, an applicant for a major permit, an administrative permit, or a regionwide permit is required to submit a water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board and any approval required by the California Department of Toxic Substances Control. The regionwide permit regulations were not amended in 2008.

There is ambiguity and uncertainty regarding the information required to be submitted by an applicant seeking coverage under a regionwide permit. Section 11711(a)(1) continues to require submission of a "fully completed application form, Part I only," but the existing Appendix D application form does not contain Part I and Part II designations. Rather, the Appendix D application form, as amended in 1998 and 2008, requires an applicant for a regionwide permit to complete the entire application form, while no corresponding amendment was made to section 11711(a)(1).

Moreover, the 2008 amendments to Appendix D created internal inconsistencies in the application form regarding the information required of an applicant for a regionwide permit. The form provides that all applicants, including an applicant seeking coverage under a regionwide permit, are required to complete Boxes 7 and 8, which call for information on government approvals and environmental impact documentation, respectively. In contrast, the Application Checklist, which is part of the form, indicates that that an applicant for a regionwide permit is not required to provide information on any local government approval or environmental documentation.

As part of its mission-based review of BCDC's permitting program, the Department of Finance recommended the Commission update its permit application form to make the form more user-friendly and effective at soliciting the required information for staff. As a prelude to conducting a

comprehensive review and revision of the permit application form, the proposed amendments will amend Appendix D only to the extent of making it no longer applicable to regionwide permits, and will adopt new regulations to revise, clarify, and streamline the information required to apply for coverage under a regionwide permit.

The amended regulations will identify narratively the specific information required to apply for coverage under a regionwide permit, using an application form to be adopted by the Commission. Identifying the information required to apply for coverage under a regionwide permit in a number of new regulatory sections will eliminate the uncertainty and ambiguity associated with the existing differences in regionwide permit application requirements between those currently referenced in section 11711(a)(1) and the Appendix D application form. Amending the regionwide permit regulations to adopt tailored information requirements for regionwide permits allows for consideration and integration of the existing differences in the information required to be submitted when seeking coverage under a regionwide permit versus an abbreviated regionwide permit.

One purpose of amending Appendix D to make the current application form no longer applicable to regionwide permits is to eliminate the internal inconsistencies in the form (including the Application Checklist) regarding the information required to be submitted by an applicant seeking coverage under a regionwide permit. A second purpose of this change to Appendix D is to allow the amended regionwide permit regulations to clarify and streamline the information required to apply for coverage under a regionwide permit unencumbered by references to the comprehensive application requirements applicable to applicants for a major permit or an administrative permit in Appendix D.

6. Regulations do not account for site-specific factors that should result in denying coverage.

Under the existing regulations, when determining whether to approve or disapprove a notice of intent to proceed, the Executive is required to base their determination "only on the project's consistency with any one or more Commission" regionwide permits or abbreviated regionwide permits. 14 C.C.R. §§ 11713(b), 11719(b). Thus, the Executive Director's consideration is limited to determining whether a project includes only the specified activities authorized by a regionwide permit or an abbreviated regionwide permit.

However, when the Commission adopted revised regionwide permits and abbreviated regionwide permits in December 2008 and February 2009, one of the changes made to eight of the nine existing regionwide permits and all three of the abbreviated regionwide permits was to add a condition that limits the authorization under each permit to projects that would not adversely impact the Bay or Bay resources.[1]

[1] The only regionwide permit that was not revised to include this new condition is regionwide permit number 8, which authorizes routine maintenance dredging of existing navigation channels and berthing areas of no more than 100,000 cubic yards with disposal at approved disposal sites.

Even though the Commission has adopted regionwide permits and abbreviated regionwide permits for specific categories of activities that generally "will have no substantial impact" on areas within its jurisdiction, the Commission determined that the above-referenced permit condition is necessary to allow the Executive Director to deny coverage under a regionwide permit or an abbreviated regionwide permit to protect the Bay or Bay resources based on site-specific conditions at a particular project location. Since 2009, staff practice has been to inform prospective applicants that they cannot seek coverage under a regionwide permit in the rare circumstances where, due to site-specific conditions, proceeding with the activities authorized under a regionwide permit or abbreviated regionwide permit at the project location would adversely impact the Bay or Bay resources.

It is necessary for the Executive Director to have the authority to deny coverage under a regionwide permit to prevent harm to the Bay or Bay resources. However, it is not appropriate to provide such authority only by a condition in each regionwide permit limiting the permit's applicability to projects where the authorized activities will not cause such harm. Rather, the Executive Director's authority to deny coverage under a regionwide permit on these grounds should be established by and expressly stated in the regulations.

New section 11736(b) of the amended regulations will state that an application for coverage under a regionwide permit will be denied if a proposed project includes any activities that are not authorized by one or more regionwide permits or "would harm the Bay or Bay resources, including environmentally sensitive areas, or public access to the Bay, due to its unique location."

The purposes of this amendment are to: (1) authorize the Executive Director to deny coverage under a regionwide permit when necessary to prevent harm to the Bay and Bay resources; and (2) make the regulations consistent with the above-referenced regionwide permit condition to this effect. Amending the regulations to allow the Executive Director to deny coverage under a regionwide permit when necessary to protect the Bay or Bay resources will not delay the regionwide permit permitting process. There will be no delay because the Executive Director will determine whether site-specific conditions warrant denial of coverage within the 10-day timeframe established by the amended regulations (after the regionwide permit application is determined to be complete) based solely on the information submitted with the application.

This amendment will improve the transparency of the permitting process by informing prospective applicants in the regulations that the Executive Director will consider potential harm to the Bay or Bay resources in determining whether to approve coverage under a regionwide permit and, therefore, whether to issue the regionwide permit to the applicant.

7. Regulations are not always easy for applicants to understand.

The existing regulations meet the Administrative Procedure Act's "clarity" standard. Gov't Code § 13349(c); 1 C.C.R. § 16. However, many regulations are written in long sentences that include

qualifications or exceptions, or contain numerous subsections, which make them difficult for permit applicants and members of the public to read and understand.

As part of its mission-based review of the permitting process, the Department of Finance recommended that the Commission identify opportunities to make its regulations more comprehensible to applicants and the public by incorporating plain language principles into future regulatory updates.

As an initial effort toward implementing the Department of Finance's recommendation, the new set of amended regionwide permit regulations have been drafted in plain language and an easily readable style, with the intended audience being a prospective applicant seeking coverage under a regionwide permit. The amended regionwide permit regulations are written using short sentences and active voice, rather than neutral or passive voice, and minimize both the use of numerous subsections and legal terms. In many cases, and as applicable, the amended regulations are written in the second person and refer to the permit applicant as "you" and to the applicant's project or application with "your." Plain language principles have also been applied in drafting the other proposed amendments presented in this package.

The purpose of writing the proposed amendments using plain language and an easily readable style is to improve the clarity, readability, and usability of the regionwide permit regulations by the regulated community, the public, and staff. Writing the amended regulations in this manner also meets California's plain language standard. See Gov't Code §§ 6219 (state agencies shall write documents in plain, straightforward language avoiding technical terms and using a coherent and easily readable style); 11346.2(a)(1) (agencies should draft regulations in plain English, in straightforward language avoiding technical terms and using a coherent and easily readable style); *See also* California Office of Data and Innovation, California Design System, Content Style Guide, Write in Plain Language (Write in plain language | California Design System (in writing text for the public, aim for an 8th grade reading level or lower, keep sentences short and simple, and use smaller, more common words).

2. Expand use of administrative permits for habitat projects

Summary of existing regulations

Section 10601 describes the categories of activities within the different areas of the Commission's jurisdiction that are "minor repairs or improvements" that the Executive Director may authorize through an administrative permit after the application for such a permit is listed for the Commission's consideration. As discussed above, new section 10303 will clarify that the term "minor repairs or improvements" also applies to regionwide permits that it defines as "a permit the Commission has adopted to authorize a specific category of activities that are minor repairs or improvements which the Commission has determined will have no significant impact on areas within the Commission's jurisdiction."

Subsection 10601(a) describes specified activities in the Bay and areas within the Commission's "certain waterways" jurisdiction. Subsection 10601(c) describes specified activities in salt ponds and managed wetlands. In 2022, the Commission adopted amendments to subsections 10601(a) and (c) to promote habitat projects consistent with the comprehensive set of amendments to the San Francisco Bay Plan that were adopted in 2019, commonly referred to as the Fill for Habitat Amendments.

The 2022 amendments to section 10601 to facilitate habitat projects added two provisions to each of subsections (a) and (c). These amendments describe as minor repairs or improvements:

- (a)(9)—habitat restoration or enhancement activities that would not exceed 20,000 square feet in the Bay or a certain waterway, would include the minimum amount of fill necessary to improve wildlife habitat, and would not have significant adverse habitat conversion impacts;
- (c)(3)—habitat restoration or enhancement activities that would not exceed 50 acres in salt ponds or managed wetlands and that would include the minimum amount of fill necessary to improve wildlife habitat; and
- (a)(10) and (c)(4)—extraction or dredging of no more than 10,000 cubic yards of materials to enhance tidal connectivity or restore habitat or the disposal of such materials within an existing site for such purposes.

The 2022 amendments to section 10601(a)(2) also facilitated the use of natural and nature-based solutions in shoreline protective works (alongside traditional gray infrastructure like bulkheads, levees, and riprap) that allow for such works to be processed administratively so long as they constitute the minimum amount of fill necessary and would cover less than 10,000 square feet of the Bay or a certain waterway.

By including certain habitat projects and nature-based solutions as minor repairs or improvements, these amendments made many smaller habitat projects and projects that incorporate natural or nature-based features eligible to be authorized administratively.

Issues addressed by proposed amendments

1. Too few habitat projects are eligible for administrative permits, creating unnecessary burdens for projects of regional importance.

When these section 10601 amendments were developed in 2020, shortly after adoption of the Bay Plan Fill for Habitat Amendments, the size limits for habitat projects were established in comparison to limitations for other types of Bay fill projects. At the time, the goal was to allow more beneficial habitat projects to be processed as administrative permits, but in retrospect the scale that was selected was overly conservative and did not fully reflect the benefits provided by large-scale projects in preserving the long-term health of Bay habitats. The approach was a starting point, designed to introduce flexibility while maintaining relative consistency with how much fill was considered "minor" in other contexts. (See the accompanying technical memorandum prepared by Dr. Britne Clifton, Commission Climate Adaptation Specialist, dated April 28, 2025).

However, the current size limits in subsections 10601(a)(9), (a)(10), (c)(3), and (c)(4) are too small for many meaningful restoration projects to qualify, particularly those intended to restore ecosystem functions within the Bay. The current size limits are best suited for small-scale pilot and demonstration projects.

To further promote and streamline the permitting process for habitat projects based on best available science, and to be fully consistent with the Fill for Habitat Amendments, the currently proposed amendments will add a new subsection 10601(e)(5) to describe habitat projects up to 1,000 acres in area that will result in a net increase in habitat resources or functions as minor repairs or improvements. New subsection (e)(5) will supersede and render unnecessary subsections (a)(9), (a)(10), (c)(3), and (c)(4), and, therefore, each of these provisions added to section 10601 in 2022 will be repealed.

Subsection 10601(e) describes specified activities "anywhere in the Commission's jurisdiction" that are minor repairs or improvements By placing habitat projects up to 1,000 acres in size that will result in a net increase in habitat resources or functions within subsection (e), new subsection (e)(5) will allow such habitat projects to be considered comprehensively, in terms of their overall geographic location and area, rather than require artificially segmented consideration of individual project components that happen to be located in each area of the Commission's jurisdiction. Thus, subsection (e)(5) will both simplify the regulatory framework and allow for holistic evaluation of habitat projects.
Subsection (e)(5) provides that the permit application must include all the information described in San Francisco Bay Plan Tidal Marshes and Tidal Flats Policy 6 or Subtidal Area Policy 3, as applicable to the project site, and must demonstrate that the project will result in a net increase in habitat resources or functions. To demonstrate a net increase in habitat resources or functions, subsection (e)(5) distinguishes between two different kinds of habitat projects:

- A project that will restore or enhance an existing habitat type, and
- A project that will result in the conversion of a distinct habitat type to another habitat type.

It is necessary to distinguish between these two different kinds of projects because the approach to demonstrate whether a project will result in a "net increase of habitat resources or functions" depends on whether a project includes habitat type conversion.

It is easier to demonstrate that a habitat project to restore or enhance existing habitat will result in a net increase in resources or functions because of the nature of the project. By contrast, habitat projects that result in the conversion of one type of habitat to another may result in a net loss of some habitat types and associated ecosystem functions and other negative impacts unless properly designed and implemented. In many areas of the Bay, especially where habitats are particularly threatened by sea level rise and an absence of upland migration space, habitat type conversion may be required to offset habitat loss due to climate change effects and ensure that fish, other aquatic organisms, wildlife, and plants have habitat into the future. Thus, robust and reliable evaluation is necessary to identify habitat projects that will support habitat resilience. (See the

accompanying technical memorandum prepared by Dr. Britne Clifton, Commission Climate Adaptation Specialist, dated April 28, 2025).

If a habitat project will restore or enhance an existing habitat, the permit application must include an analysis of the design of the project that demonstrates a resulting net increase in habitat resources or functions. This analysis will be based on the project description and design and the required information described in applicable Bay Plan policies.

If a habitat project will result in the conversion of a distinct habitat type to another habitat type, proposed subsection (e)(5) allows a permit applicant to use either of two alternative approaches to demonstrate a net increase in habitat resources or functions. The permit application for a habitat conversion project must include either:

(1) An analysis of the design and evaluation of the project that demonstrates a net increase in habitat resources or functions; or
(2) The results and all supporting data from an evaluation of the project using the Aquatic Resource Type Conversion Evaluation Framework, version 2.0, Southern California Coastal Research Project, Technical Report 1110 (March 2022) ("Framework"), showing that the project achieved a positive score in all three Framework modules.

If the applicant elects to provide an analysis and evaluation of the project that demonstrates a net increase in habitat resources or functions, this analysis will be based on the project description and design and the required information described in applicable Bay Plan policies.

Alternatively, the Framework consists of three modules to assess the overall net environmental benefit of a habitat project. Subsection (e)(5) provides that if a permit application includes the results and all supporting data from an analysis and evaluation of the project using the Framework and shows that the project achieved a positive score in all three Framework modules, this shall be sufficient to demonstrate the project will result in a net increase in habitat resources or functions.

The three modules address:

(1) Feasibility/suitability;
(2) Site-specific assessment of function and condition; and
(3) Regional context.

In Module 1, feasibility is evaluated using a standardized checklist to rate how well various criteria have been met, along with justifications for each assigned rating. Module 1 comprises two parts, each of which is scored separately: (1) suitability for the landscape setting and context, and (2) difficulty or intensity of management necessary to support the future habitat after construction and in perpetuity.

Module 2 provides an approach for evaluating the relative change in function between the original and ultimate habitat type to support an evaluation of whether such a habitat type conversion is acceptable and/or desirable.

Module 3 provides approaches to consider how type conversion may support or detract from the larger regional functions and connections that individual habitat resources contribute to and how the project contributes to regional goals.

The three Framework modules provide a uniform and scientifically rigorous approach to assess potential habitat type conversion impacts. The Framework evaluates expected habitat functional losses and gains resulting from habitat type conversion, including over time considering sea level rise.

The Framework supports streamlined decision-making. By providing a uniform method to assess potential impacts of habitat type conversion across various projects, the Framework allows project sponsors to self-assess and then demonstrate to Commission staff if their project can qualify for an administrative permit.

To enable use of the Framework in the permitting process for habitat projects, subsection (e)(5) will incorporate the Framework by reference, and will state that the Framework is posted on the Commission's website and available upon request from staff.
Subsection (e)(5) reflects an expanded understanding of the best available science and established techniques involved in habitat projects. As the knowledge and best practices behind habitat projects have increased, greater streamlining is now appropriate to enable wider adoption and quicker delivery of these projects. Moreover, subsection (e)(5) will align the Commission's regulations with the approaches taken by most other state and federal agencies involved in permitting habitat projects, which have already taken aggressive measures to streamline and reduce regulatory burdens for habitat projects. (See the accompanying technical memorandum prepared by Dr. Britne Clifton, Commission Climate Adaptation Specialist, dated April 28, 2025).

A central purpose of subsection (e)(5) is to reduce the uncertainty and higher costs (lower application fees, fewer consultant hours, and less staff time spent) associated with applying for a major permit for many habitat projects, allowing such projects to maximize the benefits of streamlining efforts at other agencies. Subsection (e)(5) will enable more habitat projects to qualify for administrative permits and reduce regulatory burdens on projects capable of making greater progress toward regional goals on ecosystem restoration.

Subsection (e)(5) is fully consistent with the Commission's laws and policies including the McAteer-Petris Act, the Suisun Marsh Preservation Act, the Bay Plan, and the Suisun Marsh Protection Plan. In particular, subsection (e)(5) is consistent with and promotes the goals of the 2019 Bay Plan Fill for Habitat Amendments, which aimed to accelerate habitat restoration and ensure the survival of Bay habitats as sea levels rise.

2. Nature-based shoreline protection projects are treated the same as traditional gray infrastructure.

Section 10601(a) describes certain activities in the Bay and areas within the Commission's "certain waterways" jurisdiction. Subsection 10601(a)(2) provides that the installation of new shoreline protective works and repairs to protective works are minor repairs or improvements if specified criteria are met, including that the new works or repairs to existing works will cover less than 10,000 square feet of the Bay or a certain waterway. In 2022, this subsection was amended to include references to levees and natural or nature-based features as examples of protective works in addition to bulkheads and riprap.

While this change was intended to promote natural or nature-based solutions, in practice it has created an unintended impediment to such projects. This is because the same 10,000 square footage limitation applies to both traditional gray infrastructure (like bulkheads and riprap) and nature-based solutions (like living shorelines and ecotone features). Because both approaches have the same 10,000 square foot size limit, there is no incentive to consider natural or nature-based options. On the contrary, it is easier for a project proponent to build a traditional rock revetment than a nature-based alternative because habitat features associated with nature-based alternatives require a more gradual slope and may therefore require more fill, which could lead to the need for a major permit rather than an administrative permit. For example, a 1,000-linear-foot riprap revetement with a 2:1 slope requires the same amount of fill as 400-linear-feet of 5:1 slope habitat, the minimum slope used to meet the biological needs for many shoreline bird species.

Because habitat features generally require larger areas to support multiple goals, including effectively dissipating wave energy and promoting habitat establishment and growth, subsection 10601(a)(2) will be amended to create an incentive to implement natural or nature-based features. Specifically, as amended, this section will provide that if a project incorporates natural or nature-based features to provide improved fish or wildlife habitat, the new works or repairs to existing works may cover up to 12,500 square feet of the Bay or certain waterway. Thus, the amended regulation will allow an additional 2,500 square feet of coverage for natural or nature-based solutions to be authorized administratively in comparison to traditional gray structure protective works.

3. Reduce permitting burdens for straightforward and routine activities

Summary of existing regulations

There is ambiguity and uncertainty in the existing regulations as to whether a permit is required for certain de minimis uses or activities conducted in the shoreline band that generally do not result in any adverse impacts to the environment or public access or raise concerns related to protection of the Bay and Bay resources. Examples of de minimis activities in the shoreline band include:

- Routine repairs and maintenance;

- Remodeling or alteration of an existing structure that does not increase the building footprint;
- Construction of accessory structures or facilities associated with an existing principal structure, such as a garage, storage shed, patio, or deck for a single-family residence, or a waste disposal or recycling station for a commercial building;
- Installation or alteration of landscaping or installation of a fence less than five feet in height;
- Removal of an existing structure; and
- Installation or relocation of a utility box to provide electrical, gas, or other essential public services.

More specifically, it is not clear whether such de minimis uses or activities in the shoreline band constitute "a substantial change in use" or the placement of "fill," as those terms are used in Government Code section 66632(a), and, therefore, require a permit.

This ambiguity and uncertainty have resulted in the need for project proponents to submit, and Commission staff to process, many arguably unnecessary permit applications (typically for administrative or regionwide permits) for uses or activities in the shoreline band that had limited potential for adverse impacts on the environment or public access. This potentially has also resulted in avoidable enforcement actions for alleged violations of the McAteer-Petris Act associated with such activities.

Another ambiguity around a de minimis activity in the existing regulations has to do with section 10130's exclusion for the need to obtain a permit for extraction of materials for sampling. Government Code section 66632(a) requires a Commission permit to, among other things, "extract materials…within the area of the commission's jurisdiction," and further provides that, "[f]or purposes of this section, 'materials' means items exceeding twenty dollars ($20) in value." Public Resources Code section 29114(a) defines the term "development" for which a marsh development permit is required under the Suisun Marsh Preservation Act to include, among other things, "extraction of materials."

Section 10130 of the regulations currently excludes from the requirement for a permit under the McAteer-Petris Act and Suisun Marsh Preservation Act the extraction of any materials for environmental or seismic testing purposes. However, there is ambiguity and uncertainty as to whether this exclusion also applies to incidental activities conducted to restore a site to its previous condition once testing has been completed.

Issues addressed by proposed regulations

1. Whether a permit is required for certain activities in the shoreline band is not clearly defined, leading to confusion and sometimes permitting projects with little or no potential for adverse impacts.

New section 10307 identifies certain de minimis uses or activities in the Commission's shoreline band jurisdiction that do not require a permit because each listed use or activity is not a "substantial change in use" and does not involve the placement of "fill" under Government Code section 66632(a). No permit is required only if these uses or activities: (i) are located or conducted entirely in the shoreline band or partially in the shoreline band and partially in areas outside the Commission's jurisdiction; (ii) do not adversely impact existing public access; and (iii) do not block views of the Bay from the nearest public road or other publicly accessible locations.

Section 10307 will eliminate ambiguity and uncertainty as to whether a permit is required for certain de minimis uses or activities in the shoreline band that do not result in adverse impacts to the environment or public access or raise concerns related to protection of the Bay and Bay resources. This section limits the circumstances under which no permit is required to locations where the listed uses or activities will not adversely impact existing public access or block views of the Bay from the nearest public road or other publicly accessible locations.

Section 10307 identifies uses and activities in the shoreline band that do not require a permit in eight subsections, (a) through (h).

Subsection (a) provides that for existing single-family or two-family residences (duplexes), no permit is required for: (1) routine repairs and maintenance; (2) construction, replacement, or alteration of accessory structures; (3) construction of an accessory dwelling unit; (4) renovation, remodeling, or alteration of an existing structure that does not increase the building footprint; (5) reconstruction or replacement of an existing residence that was constructed under a Commission permit as long as the new structure would not increase the building footprint; (6) construction, replacement, or alteration of ancillary facilities, such as stairs, decks, patios, driveways, and retaining walls less than five feet in height that will not serve a flood protection function or require drilled piers or pile driving; (7) landscaping, gardens, and plantings; and (8) a fence or gate less than five feet in height.

Subsection (b) provides that for existing commercial, office, industrial, recreational, multi-family residential, and other uses besides existing single-family and two-family residences, no permit is required for: (1) routine repairs and maintenance; (2) construction, replacement, or alteration of accessory structures, provided such structures do not change of the type or intensity of use of the use; (3) renovation, remodeling, or alteration of an existing structure that: (i) has an estimated cost of less than $500,000; and (ii) does not increase the building footprint; (4) construction, replacement, or alteration of ancillary facilities, such as stairs, sidewalks, parking lots, driveways, and retaining walls less than five feet in height that will not serve a flood protection function or require drilled piers or pile driving; (5) landscaping, gardens, and plantings; and (6) a fence or gate less than five feet in height.

Subsection (c) provides that no permit is required for removal of any existing structure, accessory structure, or ancillary facility, fence, or gate, or removal of any existing use or activity, other than removal of existing public access or public access improvements.

Subsection (d) provides that no permit is required for a transfer of ownership or a change of tenant for an existing structure or activity as long as the new owner or tenant continues the same general category of use or activity and does not substantially change the intensity of use or activity.

Subsection (e) provides that no permit is required for a subdivision or other division of land in connection with a public agency acquiring an interest in such land for wildlife habitat, marsh restoration, public recreation, or public access. This provision has been moved from existing subsection 10125(b)(5) (discussed below), which currently provides that a subdivision or other division of land under the stated circumstances in not a substantial change in use.

Subdivision (f) provides that no permit is required for the installation or relocation of a utility box to provide electrical, gas, communications, water, sewage, or any other public services for an existing use or structure.

Subdivision (g) provides that no permit is required for the installation, replacement, alteration, relocation, or maintenance of any public service facilities (for electrical, gas, communications, water, sewage, or any other public services) within or upon any public highway or street. This provision implements Government Code section 66632.3, which authorizes the construction and repair of public services facilities without a permit.

Subsection (h) provides that no permit is required for environmental remediation activities where the California Department of Toxic Substances Control, the San Francisco Bay Regional Water Quality Control Board, or the United States Environmental Protection Agency has approved and is overseeing a soil or groundwater sampling plan, site investigation plan, remedial action plan, or other cleanup plan, or has issued an imminent and substantial endangerment order, cleanup and abatement order, cease and desist order, or other administrative enforcement order to compel the responsible parties to investigate and remediate environmental contamination.

Subsection (h) will allow the Commission to prioritize staff resources and avoid duplication of effort and regulatory oversight with that exercised by other federal and state agencies. Commission staff generally does not have the expertise to regulate environmental remediation activities (such as establishing cleanup levels or evaluating and selecting remediation technologies), and the Commission's permits for such activities generally impose duplicative conditions for site investigation and remediation that have previously been developed and imposed by other federal or state agencies with the necessary expertise. Under subsection (h), no permit will be required only for environmental remediation activities conducted entirely in the shoreline band or partially in the shoreline band and partially in areas outside the Commission's jurisdiction. A Commission permit will continue to be required for environmental remediation activities in other areas of the Commission's jurisdiction.

Section 10307 will eliminate or reduce the regulatory burden on project proponents from needing to apply for and obtain, and the burden on staff from needing to process, permits for the listed uses or activities conducted in the shoreline band. This section will also eliminate or reduce the regulatory burden on property owners or other project proponents and staff from unnecessary enforcement actions for alleged violations of the McAteer-Petris Act associated with such uses or activities conducted in the shoreline band without a permit and later deemed, after-the-fact, to constitute an unauthorized substantial change in use and the unauthorized placement of fill.

A benefit of listing the uses or activities in the shoreline band for which no permit is required is that section 10307 will allow Commission staff to focus its time on and dedicate more resources to processing permit applications in critical program areas, including large, complex, multi-use projects, and projects to promote habitat restoration and enhancement, sea level rise adaptation, and shoreline resiliency. In this way, section 10307 implements one of the pre-application "best practices" recommended by the final report of the California Assembly Select Committee on Permitting Reform, which is for regulatory agencies to prioritize their permitting objectives and workloads.

2. Regulations exempt material extraction for environmental or seismic testing but do not clearly exempt incidental restoration activities, such as backfilling or sealing small-diameter borings and monitoring wells.

Section 10130 will be amended to state that the exclusion from the requirement for a permit for environmental or seismic testing purposes includes incidental activities conducted to restore a site to its previous condition once testing has been completed, such as backfilling or sealing small diameter boring holes or monitoring wells. This amendment will clarify for both the public and staff that the exclusion from permitting requirements for environmental or seismic testing purposes applies to incidental site restoration activities and that no permit is required for such incidental activities. In addition, editorial revisions will be made to section 10130 to accurately quote provisions of the McAteer-Petris Act and Suisun Marsh Preservation Act.

4. Make other routine updates to clarify and improve permitting rules

Summary of existing regulations

There are opportunities to increase the overall clarity and efficacy of the Commission's existing regulations with targeted improvements to certain sections. For instance, the Commission's regulations define processes for issuing major, administrative, regionwide, and emergency permits. However, the regulations do not clearly define each permit type or provide a process for selecting the appropriate permit. In addition, the regulations do not explicitly describe the manner of judicial review of Commission permitting decisions, define emergency permits, or consistently use terminology aligned with CEQA. Some application form requirements are outdated, and minor editorial errors and inconsistencies remain.

Issues addressed by proposed regulations

1. Permit types are not clearly defined, and applicants do not have guidance for selecting the correct permit.

While the Commission considers applications and issues permits for many different types of proposed uses or activities, particularly large, complex, multi-use projects, the McAteer-Petris Act authorizes the Commission to provide by regulation for the issuance of permits by the Executive Director in cases of emergency or for "minor repairs to existing installations or minor improvements made anywhere within the area of jurisdiction of the commission." Gov't Code § 66632(f).

Beginning with the Commission's first set of regulations adopted in 1970, the regulations have included procedures applicable to "major," "administrative" (or "minor"), and "emergency" permits, and have also included a provision describing "minor repairs or improvements." As discussed above, in 1986, the Commission adopted regulations establishing the regionwide permit program; those regulations were amended in 1996 to establish the abbreviated regionwide permit program.

Because of how the Commission's permitting program developed over time, the regulations governing the different types of permits are set forth in different chapters of the regulations. Chapters 3, 4, and 5 contain regulations establishing procedures applicable to major permits. Chapter 6 contains regulations applicable to administrative and emergency permits. Chapter 17 contains regulations governing regionwide permits and abbreviated regionwide permits. Due to the historical development of the regulations, there is no single Chapter or Article of the regulations that defines the different types of permits or explains how to determine the type of permit required for a particular project.

Another clarity issue to be addressed is that Government Code section 66632(i), which establishes a 90-day limitations period (or statute of limitations) to seek judicial review of a Commission permitting decision under the McAteer-Petris Act fails to specify that a challenge to such a decision shall be brought by filing a petition for writ of mandate in accordance with Code of Civil Procedure section 1094.5. In contrast, Public Resources Code section 29602, which establishes a 60-day limitations period to seek judicial review of any Commission decision under the Suisun Marsh Preservation Act, states that an aggrieved person shall challenge such a decision "by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure."

To make the regulations more user-friendly for permit applicants, permittees, and the public, and provide greater transparency to the Commission permitting program, the proposed amendments

will repeal the first Article of Chapter 3 of the regulations, which currently contains a single section (defining the term "major permit"), and replace it with a new Article, which will contain nine sections.

The new sections will:

- define major, administrative, regionwide, and emergency permits;
- explain how the type of permit required for a project is determined;
- discuss the opportunity for prospective applicants to request a pre-application meeting;
- identify certain de minimis uses or activities in the shoreline band that do not require a permit; and
- clarify that judicial review of permitting decisions shall be sought by filing a petition for a writ of mandate under Code of Civil Procedure section 1094.5.

Each of the new sections of amended Chapter 3, Subchapter 1, Article 1 is discussed below.

Section 10300—Types of Permits

Existing section 10300 is entitled "Major Permits" and defines a major permit as any Commission permit other than an administrative permit, an emergency permit, a regionwide permit, or an abbreviated regionwide permit. This section will be repealed and replaced by a new section 10301, which will set forth a revised definition of "major permit."

New section 10300 is entitled "Types of Permits" and will identify the four types of Commission permits: (a) major; (b) administrative; (c) regionwide; and (d) emergency.

Section 10301—Major Permit

New section 10301 will set forth a revised definition of the term "major permit" in comparison to existing section 10300, which will be repealed. The revised definition is more precise than the existing definition because the revised definition includes the language triggering the requirement for a permit under the McAteer-Petris Act ("to place fill, extract materials, or make any substantial change in use of any water, land, or structure within an area of the Commission's jurisdiction under the [McAteer-Petris Act]") or the Suisun Marsh Preservation Act ("to perform or undertake any development" within an area of the Commission's jurisdiction under the Suisun Marsh Preservation Act).

Like the existing definition of major permit, the revised definition distinguishes a major permit from the other types of permits. However, the revised definition provides more detail to clarify that a major permit is a permit issued by a Commission for an activity regulated under the McAteer-Petris Act or Suisun Marsh Preservation Act "other than for minor repairs or improvements as authorized by an administrative permit or a regionwide permit or for emergency work as authorized by an emergency permit."

Section 10302—Administrative Permit

Existing section 10600 is entitled "Administrative Permit" and defines and describes an administrative permit," as "a permit issued for minor repairs or improvements." Section 10600 will be repealed and replaced by new section 10302, which will set forth a revised definition of "administrative permit."

Section 10302's revised definition of "administrative permit" is more detailed than the existing definition because the revised definition will state that an administrative permit is: (1) issued by the Executive Director; and (2) a permit issued for an activity described as minor repairs or improvements in sections 10601 or 10602, other than a regionwide permit adopted by the Commission to authorize a specific category of minor repairs or improvements.

A benefit of the revised definition is that it will clarify that both administrative permits and regionwide permits are issued for minor repairs or improvements. The difference is that an administrative permit is issued in accordance with the requirements in Chapter 6 of the regulations, including submission of a complete permit application and administrative listing prior to any action by the Executive Director, to provide the Commission an opportunity to consider whether it should process the application as a major permit. In contrast, as stated in the new definition of a regionwide permit in section 10303, a regionwide permit is adopted by the Commission to authorize a specific category of minor repairs or improvements that the Commission has determined will have no significant impact on areas within its jurisdiction. The Executive Director approves coverage under (and issues a copy of a regionwide permit to an applicant) in accordance with the less burdensome requirements for a regionwide permit as set forth in the amended Chapter 17 regulations.

Section 10303—Regionwide Permit

As discussed above, the existing regulations do not define a regionwide permit. New section 10303 will define a regionwide permit as "a permit the Commission has adopted to authorize a specific category of activities that are minor repairs or improvements which the Commission has determined will have no significant impact on areas within the Commission's jurisdiction."

Existing section 11700 does not refer to activities authorized by a regionwide permit as "minor repairs or improvements." However, as noted above, every current regionwide permit contains a finding that the authorized activities are minor repairs or improvements, including a citation to one or more subsections of sections 10601 or 10602. Thus, the Commission has adopted regionwide permits to authorize, under the streamlined and less burdensome procedures applicable to regionwide permits, certain categories of activities that are in fact minor repairs or improvements as described in or within the scope of sections 10601 and 10602 and which would otherwise need to be authorized by an administrative permit. Section 10303 will clarify for prospective permit applicants that the activities that may be authorized by a regionwide permit are minor repairs or improvements.

As discussed above, section 10303 will revise the standard for adoption of a regionwide permit from will have no "substantial" impact (under existing section 11700) to will have no "significant" impact" on areas within the Commission's jurisdiction. This is not a substantive change in the standard but rather a clarification for consistency with the terminology to assess environmental impacts under CEQA.

As also discussed above, section 10303 will refer to the Commission determining that the activities authorized under a regionwide permit will have no significant impact "on areas within the Commission's jurisdiction" generally and will not be limited to the Commission's McAteer-Petris Act jurisdiction. Thus, the definition of regionwide permit expands the scope of the regionwide permit permitting program to include areas within the Commission's jurisdiction under both the McAteer-Petris Act and Suisun Marsh Preservation Act. This change will increase the scope of the regionwide permit program, streamline the Commission's permitting process in Suisun Marsh, and promote consistency in permitting process under the McAteer-Petris Act and the Suisun Marsh Preservation Act.

Section 10304—Emergency Permit

The existing regulations do not define an emergency permit. New section 10304 will define an emergency permit as "a permit issued by the Executive Director for work that is necessary due to a sudden, unexpected situation that poses an immediate danger to life, health, property, or essential public services and that requires action more quickly that can reasonably occur when following the Commission's procedures for issuing other types of permits." This definition is consistent with and implements the definition of "emergency" in section 10120 and the criteria for granting an emergency permit set for in section 10652.

Section 10305—Determining What Type of Permit is Required for a Project

New section 10305 describes how the type of permit required for a project is determined based on the nature and scope of the proposed activity. This section clarifies that a proposed project first should be evaluated to determine if it qualifies for authorization under a regionwide permit, which involves the least burdensome and most streamlined application requirements and processing procedures. If the project does not qualify for coverage under a regionwide permit, the project should next be evaluated to determine if it qualifies for authorization under an administrative permit, which involves application requirements and procedures that are intermediate in detail and scope between those for a regionwide permit and a major permit. Only if a project does not qualify for authorization under a regionwide permit or an administrative permit must an applicant apply for a major permit. This section also clarifies that a project proponent may apply for an emergency permit only in an "emergency" situation as defined in the regulations.

Subsection 10305(a) states that the Commission has adopted regionwide permits for certain activities that are minor repairs or improvements "as described in or within the scope of sections 10601 and 10602" which it has determined will have no significant impact on areas within its jurisdiction. It is necessary to include the phrase "as described in or within the scope of" because

the existing regionwide permits do not, and future regionwide permits need not, exactly track the language used in sections 10601 and 10602 to describe various minor repairs or improvements, and because a regionwide permit may authorize minor repairs or improvements under multiple subsections of 10601 and 10602 for similar activities or for different areas of the Commission's jurisdiction.

Subsection (a) directs applicants to apply for coverage under a regionwide permit if a project includes only activities authorized by one or more adopted regionwide permits. This subsection also explains that the application process for a regionwide permit is streamlined in comparison to the process for a major or an administrative permit, and refers to sections 11741 through 11746 for the regionwide permit application requirements.

Subsection (b) directs applicants to apply for an administrative permit if a project includes only activities that are minor repairs or improvements as described in sections 10601 and 10602 but which are not authorized under one or more adopted regionwide permits. This subsection refers to section 10610(a) for the application requirements for an administrative permit.

Subsection (c) directs applicants to apply for a major permit if a project includes activities that are not authorized under one or more adopted regionwide permits or are not minor repairs or improvements as described in sections 10601 or 10602. This subsection refers to section 10310 for the application requirements for a major permit.

Subsection (d) directs applicants to apply for an emergency permit only in an "emergency" situation as defined in section 10120. This subsection refers to sections 10640 and 10641 for the application requirements for an emergency permit.

Section 10306—Pre-application Meeting with Staff

New section 10306 informs applicants that they have the opportunity to request a pre-application meeting with staff. A pre-application meeting has long been an informal part of the permitting process, particularly for large, complex projects that require a major permit, but the opportunity for such a meeting has not been reflected in the regulations. This section will increase the transparency of the permitting process by informing prospective applicants that they may request a pre-application meeting that will give them the opportunity to learn about the permitting process, particularly as applied to their project, and to resolve with staff any questions regarding application requirements or the permitting process.

Subsection 10306(a) states that if a prospective permit applicant has questions about what type of permit will be required for a project, application requirements, or how the laws and policies administered by the Commission apply to a project, the prospective applicant may request a pre-application meeting with Commission staff.

Subsection (b) clarifies that a pre-application meeting is not required but is recommended for large, complex, or mixed-use projects and any project that will require a major permit.

Subsection (c) states that for small or straight-forward projects staff may respond to questions by phone or email instead of convening a pre-application meeting. Subsection (c) is necessary to allow staff to decline a request for a pre-application meeting for small projects when warranted by workload constraints, to conserve and efficiently use staff resources, and to instead respond to questions in a phone conversation or email.

Section 10307—Uses or Activities In the Shoreline Band that Do Not Require a Permit

See discussion under "3. Reduce permitting burdens for straightforward and routine activities" above.

Section 10308—Judicial Review of Any Decision on a Permit Application

New section 10308 will provide that any aggrieved person may seek judicial review of any decision of the Commission or Executive Director to deny or approve a permit application by filing a petition for writ of mandate, within the time specified by Government Code section 66632(i) or Public Resources Code section 29602, as applicable, in accordance with Code of Civil Procedure section 1094.5.

Section 10308 will clarify that any challenge to a permit decision by the Commission or the Executive Director must be brought by filing a petition for writ of mandate in accordance with Code of Civil Procedure section 1094.5. Section 10308 is necessary because Government Code section 66632(i) fails to specify that such a challenge shall be brought by filing a petition for writ of mandate in accordance with Code of Civil Procedure section 1094.5. Section 10308 is also necessary because, while both Government Code section 66632(i) and Public Resources Code section 29602 refer to decisions by the Commission, the same writ of mandate standards and procedures that apply to judicial review of decisions by the Commission also apply to permitting decisions by the Executive Director pursuant to delegated authority under Government Code section 66632(f) and the Commission's regulations.

The Legislature enacted Government Code section 66632 sixty years ago, in 1965, and may have inadvertently omitted to specify that a challenge to a Commission permitting decision under the McAteer-Petris Act is to be brought by filing a petition for writ of mandate under Code of Civil Procedure section 1094.5. The Legislature did specify this manner of judicial review in 1977 when it enacted Public Resources Code 29602 to govern challenges to Commission decisions under the Suisun Marsh Preservation Act. The Legislature also specified this manner of judicial review in 1974 when it enacted Government Code section 66639 to govern judicial review of cease and desist orders issued by the Commission or Executive Director, and in 1988 when it enacted Government Code section 66641.7 to govern judicial review of an order issued by the Commission setting administrative civil liability.

2. Rules for calculating regulatory deadlines are unclear.

Permit applicants, permittees, respondents in enforcement proceedings, and staff have repeatedly expressed confusion and uncertainty regarding how to determine the due date for completing actions required under the regulations or calculating the deadline for submission of documents. This problem occurs especially when, by counting the number of days allowed for an action, the due date or deadline appears to fall on a weekend or holiday. To address this lack of clarity, a new section 10112 is proposed to provide instructions on calculating regulatory deadlines.

New section 10112 describes how to calculate the due date or deadline by which to perform any act provided by the regulations. This section implements and is consistent with Civil Code sections 7 and 10 and Government Code sections 6700 and 6701-6702, pursuant to which the time to complete any required legal action is computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday, or state holiday, in which case the due date is extended to the next business day.

Section 10112 will clarify for the members of the public and staff how to compute the time in which any action or submission of any document specified by the regulations or a permit condition is required to be done, particularly when the last day falls on a Saturday, Sunday, or state holiday.

3. The term "substantial change" is not clearly defined.

Government Code section 66632(a) requires a Commission permit "to place fill, to extract materials, or *to make any substantial change in use of any water, land or structure*, within the area of the Commission's jurisdiction." Section 10125 describes what is encompassed by the term "substantial change in use" under Government Code section 66632(a) in the different areas of the Commission's McAteer-Petris Act jurisdiction established by Government Code section 66610.

Subsection 10125(a) describes what is included as a "substantial change in use" as to any salt pond or managed wetland, which are jurisdictional areas established by Government Code subsections 66610(c) and (d), respectively. Subsection 10125(b) describes a "substantial change in use" as to all other areas of the Commission's McAteer-Petris Act jurisdiction—that is, San Francisco Bay, the shoreline band, and certain waterways, which are jurisdictional areas established by Government Code subsections 66610(a), (b), and (e), respectively.

One problem with the existing regulation is that subsection (b) applies both to areas of the Commission's McAteer-Petris Act jurisdiction that are subject to tidal action—the Bay and certain waterways—and to the shoreline band. Because the nature and resource values of these two types of areas are fundamentally different—water areas subject to the tides versus dry land—it is necessary to consider these areas separately in determining what uses or activities constitute a substantial change of use in each type of area. To address this issue, section 10125 will be amended in a number of respects.

A new subsection (a) will be added to describe a substantial change in use in the Bay or any certain waterway as "any construction, reconstruction, replacement, or alteration of a structure, or any other activity" that:

(1) changes the general category of use;

(2) converts the use of a property or a structure or an activity from public to private or from private to public;

(3) significantly increases or decreases the intensity of a use; or

(4) adversely impacts existing public access.

Subsections (a)(1), (a)(3), and (a)(4) are taken, with minor modifications, from existing subsection (b), which currently defines a substantial change of use in the Bay or any certain waterways, as well as the shoreline band. Subsection (a)(2) will be added because converting the use of a property or structure or an activity from public to private or from private to public can substantially change the nature or scope of a use. For the same reason, as discussed below, this provision will also be added as redesignated subsection (c)(2) as part of the definition of a substantial change in use in the shoreline band.

Subsection (a)(4) is limited to substantial changes that will adversely impact existing public access, unlike existing subsection (b)(4), which also references adverse impacts to future public access as shown on any Commission permit, the San Francisco Bay Plan, any Commission special area plan, or any other Commission planning document. The reference to adverse impacts to future public access will be omitted in subsection (a)(4) (and, as discussed below, in amended and redesignated subsection (c)(4)) to improve the clarity of section 10125.

Property owners and other permit applicants should be able to determine from reviewing section 10125 whether their proposed project will constitute a substantial change of use requiring a permit. It is not reasonable to expect a property owner or other permit applicant to know or be able to determine easily the location of future public access near a project site as may be shown on unspecified Commission permits, special area plans, or other planning documents. Moreover, while the reference to the San Francisco Bay Plan is clear, the Bay Plan maps show waterfront parks and beaches, many as identified in 1969 when the original Bay Plan was adopted, but do not show required existing or future public access.

Unlike existing subsection (b)(1), new section (a) does not limit a substantial change of use in the Bay or a certain way to any construction of or work on a structure or any activity that has an estimated cost of $500,000 or more. A cost threshold is misleading and confusing as applied to construction of or work on a structure or other activity in the Bay or a certain waterway because it may lead a property owner or other permit applicant to conclude incorrectly that no permit is required if the cost threshold is not exceeded. However, regardless of the estimated cost, construction of or work on a structure or other activities conducted in the Bay or a certain

waterway almost always involves the placement of fill and, therefore, will require a permit on that basis. To increase the clarity of this regulation and avoid the misleading impression that no permit is required if the estimated cost is less than a specified amount, it is necessary to omit a cost threshold in amended subsection (a).

Existing subsection 10125(a) will be redesignated as subsection (b) to describe a substantial change in use in any salt pond or managed wetland. In comparison to existing subsection (a), amended subsection (b) will incorporate the following changes.

First, to improve the clarity of the text, after the introductory clause, the remainder of the existing sentence of this subsection will be replaced by four further subsections describing four types of a substantial change in use. This change will make the format of amended subsection (b) consistent with the format of amended subsections (a) and (c).

Second, in subsection (b)(1), "change in use" will be revised to read, "change in the general category of use." This change will make the language of this subsection consistent with that in amended subsections (a)(1) and (c)(1).

Third, the reference to "abandonment" as a substantial change in use will be deleted. This change is necessary because it is not practical or feasible to require a property owner to obtain a permit prior to abandoning use of a salt pond or managed wetland (or any other use).

Fourth, a new subsection (b)(3) will be added to state: "complete or partial removal or breaching of a levee or berm." This change is necessary because salt ponds and managed wetlands are defined by Government Code sections 66610(c) and (d), respectively as "areas which have been diked off from the bay." The complete or partial removal or breaching of a levee or berm would fundamentally change the nature of such areas, subjecting them to tidal action, and thereby constitute a substantial change in use.

Finally, a new subsection (b)(4) will be added to state: "construction, reconstruction, replacement, or alteration of a structure." This change will make the language of subsection (b) consistent with amended subsections (a) and (c), which both refer to a substantial change of use as involving construction, reconstruction, replacement, or alteration of a structure.

Existing subsection (b) will be redesignated as subsection (c) to describe a substantial change in the shoreline band as "any construction, reconstruction, replacement, or alteration of a structure, or any other activity" that meets any of the standards established by five further subsections, (c)(1) through (c)(5). In comparison to existing subsection (b), amended subsection (c) will incorporate the following changes.

First, existing subsection (b)(1), which limits a substantial change of use to any construction of or work on a structure or any other activity that has an estimated cost of $500,000 or more, will be deleted. This provision will be deleted because whether construction of or other work on a structure or any other activity is a substantial change of use depends on the nature and scope of

the construction, other work on a structure, or the activity, especially in comparison to existing conditions, not on the estimated cost of the construction of or work on a structure or the activity. However, an estimated cost threshold of $500,000 has not been eliminated from the regulations entirely, but rather, has been incorporated into new section 10307, which identifies certain de minimis uses and activities in the shoreline band that do not require a permit.

Many of the uses or activities listed in section 10307—including but not limited to routine repairs and maintenance, construction or alteration of accessory structures or facilities associated with an existing principal structure, installation of landscaping or a fence or gate less than five feet in height, or removal of any existing structure—typically cost less than $500,000. Nevertheless, an estimated cost threshold has been included in section 10307(b)(3), which provides that no permit is required for renovation, remodeling, or alteration of most existing structures which have an estimated cost of less than $500,000.

Second, former subsection (b)(2) has been redesignated as subsection (c)(1), and a new subsection (c)(2) has been added to refer to any construction of or work on a structure or other activity that "converts the use of a property or structure or an activity from public to private, or from private to public." This subsection has been added because converting the use of a property or structure or an activity from public to private or from private to public can substantially change the nature or scope of a use.

Third, subsection (c)(3) will be revised to improve its clarity and to be consistent with subsection (a)(3).

Fourth, subsection (c)(4) will be revised to be limited to substantial changes that will adversely impact existing public access, and to eliminate the existing reference to adverse impacts to future public access as shown on any Commission permit, the San Francisco Bay Plan, any Commission special area plan, or any other Commission planning document. The reference to adverse impacts to future public access in this subsection will be deleted to improve the clarity of section 10125 and to make this subsection consistent with subsection (a)(4).

Fifth, subsection (c)(5), will be revised to be limited to subdivisions of land that will substantially affect existing public access, and to eliminate the reference future public access. This change is necessary to improve the clarity of subsection 10125 for the same reasons discussed above under subsections (a)(4) and (c)(4), and for subsection (c)(5) to be consistent with those two subsections.

Finally, subsection (c)(5) will be revised to eliminate the last clause of the existing text, which excludes from the description of a substantial change of use a subdivision or other division of land "that is brought about in connection with the acquisition of an interest in such land by a public agency for wildlife habitat, marsh restoration, public recreation, or public access." This exclusion from the description of a substantial change in use has not been eliminated from the regulations. Rather, this exclusion has been incorporated into new subsection 10307(e) which, as discussed above, provides that no permit is required in the shoreline band for a "subdivision or other division

of land in connection with a public agency acquiring an interest in such land for wildlife habitat, marsh restoration, public recreation, or public access."

4. Lack of clarity that Commission jurisdiction is not static and can change over time.

Section 10133 is currently entitled Determination of Shoreline and Map Boundaries and consists of three subsections. In summary, subsection (a) provides that upon written request, staff will furnish a description in words the Commission's jurisdiction or will indicate on a map the location of the Commission's jurisdiction or any particular boundary in a particular area represented by one or more Bay Plan maps. Subsection (b) provides that upon written request from any person who has obtained a written description or map from staff in accordance with subsection (a), the Commission shall by resolution determine by map or in words the location of the Commission's jurisdiction. Subsection (c) provides that that the maps or narrative descriptions of Commission jurisdiction need not be based on surveys performed by the Commission but may be based on any reliable information.

Section 10133 considers the areas of the Commission's jurisdiction to be static and fails to reflect that the nature of the Commission's jurisdiction can change, either as the result of work authorized by a Commission permit or for other reasons. Other circumstances that may result in a change in the nature of the Commission's jurisdiction include a failure to maintain or promptly repair a levee or water control structure, such that a former salt pond or managed wetlands becomes subject to tidal action and, therefore, comes within the Commission's Bay jurisdiction. *See Sweeney v. San Francisco Bay Conservation & Development Comm'n* (2021) 62 Cal.App.5th 1, 14-16 (former managed wetland became tidal marsh where a property owner failed to maintain a levee and manage property for a prolonged period of time). Similarly, the jurisdiction of an area formerly within the shoreline band may change if the area becomes subject to tidal action due to periodic inundation due to sea level rise. To address these issues, section 10133 will be revised.

The title of section 10133 will be amended to read "Determination of Commission Jurisdiction." This change will clarify the scope of section 10133 and make the title accurate because this section addresses the determination of the Commission's jurisdiction generally, not only the determination of the shoreline and map boundaries as suggested by the current title.

Section 10133 will be amended by adding a new subsection (d) to state that the Commission will determine its jurisdiction based on existing conditions if the nature of an area has changed either: (1) as authorized by a Commission permit, except as provided in section 10710; or (2) due to specified circumstances. As discussed below, section 10710 provides that an area subject to the Commission's Bay or certain waterways jurisdiction, under Government Code sections 66610(a) and (e), respectively, remains subject to that same jurisdiction even if filled or otherwise altered pursuant to a Commission permit or by other means.

The circumstances to be considered in determining the Commission's jurisdiction under section 10133(d) include: (1) failure to maintain any use of land or water or any human-made works; (2) the natural destruction of and failure to timely repair any human-made works except to the extent

an area remains excluded from Commission jurisdiction pursuant to section 10123(a); or (3) an area becomes subject to tidal action due to periodic inundation with tidal waters or sea level rise.

New subsection (d) will clarify that where the nature of an area has changed either as authorized by a Commission permit or due to the circumstances specified in the regulation, the Commission's jurisdiction shall, with few exceptions, be determined based on existing conditions. This new subsection is necessary to reflect and implement the Court of Appeal's decision in *Sweeney v. San Francisco Bay Conservation & Development Comm'n* (2021) 62 Cal.App.5th 1, 14-16, which held that the Commission properly determined its jurisdiction based on existing conditions, and that a former managed wetland had become tidal marsh, where a property owner had failed to maintain a levee and manage its property for a prolonged period of time. This new subsection is also necessary to clarify that the jurisdiction of an area may change if the area becomes subject to tidal action due to periodic inundation due to sea level rise.

5. Procedures for processing and noticing administrative and emergency permits need clarification.

The following amendments will update Chapter 6 (Permit Procedures: Administrative and Emergency Permits) of the Commission's regulations. They clarify administrative permit procedures, improve notice requirements for permitting actions by the Executive Director, and revise language for greater clarity and consistency.

Subchapter 1. Procedures for Administrative Permits

Subchapter 1 currently is entitled "Procedures for Permits for Minor Repairs or Improvements (Administrative Permits)." This title is misleading and confusing because, as discussed above, while administrative permits are issued for minor repairs or improvements, the Commission has also adopted regionwide permits to authorize certain categories of activities that are minor repairs or improvements which it has determined will have no significant impact on areas within its jurisdiction. However, the procedures established in subchapter 1 of Chapter 6 are applicable only to administrative permits.

To clarify that the procedures in subchapter 1 apply only to administrative permits, it is necessary to change the title of subchapter to read: "Procedures for Administrative Permits."

Section 10600—Administrative Permit

Existing section 10600 is entitled "Administrative Permit" and defines an administrative permit, sometimes referred to as a "minor permit" as a permit issued for minor repairs or improvements. As discussed above, this section will be repealed and replaced by new section 10302, which will set forth a revised definition of "administrative permit."

Section 10601—Minor Repairs or Improvements

Section 10601 describes the categories of activities within the different areas of the Commission's jurisdiction that constitute "minor repairs or improvements."

Introductory Paragraph. The introductory paragraph of this section currently states that "minor repairs or improvements"

> means any activity for which a Commission permit is required, that is either (a) necessary to the health, safety, or welfare of the public in the entire Bay Area, (b) consistent with the Government Code sections 66600 through 66661 and the San Francisco Bay Plan, or (c) consistent with the Public Resources Code sections 29000 through 29612 and Suisun Marsh Protection Plan or with the certified Suisun Marsh Local Protection Program, and that falls into one or more of the following categories:…

The language in clauses (a) and (b) is based on Government Code section 66632(f) which provides that the Commission shall grant a permit under the McAteer-Petris Act if it 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 [the McAteer-Petris Act] and with the provisions of the San Francisco Bay Plan."

The Commission has rarely granted a permit on the ground that a project is necessary to the health, safety or welfare of the public of the entire Bay Area, and has made such a determination only when issuing a major permit or adopting an amendment to the San Francisco Bay Plan or a special area plan. Moreover, the Executive Director has never issued an administrative permit, and the Commission has never adopted a regionwide permit, based on factual findings that the minor repairs or improvements authorized by such a permit are necessary to the health, safety or welfare of the public of the entire Bay Area.

By their very nature, "minor repairs or improvements" are not necessary to the health, safety or welfare of the public of the entire Bay Area. Therefore, the inclusion of clause (a) in the introductory paragraph of section 10601 is inaccurate and misleading as a potential ground for determining that an activity described in this section is a minor repair or improvement.

For these reasons, the introductory paragraph of section 10601 will be amended to delete clause (a) and redesignate clauses (b) and (c) as clauses (a) and (b), respectively. The purpose of this change is to more accurately describe the basis for determining that the activities described in section 10601 are minor repairs or improvements.

Subsection 10601(a). Amendments to Subsection 10601(a)(2) are discussed above in "2. Expand use of administrative permits for habitat projects."

Subsection 10601(a)(3) provides that in the Bay and certain waterways "the placement of piles to support extensions of portions of principal structures, as defined in section 10702(b), over the water where the total of any such extensions would not exceed 1,000 square feet" is a minor repair or improvement. Subsection (a)(3) will be amended to substitute the term "an existing structure" in place of "principal structures, as defined in section 10702(b)," which will be deleted, because section 10702 was repealed in 2022.

In addition, the changes to subsection (a) include minor editorial revisions to the introductory clause and to subsections (a)(1) through (a)(5). These changes are being made to improve the clarity and conciseness of the text, but none alter the meaning of any of these provisions. Similarly, subsection (a)(4) will be amended to update the proper name of the San Francisco Bay Regional Water Quality Control Board, and subsection (a)(10) will be amended to add a reference to "beneficial reuse" as the preferred alternative to disposal of dredged sediment.

Subsection 10601(b). Subsection (b) describes certain activities within the Commission's 100-foot shoreline band jurisdiction.

Subsection (b)(2) provides that in the shoreline band the construction of a one- or two-family residence and ancillary residential structures is a minor repair or improvement except when the residence "would adversely affect existing physical or visual access or potential visual access." Subsection (b)(2) will be amended to delete the references to "visual public access" and "potential visual public access," and substitute in their place a reference to "views of the Bay or shoreline from the nearest public road or other publicly accessible locations." These changes are necessary because the terms "visual public access" and "potential visual public access" are vague and ambiguous, and because construction of a new residence on an undeveloped parcel will always have visual impacts from some locations near a project site.

The Bay Plan's policies for Appearance, Design and Scenic Views and the Commission's Public Access Design Guidelines provide for the enhancement and preservation of views of the Bay and its shoreline from public thoroughfares and other public spaces, rather than for the protection of broad and undefined "visual public access" or "potential visual public access." To improve the clarity of this subsection, it is necessary to delete the references to visual public access and potential visual public access and substitute a reference to views from the nearest public road or other publicly accessible location.

Subsection 10601(b)(5) provides that in the shoreline band "routine repairs, reconstruction, replacement, removal, or maintenance of a structure that do not involve any substantial enlargement or any substantial change in uses is a minor repair or improvement. Subsection (b)(5) will be amended to delete the references to "routine repairs," "maintenance," and "removal," so that this subsection will be consistent with section 10307; under that new section, no permit will be required for routine repairs and maintenance, or for removal of any existing structure, in the shoreline band. To improve the clarity of subsection (b)(5), it is also necessary to delete the reference to "a structure" and substitute a reference to "an existing structure," because the subsection applies to reconstruction or replacement of an existing structure.

To improve the clarity of subsection (b)(5), it is also necessary to add a reference to "alteration" of an existing structure and to delete the vague reference to reconstruction, replacement, or alteration that "do not involve any substantial enlargement" of an existing structure. Adding "alteration" of an existing structure will make this subsection consistent with section 10125, which includes alteration of a structure as an activity that may qualify as a substantial change of use.

The term "substantial enlargement" is vague and provides no standard to assess the size or scope of an enlargement to determine if the work qualifies as a minor repair or improvement. Subsection (b)(5) will be amended to refer instead to any reconstruction, replacement, or alteration of an existing structure that "does not increase the building footprint, floor area, or height of a structure by more than 25%." The revised provision will establish definite quantitative measures for determining whether enlargement of an existing structure qualifies as a minor repair or improvement.

In addition, the amendments to section 10601 include numerous minor editorial revisions to subsections (b) through (f). These revisions are necessary to improve the clarity and conciseness of the text, but none changes the meaning of any of these provisions. Similarly, subsection (c)(4) will be amended to add a reference to beneficial reuse as the preferred alternative to disposal of dredged sediment, and subsection (d)(4) will be amended to refer to the updated proper name of the San Francisco Bay Regional Water Quality Control Board.

Section 10602—Administrative Permits for Dredging and Beneficial Reuse or Disposal Projects

Section 10602 describes the dredging and disposal projects that constitute "minor repairs or improvements."

This section currently is entitled "Administrative Permits Related to Dredging and Disposal Projects." The title of this section will be amended to include a reference to beneficial reuse, which is the preferred alternative to disposal of dredged sediment. The introductory sentence of this section and subsections (d) and (g) will also be amended to add references to beneficial reuse.

The amendments to section 10602 include numerous minor editorial revisions. These revisions will improve the clarity and conciseness of the text, but none alter the meaning of any of these provisions. Subsection 10602(f) will be amended to update the proper names of the San Francisco Bay Regional Water Quality Control Board and the California Department of Fish and Wildlife, and to correct a typographical error in the name of the U.S. Army Corps of Engineers.

Section 10620—Administrative Listing

This section requires the Executive Director to submit to the Commission, prior to each regularly scheduled Commission meeting, a list of applications for administrative permits that are ready to be acted upon. As shown by the following section 10621, entitled Executive Director's and Commission's Action After Listing, the purpose of the administrative listing is to provide an opportunity for any Commissioner to object to the issuance of the administrative permit by the Executive Director and, if such as objection is raised, for the Commission to vote on whether it should consider the application as a major permit.

The first sentence of subsection 10620(a) is unclear and confusing because it refers to any permit application for "minor repairs or improvements." As the definitions of administrative permit and regionwide permit in new sections 10302 and 10303 make clear, both these types of permits are

for activities that are minor repairs or improvements. To clarity that section 10620 concerns only any application for an administrative permit, and not also a request for coverage under a regionwide permit, it is necessary to delete the reference to "minor repairs or improvements" in the first sentence of subsection (a) and substitute instead the words, "an administrative permit." This change will make section 10620 consistent with section 10621, which refers repeatedly to an administrative permit (see subsections 10621(a), (a)(1), (a)(2), (b), and (e)).

Section 10620 requires a listing of applications for administrative permits ready to be acted upon, but neither section 10620 nor any other regulation requires notice to be provided when the Executive Director issues an administrative permit. Similarly, the regulations do not require notice of three other permitting actions by the Executive Director: (1) approval of a nonmaterial amendment to an administrative permit under section 10810; (2) approval of a nonmaterial amendment to a major permit under section 10822; and (3) approval of coverage under a regionwide permit. In contrast, section 10654 requires the Executive Director to report to the Commission as part of the administrative listing the emergency permits granted by the Executive Director since the last listing.

To improve the transparency of the permitting process and provide notice of permitting actions taken by the Executive Director, section 10620 will be amended, by adding a new subsection (c), to state that the administrative listing shall include a section providing notice of the Executive Director's issuance, granting, or approval of each administrative permit, emergency permit, nonmaterial amendment to a major permit, nonmaterial amendment to an administrative permit, and coverage under a regionwide permit. To ensure adequate notice, subsection (c) further provides that for each permit or approval the notice shall include: (1) the name of the permittee; (2) the project address or location; (3) the permit number; and (4) the date of issuance or approval.

Section 10654—Notice of Granting Emergency Permits

This section currently is entitled "Report to the Commission," and requires the Executive Director to report to the Commission, as part of the administrative listing at each meeting, the emergency permits the Executive Director has granted since the last report.

Section 10654 will be amended to require the Executive Director to provide notice of granting each emergency permit in the listing provided to the Commission and posted on the Commission's website, in accordance with section 10620(c). For improved clarity, the title of this will be revised to read: Notice of Granting Emergency Permits. The text of section 10654 will be amended to be consistent with section 10620(c) and with the amendments to sections 10810 and 10822 and with new section 11737, regarding notice of the other permitting actions taken by the Executive Director. The amendment to section 10654 is not a substantive change but rather will ensure consistency among these regulatory provisions.

6. Lack of clarity about the Commission's continuing jurisdiction over certain areas.

Section 10710 currently provides:

> Areas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered whether pursuant to a Commission permit or not.

This provision has generated confusion because it has been incorrectly interpreted as applying to all the different types of areas of the Commission's jurisdiction under the McAteer-Petris Act as established in Government Code section 66610—San Francisco Bay, the shoreline band, saltponds, managed wetlands, and certain waterways. Under this incorrect interpretation, any of these areas remain subject to the same type of jurisdiction even if the area is filled or otherwise altered to another type of jurisdictional area. However, the regulatory history demonstrates that this provision was intended to apply only to jurisdictional areas subject to tidal action—the Bay and certain waterways—so that the fill policies of Government Code section 66605 would continue to apply to these areas even if they were filled or otherwise altered.

In the first set of regulations adopted by the Commission, in 1970, what became this provision was subsection (b) of section 10132, entitled "Subject to Tidal Action." Subsection 10132(b) provided: "Areas once subject to tidal action (as defined in paragraph (a)) remain subject to the same Commission jurisdiction even if filled pursuant to a Commission permit." As part of amendments to the Commission's regulations adopted in 1987, former section 10132 was amended and renumbered and former subsection 10132(b) was revised as section 10710 in its current form.

In discussing section 10710, the Initial Statement of Reasons explained:

> Early in its existence, the Commission issued some fill permits without any conditions concerning how the fill would be used after it was placed. The Commission's more recent practice is to grant a permit *to allow fill in the Bay* only if the terms and conditions of the permit identify and limit the uses to which the permittee can put the fill after he has placed it. In addition, in some cases, *fill has been placed into San Francisco Bay* illegally without a Commission permit. (emphasis added).

The conditions that the Commission has placed in permits concerning the use of filled areas, as referenced in the Initial Statement of Reasons for section 10710, are set forth in Government Code section 66605 which contains legislative findings and declarations concerning further filling of San Francisco Bay and certain waterways. Those conditions include most importantly limiting the use of filled areas to water-oriented uses and that there be no alternative upland location for the proposed use. Govt Code § 66605(b).

Section 10710 will be amended to read:

> Areas once subject to Commission Bay or certain waterways jurisdiction under Government Code sections 66610(a) or 66610(d), respectively, remain subject to that same jurisdiction even if filled or otherwise altered whether pursuant to a Commission permit or by other means.

This purpose of this change is to clarify that the scope of section 10710 is limited to areas subject to the Commission's Bay and certain waterways jurisdiction and to eliminate the confusion associated with incorrectly interpreting the existing regulation as applying to all the different types of areas of the Commission's jurisdiction under the McAteer-Petris Act. For these reasons, it is necessary to amend section 10710 to refer specifically to the Commission's Bay and certain waterways jurisdiction and to cite Government Code sections 66610(a) and (d), respectively.

7. Lack of notice when the Executive Director approves nonmaterial amendments to administrative or major permits.

The following amendments will require the Executive Director to notice approval of nonmaterial amendments to administrative or major permits as part of the administrative listing provided to the Commission and the public, for consistency with noticing requirements around other Executive Director permitting actions.

Section 10810—Applications for and Action on Nonmaterial Amendments to an Administrative Permit

Section 10810 governs applications for and action on nonmaterial amendments to an administrative permit. Subsection (b) authorizes the Executive Director to approve a nonmaterial amendment to an administrative permit if the amendment is consistent with the Commission's laws and policies as specified therein. However, section 10810 does not require notice that the Executive Director has approved a nonmaterial amendment to an administrative permit.

To improve the transparency of the permitting process and provide notice of permitting actions taken by the Executive Director, section 10810 will be amended to add subsection (d), which will require notice of approval of a nonmaterial amendment to an administrative permit in the listing provided to the Commission in accordance with section 10620(c).

Section 10822—Criteria and Procedures for Processing Nonmaterial Amendments to Major Permits

Section 10822 establishes criteria and procedures for processing nonmaterial amendments to major permits. This section authorizes the Executive Director to approve a nonmaterial amendment to major permit if he or she finds the amendment is consistent with the Commission's laws and policies as specified therein. However, this section does not require notice that the Executive Director has approved a nonmaterial amendment.

To improve the transparency of the permitting process and provide notice of permitting actions taken by the Executive Director, section 10822 will be amended, by redesignating the existing text as subsection (a) and adding subsection (b), which will require notice of approval of a nonmaterial amendment to a major permit in the listing provided to the Commission in accordance with section 10620(c).

Estimated costs associated with the amendments

The amendments will not impose any direct or indirect costs on individuals, businesses, local government agencies, or state agencies. The amendments will eliminate permit fees for certain de minimis activities in the shoreline band by clarifying that no permit is required for such activities, and will reduce permit fees for some habitat projects which will be eligible to be authorized under administrative permits rather than major permits. Thus, the amendments will incrementally reduce the costs of the Commission's regulatory program by a modest amount and correspondingly reduce the permit application fees collected by the Commission.

It is difficult to estimate the reduction in permitting costs (and collected fees), that will result from clarifying that no permit is required for certain de minimis activities in the shoreline band. However, the reduction in costs (and fees) is not expected to be substantial. This is because if a project consists of only de minimis activities in the shoreline band, under the existing regulations, the project generally would be authorized under a regionwide permit or abbreviated regionwide permit for which the application fee is only $200. If an administrative permit were required for such a project and if the total project cost were under $600,000, under the existing regulations, the application fee would be between $300 and $2,100. If such a project were processed as a non-material permit amendment to an administrative permit, the cost would be between $200 and $600 for projects with total costs under $600,000.

If the amendments clarifying that no permit is required for certain de minimis activities in the shoreline band had been in place in 2024, they likely would have eliminated the need for issuance of approximately 15 permits (primarily regionwide permits and non-material amendments to administrative permits) for which the total application fees were $4,750, or an average of $467 per application. In comparison, in 2024, the Commission collected over $1.2 million in total permit fees.

The proposed amendment to allow habitat projects up to 1,000 acres in size to be authorized under an administrative permit, will reduce the permitting costs (and collected fees) for such projects. However, the reduction in regulatory costs (and collected fees) is difficult to estimate and would depend on the number of habitat projects authorized under administrative permits rather than major permits per year, the total cost of each project, and whether the individual projects are funded in whole or part by a grant from the San Francisco Bay Restoration Authority.

The reduction in costs (and collected fees) will depend on the total cost of each habitat project because under the regulations, permit application fees are determined based on total project costs. In addition, to the extent that a habitat project is funded through a grant from the San Francisco Bay Restoration Authority, the regulations provide that the amount of such a grant is subtracted from the total project costs in determining the permit application fee. Moreover, the Commission does not impose or collect application fees for any federal agency project approved through the consistency review process under the Coastal Zone Management Act; therefore, the amendment would not change permitting costs or fees for federal habitat projects.

Although difficult to estimate, the reduction in costs (and collected fees) associated with authorizing habitat projects up to 1,000 acres in size under administrative permits is not expected to be substantial. For example, for a habitat project with a total project cost of $10 million dollars, the application fee for a major permit would be $40,000, and the application fee for a minor permit would be $24,000. If the project received funding through a grant from the San Francisco Bay Restoration Authority, the permit fees, for either a major permit or an administrative permit, would be less than stated above, and therefore the reduction in permitting costs (and fee revenue) would likely be less.

Over the past five years, an average of no more than one habitat project per year would have been eligible to be authorized under an administrative permit if the proposed amendment for habitat projects had been in effect during that period. Based on the above estimate, while the reduction in permit costs fees would be helpful to the applicant for an individual habitat project, the reduced fee revenue collected by the Commission on an annual basis would not be substantial in comparison to the over $1.2 million in total fees collected in 2024.