

San Francisco Bay Conservation and Development Commission

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INITIAL STATEMENT OF REASONS

September 2025

Proposed Amendments to Commission Regulations, Title 14, Division 5

I. INTRODUCTION

A. Background

The Commission's regulations establish procedures and standards for the Commission or its Executive Director to issue permits within areas of the Commission's jurisdiction: (1) under the McAtter-Petris Act ("MPA"), California Government Code sections 66600 through 66694; and (2) the Suisun Marsh Preservation Act ("SMPA"), California Public Resources Code sections 29000 through 29612.

In summary, the proposed amendments will:

- Streamline and improve the regionwide permit program for straightforward projects that will not result in significant adverse environmental impacts;
- Add a new introductory Article to the permitting regulations including sections to define the different types of permits, describe how the type of permit required is determined based on the nature and scope of a project, identify de minimis activities within the Commission's shoreline band jurisdiction that do not require a permit, and state general provisions applicable to all types of permits; and
- Revise, clarify, or update certain regulations governing the Commission's permitting process and the determination of the Commission's jurisdiction.

The objectives of the proposed amendments are to improve and clarify the regionwide permit program by providing more detail as to how the Commission adopts, amends, or revokes a regionwide permit, how a permit applicant applies for coverage under a regionwide permit, and how the Executive Director reviews an application for coverage under a regionwide permit. The objectives also include clarifying and streamlining the information required to apply for coverage under a regionwide permit.

The objectives of the proposed amendments include increased clarity and transparency for permit applicants and the public by adding a new introductory Article to the permitting regulations with sections to define the different types of permits, describe how the type of permit required is determined depending on the nature and scope of a proposed project provide, identify certain de minimis activities in the Commission's shoreline band jurisdiction that do not require a permit, and set forth general provisions applicable to all types of permits.



Finally, the objectives include revisions to update and improve the clarity of selected regulations and to increase transparency by providing for notice of permitting actions taken by the Executive Director.

The proposed amendments were developed in response to recent work that Commission staff has undertaken to improve the effectiveness, efficiency, and transparency of the permitting program.

In 2024, staff completed a year-long assessment of the permitting process and developed a roadmap identifying targeted improvements for the program. The roadmap incorporates recommendations from the mission-based review of the Commission's permitting program by the Department of Finance at the Executive Director's request. The proposed amendments 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.
- **Commission'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.

On May 15, 2025, the Commission considered a staff briefing on the proposed amendments to its regulations. Comments by Commissioners and the public focused on certain proposed amendments that were intended to accelerate the processing of habitat restoration projects by allowing habitat projects up to 1,000 acres in size to be authorized by an administrative permit.

On June 5, 2025, the Sea Level Rise Commissioner Working Group considered a staff briefing on planned improvements to the Commission permitting program, which included a further discussion of the proposed amendments to increase the number of habitat projects that would qualify for administrative permits. Based on the additional comments by Commissioners and the public, the Executive Director decided to remove these proposed amendments from this set of proposed amendments pending further evaluation of potential comprehensive changes to the regulations governing administrative permits.

On September 4, 2025, the Commission considered a second staff briefing on the proposed amendments described herein and the recommendation to remove the earlier proposed amendments to increase the number of habitat projects that would qualify for administrative permits. Following the briefing, the Commission authorized staff to initiate this rulemaking process.

B. Summary of Proposed Amendments

1. Streamline and Improve the Regionwide Permit Program

The existing regulations allow the Commission to authorize similar categories of activities under two different permit programs, one for regionwide permits (“RWPs”) and another for abbreviated regionwide permits (“ARWPs”). Commission adoption of permits under the two programs is governed by an identical regulatory standard, which requires that the Commission has determined the authorized activities “will have no substantial impact.” However, the application requirements and processing timeframes for these programs differ slightly. Having two similar programs with different requirements is confusing to permit applicants and has resulted in little or no benefit from a regulatory perspective.

The proposed amendments will repeal the existing regulations governing RWPs and ARWPs in their entirety and adopt a new set of amended regulations for the RWP permit program only. In comparison to the existing regulations, the amended regulations will provide much more detail as to how the Commission adopts, amends, or revokes a RWP, how a property owner or other project proponent applies for coverage under a RWP, and how the Executive Director reviews an application for coverage under a RWP.

The existing RWP program applies only in areas of the Commission’s jurisdiction under the MPA. This limitation is unnecessary, unjustified, and confusing. The amended regulations will increase the scope of the RWP program to include areas within the Commission’s jurisdiction under the SMPA.

Under the existing regulations, there are ambiguities and inconsistencies regarding the information that an applicant seeking coverage under a RWP is required to submit to enable the Executive Director to determine whether to approve or deny coverage under such a permit. The proposed amendments will repeal the existing RWP application requirements and adopt new regulations to revise, clarify, and streamline the information required to apply for coverage under a RWP.

The amended RWP regulations are discussed in Part II of this Initial Statement of Reasons.

2. Add a New Introductory Article to the Permitting Regulations

Because of how the Commission's permitting programs developed over time, the regulations governing the different types of permits are set forth in different Chapters of the regulations. There is no single Chapter or Article that defines the different types of permits or contains general provisions applicable to all types of permits.

To provide greater clarity to prospective permit applicants and the public, the proposed amendments will add a new introductory Article to the permitting regulations. The new Article will include sections to:

- Define the four types of permits – major, administrative, RWP, and emergency.
- Describe how the type of permit required is determined depending on the nature and scope of a proposed project.
- Inform permit applicants of the opportunity to request a pre-application meeting with Commission staff.
- Identify certain de minimis activities in the Commission's shoreline band jurisdiction that do not require a permit.
- State that any aggrieved person may seek judicial review of any decision of the Commission or the Executive Director to deny or approve a permit application by filing a petition for writ of mandate in accordance with Code of Civil Procedure section 1094.5.

The new introductory Article and each of the sections within it are discussed in Part III.

3. Other Amendments to Revise, Clarify, or Update Certain Regulations

The proposed amendments include a new section 10112 that will clarify how to calculate deadlines to perform any act required by the regulations. The amendments also include revisions, clarifications, or updates to the following regulations:

- Section 10125 defines a "substantial change of use" for which a permit is required under the MPA.
- Section 10130 excludes incidental site restoration activities associated with the extraction of material for sample testing from the requirement for a permit-++.
- Sections 10133 and 10710 govern the determination of the Commission's jurisdiction under certain circumstances.
- Section 10601 describes the categories of activities within the different areas of the Commission's jurisdiction that constitute "minor repairs or improvements."
- Section 10602 describes the dredging and disposal projects that constitute "minor repairs or improvements."
- Section 10620 requires the Executive Director to provide a listing to the Commission of pending applications for administrative permits.
- 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.

- Sections 10810 and 10822 govern Executive Director approval of nonmaterial amendments to administrative and major permits, respectively.

Part IV provides a section-by-section discussion of the proposed amendments to each of these regulations in numerical section order.

II. REPEAL EXISTING REGIONWIDE AND ABBREVIATED REGIONWIDE PERMIT REGULATIONS; ADOPT AMENDED REGIONWIDE PERMIT REGULATIONS

A. Summary of Existing Regulations

In 1986, the Commission adopted regulations that establish procedures to be followed in issuing regionwide permits (“RWPs”). 14 C.C.R. §§ 11700-11716. The Commission has issued RWPs to authorize specific categories of activities which it has determined will have no substantial impact on areas within the Commission’s MPA jurisdiction.

To obtain coverage under a RWP issued by the Commission, an applicant submits a “notice of intent to proceed” providing specified information about its 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 14 days: (1) approve or disapprove the notice, basing the decision solely on the proposed project’s consistency with one or more RWPs; and (2) if the notice is approved, issue a copy of the RWP to the applicant.

The Commission first issued a set of RWPs in December 1986. Since that time, it has amended many of the RWPs on one or more occasions and has discontinued the use of others. There are currently eight RWPs which are posted on the Commission’s website.

In 1996, the Commission amended certain of the RWP regulations and adopted regulations that establish procedures to be followed in issuing abbreviated regionwide permits (“ARWPs”). 14 C.C.R. §§ 11717-11720. Like RWPs, the Commission has issued ARWPs to authorize specific categories of activities which it has determined will have no substantial impact on areas within the Commission’s MPA jurisdiction.

As with a RWP, to obtain coverage under an ARWP, an applicant submits a “notice of intent to proceed” providing specified information about its 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 the decision solely on the proposed project’s consistency with one or more ARWPs; and (2) if the notice is approved, issue a copy of the ARWP to the applicant.

The Commission first issued a set of three ARWPs in December 1996. Since that time, it has amended each ARWP on one occasion. The three ARWPs are posted on the Commission’s website.

The ARWP regulations were intended to provide a more streamlined approach for submitting a notice of intent to proceed under such a permit, in comparison to the approach for RWPs, so that the timeframe for approval of projects covered by an ARWP could be shortened. In 1996, when the ARWP regulations were adopted, an applicant submitting a notice of intent to proceed for a project covered by a RWP 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 a ARWP. Therefore, in adopting the ARWP regulations, the Commission also adopted a notice of intent to proceed form (Appendix N to the regulations) that identifies the information required to apply for a ARWP.

Adoption of the relatively brief notice of intent to proceed form (Appendix N) to apply for coverage under an ARWP was intended to reduce the time spent by applicants and staff in processing projects covered by ARWPs. The agency review time for completed notices of intent to proceed for ARWPs is slightly shorter than for the corresponding notices for RWPs. After the Executive Director determines that a notice of intent to proceed for a ARWP is complete, the notice must be approved or disapproved within seven working days. In contrast, after the Executive Director determines that a notice of intent to proceed for a RWP is complete, the notice must be approved or disapproved 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 RWP to complete the entire form. As last amended in 2008, the current Appendix D form provides that an applicant seeking coverage under a RWP, as well as an applicant for a major permit or an administrative permit, is required to complete the entire application form. However, the RWP regulations were not amended in 1998 or 2008, and continue to state that an applicant seeking coverage under a RWP is required to complete only Part I of the Appendix D form, which no longer exists. Thus, the RWP regulations and Appendix D are inconsistent, resulting in ambiguity and confusion regarding the information required to apply for coverage under a RWP.

B. Problems With Existing Regulations and Proposed Amendments

1. The Existing Regulations Establish Two Duplicative Programs Based on an Identical Permitting Standard

The existing regulations establish two permit programs, one for RWPs and another for ARWPs, under each of which the Commission's issuance 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 MPA jurisdiction. Having two different permit programs for similar categories of activities that have been authorized under an identical standard is confusing to permit applicants, the public, and staff.

The ARWP regulations were intended to provide a more streamlined approach for submitting a notice of intent to proceed under an ARWP, in comparison to RWPs, so that the timeframe for approval of projects covered by an ARWP 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 a ARWP is determined to be complete, the Executive Director must approve or disapprove the notice (and if the notice is approved, must issue the ARWP to the applicant) 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 RWP is determined to be complete, the Executive Director must approve or disapprove the notice (and if the notice is approved, must issue the RWP to the applicant) within fourteen days. The somewhat shorter processing time for ARWPs is not substantial.

There are also differences in the information required to be submitted in a notice of intent for a RWP versus an ARWP, with considerably more information required for a RWP. (However, as noted above, the RWP regulations and the Appendix D application form are inconsistent regarding the information required to apply for coverage under RWP.) 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 ARWP. Moreover, the current differences in the information required to apply for coverage under a RWP versus a ARWP 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 RWP.

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

Proposal and Rationale

The existing regulations governing RWPs and ARWPs (sections 11700 through 11721) will be repealed in their entirety, and the Commission will adopt in their place a new set of amended regulations governing RWPs only. Given the extensive proposed changes to the RWP regulations, proceeding in this manner will be clearer to the public than amending a few of the existing RWP regulations with underscoring to show new text and strikeout to show deleted text, and adding many new sections that have no counterpart in the existing regulations.

Existing section 11717 requires a project sponsor seeking to implement a project under an ARWP to complete and submit to the Executive Director “a Notice of Intent to Proceed under

an Abbreviated Regionwide Permit (which these regulations contain as Appendix N).” Because all the existing regulations governing ARWPs, including section 11717, will be repealed, it is also necessary to repeal Appendix N, which is the notice of intent to proceed under an ARWP.

The purpose of amended regulations is to replace the existing regulations that establish two different permitting programs – one for RWPs and a second for ARWPs – for similar types of activities governed by an identical standard, which is that the authorized activities will have no significant impact on areas within the Commission’s jurisdiction. The amended regulations will consolidate these into a single permit program for RWPs. These changes are necessary to streamline and improve the clarity of the permitting process for the Commission to authorize specific categories of activities which the Commission has determined will have no substantial impact on areas within its jurisdiction.

The benefits of these changes will include clarifying and streamlining the process for the Commission to adopt RWPs 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 RWP and ARWP programs. To achieve these benefits, it is necessary to repeal the existing regulations and adopt a new set of amended regulations.

In proposing to repeal the ARWP regulations, staff was sensitive to the shorter time period for review of a notice of intent to proceed under an ARWP (seven working days) in comparison to the review time for a notice of intent to proceed under a RWP (14 days). To streamline the amended RWP process and preserve the benefit to applicants from the existing shorter processing time for ARWPs, under the amended RWP regulations, the Executive Director must approve or deny an application for coverage under a RWP within 10 days after determining that the application is complete. This time frame is four days shorter than the current review period for a RWP notice of intent and approximately only one or two days longer than the current review period for an ARWP notice of intent. Staff believes that ten 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 RWP.

As for the existing differences in the information required to be submitted with a notice of intent to proceed under a RWP versus an ARWP, those differences have been considered in developing the amended regulations that will specify the information required to apply for coverage under a RWP. Those application requirements are discussed in detail below in Part II.B.4.

2. The Existing Regulations Do Not Define a Regionwide Permit and Unnecessarily Limit the RWP Program to the Areas of the Commission’s MPA Jurisdiction

The existing regulations do not define the term “regionwide permit.” Instead, section 11700 currently provides, in part, that the Commission may issue a RWP (or an ARWP) to authorize

throughout its MPA jurisdiction a specific category or categories of activities that it has determined will have no substantial impact on areas within its MPA 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 particular, the references in section 11700 to “routine repair” and “routine repair, maintenance, and improvements” have led to confusion between those activities that may be authorized by a RWP and those activities that are “minor repairs or improvements” that must 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 MPA or SMPA jurisdiction. Section 10602 describes numerous dredging and disposal projects that constitute minor repairs or improvements that may be authorized administratively.

Section 11700 does not refer to activities authorized by a RWP (or ARWP) as “minor repairs or improvements.” However, every current RWP (and ARWP) 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 issued RWPs (and ARWPs) 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 has created ambiguity and confusion as to the activities for which an applicant may seek coverage under the more streamlined and less burdensome procedures applicable to a RWP (or an ARWP) or instead must apply for an administrative permit.

There are two problems with the terminology used in section 11700 that will be addressed in defining the term “regionwide permit.” First, section 11700 provides that the Commission may “issue” a RWP. Use of the word “issue” is confusing because the Commission actually adopts a RWP on a programmatic basis for a specific category or categories of activities. A RWP is not “issued” to an applicant for coverage under such a permit until the Executive Director approves the applicant’s notice of intent to proceed and sends a copy of the RWP to the applicant for authorized activities at a particular location or for a particular project.

Second, the standard for “issuance” of a RWP under section 11700 – that the Commission has determined that the specified category or categories of activities “will have no substantial impact” on areas within its MPA 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 proposed project, which is whether the project will have a “significant” impact. *See, e.g.*, Pub. Res. Code §§ 21002, 21002.1, 21068, 21080.5. The standard for adoption of a RWP under the definition of this term in amended regulations will be that the Commission has determined that the specified activities will have no significant impact, rather than no substantial impact.

Finally, by providing that the Commission may issue a RWP to authorize throughout its MPA jurisdiction a specific category or categories of activities that it has determined will have no substantial impact on areas within its MPA jurisdiction, section 11700 limits the current RWP program only to areas of the Commission’s jurisdiction under the MPA. Limiting the RWP program to specified activities conducted within the Commission’s MPA 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 MPA and the SMPA; 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 MPA or SMPA.

Given that the standard for adoption of a RWP under the amended regulations will be that the Commission has determined that the specified authorized activities will have no significant impact, there is no basis or reason to distinguish between areas subject to the Commission’s jurisdiction under the MPA or the SMPA. 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 RWP within an area of the Commission’s MPA jurisdiction should and can also be authorized by a RWP when conducted within an area of the Commission’s SMPA jurisdiction.

Proposal and Rationale: New Section 10303 – Regionwide Permit

Existing section 11700 will be repealed (together with all the other existing regulations governing RWPs and ARWPs), and the amended regulations will adopt a definition of RWP in new section 10303. Section 10303 will define a RWP 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.” Section 10303 will be located in the new introductory Article of the permitting regulations, as discussed in Part III below, which will also include definitions of the other types of Commission permits.

Section 10303 is necessary to add a definition of the term “regionwide permit” to the regulations. One purpose of this definition is to clarify for permit applicants that the specified activities authorized under a RWP are “minor repairs or improvements” as that term is used in sections 10601 and 10602.

The benefit of adopting a definition of a RWP, as well as a revised definition of an “administrative permit” in new section 10302 (discussed below in Part III), is to clarify the distinctions between the activities that may be authorized under a RWP or must be authorized by an administrative permit. The distinction is that the specified activities that are minor repairs and improvements authorized by a RWP may be conducted under the streamlined procedures for obtaining coverage under a RWP 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.

Another purpose of the section 10303 definition is to change the terminology of the standard for adoption of a RWP 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 but rather a clarification for consistency with the terminology for assessing potential environmental impacts under CEQA. These two purposes are related because the Commission can make a programmatic determination that a specific category of activities will have no significant impact (that is, a determination based on the nature of the activities, without considering project-specific or site-specific information) only if such activities are minor repairs or improvements. Another purpose of the definition is to change the terminology referring to the Commission’s action with respect to a RWP from the confusing term “issue” to the term “adopt.”

A final purpose of section 10303’s definition is to increase the scope of the RWP program to include areas within the Commission’s jurisdiction under the SMPA. To achieve this objective, the new definition of RWP will state, as noted above, that a RWP 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 MPA jurisdiction only, is intended and necessary to expand the applicability of the RWP program to all areas of the Commission’s jurisdiction, under both the MPA and SMPA.

The benefits of this change will be to streamline the Commission’s permitting process for specified activities authorized under a RWP in Suisun Marsh and to promote consistency in permitting under the MPA and the SMPA.

To achieve this objective, it is necessary to include in the Authority and Reference notes for section 10303 (and for all sections of the amended RWP regulations) citations to the relevant provisions of both the MPA and the SMPA.

The Authority and Reference note for section 10303 will cite as authority Government Code section 66632(f), which authorizes the Commission to adopt regulations to enable it to carry out its functions under the MPA, and Public Resources Code section 29201(e), which authorizes the Commission to adopt regulations consistent with the SMPA.

The Authority and Reference note will reference Government Code sections 66632(a) and 66632(f) and Public Resources Code sections 29501(a) and 29505. Government Code section 66632(a) requires that a permit be obtained from the Commission for specified activities within the areas of its jurisdiction under the MPA; section 66632(f) authorizes the Commission to grant permits under the MPA containing reasonable terms and conditions and to provide by regulation for the Executive Director to issue permits for minor repairs or improvements or in cases of emergency. Public Resources Code section 29501(a) authorizes the Commission to issue permits for any development within the primary management area of the Suisun Marsh; section 29505 provides that a permit from the Commission is required for any development on tidelands, submerged lands, or other public trust lands in the Suisun Marsh.

3. The Existing Regulations Provide Little Detail Regarding the Commission's Issuance of a RWP or the Process to Apply for Coverage Under a RWP, and Are Not Always Easy for Permit Applicants to Understand

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

There is also a terminology problem regarding the process for seeking coverage under a RWP that is pervasive throughout the existing regulations. Specifically, the regulations require a project sponsor, prior to commencing any project that the project sponsor believes is authorized by a RWP (or ARWP), 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 its project. However, this is not the case – a project sponsor may not proceed with an activity covered by a RWP simply by providing notice of its intent to do so. Rather, a "notice of intent to proceed" is functionally an application to be covered by a RWP (or ARWP) that is reviewed by the Executive Director for completeness, and, after the notice is found to be complete, for the Executive Director to then determine whether to approve or deny the project's coverage under the RWP.

Another problem with the existing regulations is that they are not always easy for permit 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, DOF 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.

Proposal and Rationale

The amended regulations will provide much more detail than the existing regulations as to how the Commission adopts, amends, or revokes a RWP, how a property owner or other project proponent applies for coverage under a RWP, and how the Executive Director processes an application for coverage under a RWP. The amended regulations will also clarify the information required to apply for coverage under a RWP.

These changes are necessary to improve the transparency of the RWP permitting program, including the process for Commission adoption of a RWP, the process to be followed by an applicant to seek coverage under a RWP, 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 RWP.

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

The amended regulations have been drafted in plain English and an easily readable style, with the intended audience being a prospective applicant for coverage under a RWP. The amended regulations are written using short sentences and an active voice, rather than in 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 as "your."

The purpose and benefit of writing the proposed amendments using plain English and an easily readable style are to improve the clarity, readability, and usability of the RWP regulations by the regulated community, the public, and Commission staff. Writing the amended regulations in this manner is also necessary to meet 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).

The existing RWP regulations, which will be repealed, consist of only nine sections (§§ 11700-11716) in two Articles. The new, amended set of RWP regulations will consist of 30 sections in five Articles. The following are the titles of the Articles and sections of the proposed amended regulations:

Chapter 17. Regionwide Permits

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.

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- § 11738. If Your Application Is Denied.
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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.

Following is a section-by-section discussion of each section in Articles 1 through 4 of the amended regulations. Each of the sections in Article 5 is discussed below in Part II.B.4.

Article 1. About Regionwide Permits

Section 11700 – Terms Used in This Chapter

Section 11700 will define in four subsections the following terms as used in the Chapter 17 regulations: (a) “Regionwide permit”; (b) “Authorized activities”; (c) “You” and “I”; (d) “Your” and “my”; and (e) “Covered under a regionwide permit.”

Subsection (a) refers to the definition of “regionwide permit” in section 10303, discussed above. This subsection is necessary to make the regulations more user-friendly to permit applicants and permittees by directing the reader to the definition of “regionwide permit” in the new introductory Article of the permitting regulations (Chapter 3, Subchapter 1, Article 1), discussed below, which will include sections that also define the other types of permits and explain how the type of permit required for a project is determined based on the nature and scope of the proposed activities.

Subsection (b) defines “Authorized activities” to mean the activities that may be conducted when covered under a RWP, and further provides that the authorized activities are described in the RWP. This subsection is necessary to improve the clarity of and allow for more conciseness in the subsequent Chapter 17 regulations, which refer repeatedly to the “authorized activities.”

Subsection (c) defines “You” and “I” to mean a person or governmental agency that is an applicant or prospective applicant to be covered under a RWP. Similarly, subsection (d) defines

“Your” and “my” to mean proposed by, belonging to, or associated with a person or governmental agency that is an applicant or prospective applicant to be covered under a RWP. These definitions are provided as part of drafting the amended RWP regulations in plain English, in an easily readable style, because by using these defined terms in subsequent regulations in Chapter 17 it will be clear that those regulations refer and are directed to the applicant or prospective applicant to be covered under a RWP. Thus, these definitions are necessary to make the RWP regulations more user-friendly to applicants and prospective applicants.

Subsection (e) defines “Covered under a regionwide permit” to mean “the Executive Director has approved your application to be covered under a regionwide permit and has issued a copy of the permit to you to conduct the authorized activities at a specific location, and that you have confirmed your acceptance of the permit’s terms and conditions.” This subsection is necessary to clarify that an applicant may not proceed with activities authorized under a RWP until the Executive Director has approved the application for coverage under the permit, has issued a copy of the permit to the applicant to conduct the authorized activities and a specific location, and the applicant has confirmed acceptance of the permit’s terms and conditions. This section is also necessary to improve the clarity of and allow for more conciseness in the subsequent Chapter 17 regulations, which repeatedly use the phrase, “covered under a regionwide permit.”

Section 11701 – Availability of Adopted Regionwide Permits

This section states that the Commission will post each adopted RWP on its website. This section also provides that to see the RWPs and the authorized activities under each permit, the reader is directed to visit the Commission’s website or request copies of the RWPs from Commission staff.

The existing regulations do not require the Commission to post the adopted RWPs on its website or to provide any other information about RWPs to prospective applicants. Thus, section 11701 is necessary to inform prospective applicants and the public that copies of the RWP adopted by the Commission are posted on its website. This section is also necessary to direct prospective applicants to visit the Commission’s website or request copies of the RWPs from Commission staff to see the RWPs and the authorized activities under each permit.

The Authority and Reference note will include, in addition to other statutory citations discussed previously, a reference to Public Resources Code section 29520(a), which provides that, except as expressly provided in the SMPA, the Commission shall use the procedures set forth in the MPA for the issuance of permits under the SMPA.

Section 11702 – How to Apply to be Covered Under a Regionwide Permit

This section states that a prospective applicant may apply for coverage under a RWP if its proposed project consists only of the authorized activities as described in a RWP that has been adopted by the Commission. This section also informs a prospective applicant that the information required to apply is described in sections 11741 through 11746, and that the application review process is described in sections 11734 through 11739.

Section 11702 replaces existing section 11710, which informs a project sponsor that, before proceeding with a project believed to be authorized by a RWP, the project sponsor must submit to and obtain approval from the Executive Director of a notice of intent to proceed and must also acknowledge the terms and conditions of the issued RWP.

Section 11702 is necessary to inform prospective applicants that they may apply for coverage under a RWP if a proposed project consists only of the authorized activities as described in a RWP. This section is also necessary to direct prospective applicants to the sections of the regulations that describe the information required to apply and the application review process.

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

Section 11710 – Contents of a Proposed Regionwide Permit or Amended Regionwide Permit

Section 11710 states that the Executive Director will prepare a proposed RWP or a proposed amendment to a previously adopted RWP for the Commission's consideration. This section further provides that a proposed RWP or amended RWP will include: (a) a clear description of the authorized activities that can be conducted when covered under the permit; (b) the terms and conditions that a permittee must agree to and follow under the permit; and (c) findings of fact showing that the authorized activities, if conducted in compliance with the permit's terms and conditions, will meet the following standards:

- (1) the authorized activities are consistent with: (A) the relevant provisions of the MPA and the San Francisco Bay Plan, if the RWP authorizes activities in areas under the Commission's MPA jurisdiction; and (B) the relevant provisions of the SMPA, the Bay Plan, and the Suisun Marsh Protection Plan or the certified local protection program for the Suisun Marsh, if the RWP authorizes activities in areas under the Commission's SMPA jurisdiction under the MPA;
- (2) the authorized activities will not have a significant impact on areas within the Commission's jurisdiction;
- (3) the authorized activities are "minor repairs or improvements" as described in or within the scope of sections 10601 or 10602; and

- (4) the authorized activities are either statutorily or categorically exempt under CEQA or will not have any individually or cumulatively significant adverse effect on the environment.

Section 11700 of the existing regulations authorizes the Commission to adopt RWPs by resolution, but does not specify the required contents of such a resolution. Section 11710 is necessary to specify the required contents of a RWP or amended RWP, including a description of the authorized activities, the terms and conditions of the RWP, and findings of fact that show the authorized activities, if conducted in compliance with the permit, are consistent with the relevant provisions of the MPA, SMPA, and applicable plans.

The requirement for findings of fact showing that the authorized activities are consistent with the relevant statutory and applicable plan provisions is based on and implements Government Code section 66632(f) and Public Resources Code section 29501(b), which require the issuance of permits to be based on such findings.

The requirement for factual findings showing that the authorized activities will not have a significant impact on areas within the Commission's jurisdiction, and are minor repairs or improvements is necessary to meet the standard for adoption of RWP as reflected in the definition of a RWP in section 10303. It is necessary to include the phrase "as described in or within the scope of sections 10601 or 10602" because the existing RWPs do not, and future RWPs need not, exactly track the language used in sections 10601 or 10602 to describe various minor repairs or improvements, and because a RWP may authorize minor repairs or improvements under multiple subsections of 10601 or 10602 for similar activities or for different areas of the Commission's jurisdiction.

The required factual finding showing that the authorized activities are either statutorily or categorically exempt under CEQA or will not have any individually or cumulatively significant adverse effect on the environment are necessary to ensure a RWP will not be adopted for an authorized activities that may have significant adverse effects on the environment and, therefore, require preparation of an environmental assessment in accordance with the Commission's regulations for implementing CEQA.

The Authority and Reference note will include, in addition to other statutory citations discussed previously, references to Public Resources Code sections 21080.5 and 29501(b). Public Resources Code section 21080.5 provides that, when a state agency is acting as the lead agency under CEQA, the Secretary of the Resources Agency ("Secretary") shall certify the agency's regulatory program as being exempt from the CEQA requirements for preparing environmental impact reports, negative declarations, and initial studies if the Secretary finds that the program meets specified criteria. The Secretary has certified the Commission's permitting programs under the MPA and the SMPA as meeting all the requirements for certification under Public Resources Code Section 21080.5. See 14 C.C.R. § 15251 (h). Public Resources Code section 29501(b) requires permits to be consistent with the SMPA and the Suisun Marsh Protection Plan or local protection program for the Suisun Marsh.

Section 11711 – Public Notice and Opportunity for Review and Comment

Section 11711 states that the Executive Director will issue a public notice of a proposed RWP or amended RWP at least 30 days before the Commission will consider and may vote on the proposed permit or amended permit. This section further provides that the Executive Director will post the notice on the Commission's website and distribute it to all agencies, organizations, and individuals who have requested in writing notice of proposed RWPs and to any other parties known to the Executive Director to have an interest in RWPs. This section requires the public notice to include: (a) a copy of the proposed RWP or amended RWP; (b) the date and time of the meeting when the Commission will consider and may vote on the proposed permit or amended permit; and (c) the deadline for submitting written comments on the proposed permit or amended permit.

The existing regulations authorize the Commission to adopt RWPs by resolution but do not require the Commission to issue a public notice of a proposed RWP, or to provide a public review and comment period prior to adoption of a proposed RWP. The Commission does provide an opportunity for members of the public to comment on a proposed RWP at the Commission meeting at which it is scheduled to consider the proposed RWP, in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11125.7(a).

The purpose of this section is to increase the transparency of the public process for Commission consideration of a proposed RWP or amended RWP, to require distribution of the public notice of a proposed RWP or amended RWP to interested parties, and to expressly provide an opportunity for public review and comment of a proposed RWP or amended RWP. This section is necessary to require a public notice of a proposed RWP or amended RWP, to provide for a 30-day review and comment period, and to specify the contents of the public notice.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to Government Code section 11125.7, which requires the Commission to provide an opportunity for members of the public to address the Commission on each meeting agenda item before or during its consideration of the item.

Section 11712 – The Executive Director Will Provide Public Comments to the Commission

Section 11712 provides that before the Commission considers a proposed RWP or proposed amended RWP, the Executive Director will distribute to the Commission all written comments received during the public comment period. This section further provides that the Executive Director will post these comments on the Commission's website along with the materials for the meeting when the Commission will consider the proposed permit or amended permit.

The existing regulations authorize the Commission to adopt RWPs by resolution but do not require the Commission to provide a public review and comment period prior to adoption of a

proposed RWP. The Commission does provide an opportunity for members of the public to comment on a proposed RWP at the Commission meeting at which it is scheduled to consider the proposed RWP, in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11125.7(a). In addition, prior to each Commission meeting, the Executive Director distributes to the Commission and posts on its website all comments that have been received on each meeting agenda item.

The purpose of this section is to increase the transparency of the public process for Commission consideration of proposed RWP or amended RWP. This section is necessary to require the Executive Director to distribute to the Commission and post on its website all written comments received during the public comment period.

Section 11713 – How the Commission Votes to Adopt or Amend a Regionwide Permit

Section 11713 provides that thirteen or more "yes" votes of members of the Commission are required to adopt a RWP or an amended RWP.

Section 11713 is necessary to implement Government Code section 66632(f), which provides that 13 affirmative votes of members of the Commission are required to grant a permit.

Section 11714 – Amendment of a Regionwide Permit Does Not Affect a Project Covered Under the Permit

Section 11714 provides that once a project is covered under a RWP, that coverage remains valid and is not affected if the Commission later amends the RWP.

Although the Commission adopts the terms and conditions of a RWP, to obtain coverage under the permit, an applicant must accept those terms and conditions by signing and returning the issued RWP to the Executive Director. See existing section 11715 and proposed section 11737(a), discussed below. Thus, once signed by the Executive Director and the permittee sign the RWP, the permit is a contract between the Commission and the permittee.

Section 11714 is necessary to provide certainty to permittees that the terms and conditions of the RWP under which their project is covered will not change, and that their permit will remain valid if the Commission subsequently amends the adopted RWP. Section 11714 implements the general rule that laws enacted subsequent to execution of a contract – in this case, subsequent Commission adoption of potentially different permit terms and conditions in an amended RWP – are ordinarily not deemed to be a part of the contract unless its language clearly indicates this was intended by the parties. See *Swensen v. File* (1970) 3 Cal. 3d. 389, 393; *Continental Ins. Co. v. Crockett* (1985) 177 Cal. App. 3d Supp. 12, 23.

Article 3. How the Commission Revokes a Regionwide Permit

Section 11720 – The Executive Director Will Prepare a Proposed Resolution to Revoke a Regionwide Permit

Section 11720 provides that if the Executive Director finds good cause to revoke a RWP, for example, if the authorized activities are harming San Francisco Bay, the Executive Director will prepare for the Commission's consideration a proposed resolution to revoke the RWP. This section further provides that the proposed resolution will state the reasons why the permit is revoked and specify the effective date on which the permit is revoked.

The existing regulations authorize the Commission to adopt RWPs by resolution but do not provide for the Commission to revoke a RWP for good cause (or otherwise). In the past, the Commission has discontinued use of certain RWPs, based on a staff recommendation, but without necessarily adopting a resolution doing so, stating the reasons why use of the RWP is being discontinued, or specifying an effective date on which the permit is no longer in effect.

Section 11720 is necessary to establish a formal process for revocation of a RWP and to require the Commission to specify the reasons why it is revoking the permit and the effective date on which the permit is revoked. The purpose of section 11720 is to establish a formal process to be followed by the Commission to revoke a RWP and to increase the transparency of the Commission permitting process.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to *Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal. 3d 64, 80. In *Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal. 3d 64, 80, the California Supreme Court noted that it is an accepted rule of law that a permit may be revoked "if there exist a compelling public necessity justifying revocation," as where the conduct of the activity constitutes a public nuisance.

Section 11721 – Public Notice and Opportunity for Review and Comment

Section 11721 states that the Executive Director will issue a public notice of a proposed resolution to revoke a RWP at least 30 days before the Commission will consider and may vote on the proposed resolution. This section further provides that the Executive Director will post the notice on the Commission's website and distribute it to all agencies, organizations, and individuals who have requested in writing notice of proposed RWPs and to any other parties known to the Executive Director to have an interest in RWPs. This section requires the public notice to include: (a) a copy of the proposed resolution to revoke the RWP; (b) the date and time of the meeting when the Commission will consider and may vote on the proposed resolution; and (c) the deadline for submitting written comments on the proposed resolution.

The existing regulations do not provide for the Commission to revoke a RWP, require the Commission to issue a public notice of a proposal to discontinue use of or revoke a RWP, or require a public review and comment period prior to revocation of a RWP. The Commission

does provide an opportunity for members of the public to comment on a proposal to discontinue use of a RWP at the Commission meeting at which it is scheduled to consider such a proposal, in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11125.7(a).

The purpose of this section is to increase the transparency of the public process for Commission consideration of a proposed resolution to revoke a RWP, to require distribution of the public notice of the proposed resolution to interested parties, and to expressly provide an opportunity for public review and comment on a proposed resolution to revoke a RWP. This section is necessary to require a public notice of a proposed resolution to revoke a RWP, to provide for a 30-day review and comment period, and to specify the contents of the public notice.

Section 11722 – The Executive Director Will Provide Public Comments to the Commission

Section 11722 provides that before the Commission considers a proposed resolution to revoke a regionwide permit, the Executive Director will distribute to the Commission all written comments received during the public comment period. This section further provides that the Executive Director will also post these comments on the Commission's website along with the materials for the meeting when the Commission will consider the proposed resolution.

The existing regulations do not require the Commission to provide a public review and comment period prior to discontinuing use of or revoking a RWP. The Commission does provide an opportunity for members of the public to comment on a proposal to discontinue use of a RWP at the Commission meeting at which it is scheduled to consider such a proposal, in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11125.7(a). In addition, prior to each Commission meeting, the Executive Director distributes to the Commission and posts on its website all comments that have been received on each meeting agenda item.

The purpose of this section is to increase the transparency of the public process for Commission consideration of a proposed resolution to revoke a RWP. This section is necessary to require the Executive Director to distribute to the Commission and post on its website all written comments received during the public comment period.

Section 11723 – How the Commission Votes to Revoke a Regionwide Permit

Section 11723 provides that thirteen or more "yes" votes of members of the Commission are required to revoke a RWP.

Section 11723 is necessary to implement Government Code section 66632(f), which provides that 13 affirmative votes of members of the Commission are required to grant a permit. Although Government Code section 66632(f) addresses only the number of affirmative votes

necessary to grant a permit, the Commission reasonably interprets section 66632(f) to apply the same voting standard to revocation of a RWP.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to *Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal. 3d 64, 80, also discussed above.

Section 11724 – Revocation of a Regionwide Permit Does Not Affect a Project Covered Under the Permit

Section 11724 provides that once a project is covered under a RWP, that coverage remains valid and is not affected if the Commission later revokes the RWP.

Although the Commission adopts the terms and conditions of a RWP, to obtain coverage under the permit, an applicant must accept those terms and conditions by signing and returning the issued RWP to the Executive Director. See existing section 11715 and proposed section 11737(a), discussed below. Thus, once signed by the Executive Director and the permittee sign the RWP, the permit is a contract between the Commission and the permittee.

Section 11724 is necessary to provide certainty to permittees that the terms and conditions of the RWP under which their project is covered will not change, and that their permit will remain valid if the Commission subsequently revokes the RWP. Section 11714 implements the general rule that laws enacted subsequent to execution of a contract – in this case, subsequent Commission revocation of a RWP – are ordinarily not deemed to be a part of the contract unless its language clearly indicates this was intended by the parties. See *Swensen v. File* (1970) 3 Cal. 3d. 389, 393; *Continental Ins. Co. v. Crockett* (1985) 177 Cal. App. 3d Supp. 12, 23.

Article 4. Applying to Be Covered Under a Regionwide Permit

Section 11730 – Check if Your Project Qualifies to Be Covered Under a Regionwide Permit

Section 11730 directs a prospective permittee, before applying to be covered under a RWP, to review the adopted RWPs on the Commission’s website to confirm that its project includes only the authorized activities described in a RWP. This section further provides that a prospective permittee can apply to be covered under a RWP even if its property or project site is subject to an existing administrative permit or major permit.

Section 11710 of the existing regulations allows a project proponent to seek coverage under a RWP if the proponent “believes” a project is authorized by a RWP, but does not require the project proponent to review the adopted RWPs to confirm that its project includes only the authorized activities authorized by a RWP. The problem with existing section 11710 is that it has resulted in many project proponents submitting requests for coverage under a RWP for projects

which do not qualify for such coverage because the project includes activities that are not authorized by the RWP. When this happens, both the project proponent and staff waste time processing an application for coverage under a RWP that ultimately cannot be approved, and the project is delayed until the project proponent submits an application for the correct type of permit.

Section 11730 is necessary to direct a project proponent to review the adopted RWPs before applying for coverage to confirm that its project includes only the authorized activities described in a RWP. The purpose of this section is to expedite the permitting process and avoid project delays that will result if a project proponent seeks coverage under a RWP for which their project does not qualify. This section is also necessary because the application to apply for coverage under a RWP will require the applicant to certify that it has reviewed the RWP(s) under which it is applying for coverage and that its project includes only the authorized activities described in one or more RWPs (see section 11743(a), discussed below).

The existing regulations are unclear in that they do not address whether a prospective permittee can apply for coverage under a RWP even if its property or project site is subject to an existing administrative permit or major permit. However, when the Commission adopted revised RWPs and ARWPs in December 2008 and February 2009, one of the changes that was made to eight of the nine existing RWPs and all three of the ARWPs was to add a provision stating the permit authority is limited to activities undertaken at a site where activities are not already authorized by another Commission permit.¹ The December 2008 staff report that recommended this provision provided no rationale or justification for it, but this provision was presumably based on administrative convenience – the preference to have a single permit regulate all activities at a site and avoid the need for staff to have to assess compliance by reviewing multiple permits.

This sentence in section 11730 stating that a prospective permittee can apply to be covered under a RWP even if its property or project site is subject to an existing administrative permit or major permit is necessary to address this issue clearly and directly by regulation, rather than in a permit condition which purports to limit the applicability of a RWP to certain sites. Contrary to the December 2008 staff recommendation, a prospective permittee should be able to take advantage of the expedited and less burdensome RWP process if its project is limited to activities authorized by a RWP, even if the site is subject to an existing administrative or major permit. Thus, this provision is necessary to facilitate and expedite the permitting process for such projects. Moreover, given the improvements in regulatory program recordkeeping and electronic filing systems since 2008, allowing coverage under a RWP for activities at a site already subject to another Commission permit will not be unduly burdensome for staff.

¹ The only RWP that was not revised to include this new provision is RWP 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.

Section 11731 – You Can Be Covered Under Multiple Regionwide Permits

Section 11731 informs a prospective permittee that, if its project includes authorized activities described in more than one RWP, it can apply to be covered under multiple RWPs. This section also informs a prospective permittee that if it applies for coverage under multiple RWPs, it only needs to submit one application and pay one RWP application fee as set forth in Appendix M.

Existing section 11713(b) suggests but does not clearly state that the applicant can apply for multiple RWP by providing that the Executive Director's determination whether to approve a notice of intent to proceed shall be based on a project's consistency "with any one or more" RWPs. However, a problem with the existing regulations is that they do not directly address whether a prospective permittee can apply for coverage under multiple RWPs. Section 11731 is necessary to clarify that an applicant can apply for coverage under multiple RWPs if a project includes authorized activities described in more than one RWP, and to state that the prospective permittee needs to submit only one application and pay one RWP application fee.

The purpose of this section is to expedite the RWP permitting process and reduce the regulatory burden on prospective permittees by avoiding: (1) the need for submission of multiple applications for a single project to be covered under more than one RWP; and (2) uncertainty as to whether multiple application fees need to be paid for different elements of the same project. This section will provide greater clarity and transparency to the RWP process.

Section 11732 – You Cannot Be Covered Under a Regionwide Permit if Your Project Includes Activities that Are Not Authorized Activities Described in a Regionwide Permit

Section 11732 consists of two subsections. Subsection (a) informs a prospective permit applicant that it cannot apply to be covered under a RWP if its project includes any activities that are not authorized activities described in one or more RWPs, even if the project includes some activities that are authorized by a RWP. Subsection (a) further informs a prospective applicant that, in such cases, the Commission and the Executive Director are required by law to consider a project in its entirety.

Subsection (b) informs a prospective permit applicant that if its project includes any activities that are not authorized activities described in a RWP, it must apply for an administrative permit or a major permit. Subsection (b) also refers to a prospective applicant section 10305 to determine the type of permit required for its project based on its nature and scope.

The existing regulations do not state that a project proponent cannot request coverage under a RWP if its project includes activities that are not described in a RWP, although this principle is implicit in the limited scope of the RWP program. To improve the transparency of the RWP permitting process, section 11732 is necessary to clearly state that a prospective permit applicant cannot apply to be covered under a RWP if its project includes any activities that are not authorized activities described in one or more RWPs. Similarly, section 11732 will improve

the transparency of the permitting process by informing a prospective applicant that, where a project includes some activities that are not described in a RWP, the Commission and the Executive Director are required by law to consider a project in its entirety.

As discussed above, section 10305 clarifies how to determine the type of permit required for a project based on the nature and scope of proposed activities. Consistent with section 10305, subsection 11732(b) is necessary to inform a prospective permit applicant that, if its project includes any activities that are not authorized activities described in a RWP, it must apply for an administrative permit or a major permit. Section 11732(b) will improve the transparency of the permitting process and expedite that process by referring a prospective applicant who does not qualify for coverage under a RWP to section 10305 to determine the type of permit required for its project based on its nature and scope.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to Public Resources Code section 21065, *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 283-84, and *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal App. 3d 151, 165.

Public Resources Code section 21065 defines the term “project” under CEQA as an activity which may cause a physical change in the environment. In *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 283-84, the Supreme Court explained CEQA mandates that environmental considerations do not become submerged by chopping up a large project into many little ones. In *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal App. 3d 151, 165, the Court of Appeal found that CEQA defines the term “project” broadly to mean the whole of an action which has the potential to result in a physical change to the environment.

Section 11733 – How to Apply to Be Covered Under a Regionwide Permit

Section 11733 directs a prospective permittee that to apply to be covered under a RWP, it must complete and submit the RWP application form available on the Commission’s website, and upon request from Commission staff. This section also informs a prospective permittee that the required contents of the application are stated in sections 11741 through 11746.

Section 11733 replaces existing section 11710, which directs a project sponsor, prior to commencing any project which the project sponsor believes is authorized by a RWP, to submit to the Executive Director a notice of intent to proceed that complies with section 11711. Section 11711 specifies the required contents of a notice of intent to proceed, including a fully completed application form, Part I only, as set out in Appendix D.

Section 11733 is necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead require submission of an application to be covered under a RWP. Section 11733 is also necessary because the proposed amendments will amend

Appendix D to the extent of making it no longer applicable to RWPs. Section 11733 is also necessary to direct a prospective permittee to complete and submit the RWP application form, and to inform the prospective permittee that the form is available on the Commission's website and from staff. Section 11733 is also necessary to inform a prospective permittee that the required contents of the application are stated in sections 11741 through 11746.

Section 11734 – How Your Application Will Be Reviewed

Section 11734 informs a prospective permittee that the Executive Director will review its application to be covered under a RWP and notify the applicant within 30 days if any of the information required by sections 11741 through 11746 is missing. Section 11734 also informs a prospective applicant that if it does not submit the missing information within 45 days of the Executive Director's notice, the application will be considered withdrawn.

Section 11734 replaces existing section 11712(a) and (c), which provide that the Executive Director will determine within 30 days of receipt of a notice of intent to proceed whether the notice contains all required information and, if not, what other information is needed to complete the notice. Section 11734 is necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead require submission of an application to be covered under a RWP.

Section 11734 is necessary to ensure that an application to be covered under a RWP is reviewed in a timely manner and that an applicant is informed promptly if any of the information required to complete the application is missing. Section 11734 is also necessary to implement Government Code section 65943(a), which requires a public agency to determine within 30 days of receipt of an application for a development project if the application is complete and, if the application is determined to be incomplete, to identify the items that are not complete.

The second sentence of section 11734, which provides that an application will be considered withdrawn if the missing information is not submitted in 45 days, is necessary to encourage applicants to submit any information promptly and to expedite the permitting process. This provision is also necessary to enable staff to close pending applications if an applicant does not move forward expeditiously to implement its project by completing its application to be covered under a RWP.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to Government Code section 65943(a). As noted above, section 65943(a) requires a public agency to determine within 30 days of receipt of an application for a development project if the application is complete and, if the application is determined to be incomplete, to identify the items that are not complete.

Section 11735 – You Can Appeal if Your Application Is Found Incomplete

Section 11735 provides that if an applicant believes the Executive Director has incorrectly determined that its application is missing required information, the applicant can appeal this decision to the Commission. This section directs an applicant to submit its appeal in writing to the Executive Director within 30 days, and states that the Executive Director will schedule the appeal for consideration at a regularly scheduled Commission meeting. This section further provides that on appeal, the Commission will decide only whether the Executive Director correctly determined that the application is missing required information.

The existing regulations do not provide for an appeal to the Commission of the Executive Director's determination that a notice of intent to proceed does not contain all required information. Instead, existing section 11716 provides that if a project sponsor believes the Executive Director has improperly determined that a notice of intent to proceed is not complete, the project sponsor may apply for a Commission permit without waiting 90 days.

Existing section 11716 is not consistent with Government Code section 65943(c), which requires a public agency to provide a process for an applicant to appeal a determination that its application for a development project is not complete to the agency's governing body. Section 11735 is necessary to implement Government Code section 65943(c). Section 11735 is also necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead require submission of an application to be covered under a RWP.

Section 11735 is also necessary to ensure that any appeal is filed in a timely manner and that the Executive Director schedules the appeal for consideration by the Commission at a regularly scheduled meeting. This section is also necessary to inform an applicant that the scope of any appeal will be limited to the Commission deciding only if the Executive Director correctly determined that the application is missing required information.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to Government Code section 65943(c), which requires a public agency to provide a process for an applicant to appeal a determination that its application for a development project is not complete to the agency's governing body.

Section 11736 – How a Decision is Made to Approve or Deny Your Application

Section 11736 provides that the Executive Director will approve or deny an application to be covered under a RWP within 10 days of determining it is complete. Subsection (a) states that an application will be approved if the project includes only authorized activities described in one or more RWPs. Subsection (b) states that an application will be denied if the project includes any activities that are not authorized activities described in one or more RWPs or if the project "would harm the Bay or Bay resources, including environmentally sensitive areas, or public access to the Bay, due to its unique location."

Section 11736 replaces existing section 11713, which provides in subsection (a) that the Executive Director will approve or disapprove a notice of intent to proceed within 14 days of determining that the notice is complete, and further provides in subsection (b) that the Executive Director's will base his or her determination whether to approve or disapprove the notice "only on the project's consistency with any one or more Commission" RWPs. 14 C.C.R. § 11713(b).

A problem with existing section 11713(b) is that the Executive Director's consideration of whether to approve or disapprove a notice of intent to proceed is limited to determining whether a project includes only the specified activities authorized by a RWP. In contrast, when the Commission adopted revised RWPs and ARWPs in December 2008 and February 2009, one of the changes made to eight of the nine existing RWPs and all three of the ARWPs was to add a condition that limits the authorization under each permit to projects that would not adversely impact the Bay or Bay resources.²

Even though the Commission has adopted RWPs (and ARWPs) 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 RWP (or ARWP) 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 RWP in the rare circumstances when, due to site-specific conditions, proceeding with the activities authorized under the RWP at their project location would adversely impact the Bay or Bay resources.

While it is necessary for the Executive Director to have the authority to deny coverage under a RWP to prevent harm to the Bay or Bay resources, it is not appropriate to provide such authority only by a condition in a RWP limiting the permit's applicability to projects where the authorized activities will not cause such harm. Therefore, section 11736(b) is necessary to expressly state in the regulations that the Executive Director has the authority to deny coverage under a RWP on this ground.

The purposes of section 11736(b) are to: (1) authorize the Executive Director to deny coverage under a RWP when necessary to prevent harm to the Bay and Bay resources; and (2) make the regulations consistent with the above-referenced RWP permit condition to this effect.

Amending the regulations to allow the Executive Director to deny coverage under a RWP when necessary to protect the Bay or Bay resources will not delay the RWP permitting process. There will be no delay because the Executive Director will determine whether site-specific conditions

² The only RWP that was not revised to include this new condition is RWP 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.

warrant denial of coverage within the ten-day timeframe established by the amended regulations (after the RWP application is determined to be complete) based solely on the information submitted with the application.

The benefit of this amendment will be to improve the transparency of the RWP permitting process by informing a prospective applicant in the regulations that the Executive Director will consider whether its project will cause harm to the Bay or Bay resources in determining whether to approve or deny coverage under a RWP and, therefore, whether to issue the RWP to the applicant. To achieve these purposes and benefit, it is necessary to amend the regulations as proposed in new section 11736(b).

Section 11736 is also necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead require submission of an application to be covered under a RWP.

Section 11737 – If Your Application is Approved

Subsection 11737(a) states that the Executive Director will approve coverage under a RWP by issuing a copy of the applicable RWP(s) to the applicant, and that the approval will include the applicant's and any co-applicant's name and address and the location of the project. This subsection further provides that the applicant must acknowledge and accept the terms and conditions of the permit within 14 days, and directs the applicant to do this by signing and dating the permit and returning a signed copy to the Executive Director. Finally, this subsection advises the applicant that it is not covered under the RWP until the Executive Director receives the signed copy.

Subsection 11737(b) states that the Executive Director will provide notice of approval of coverage under the regionwide permit in the administrative listing distributed and posted on the Commission's website in accordance with section 10620(c).

Section 11737 replaces existing sections 11713(a), 11714(a) and 11715. Sections 11713(a) and 11714(a) provide that, if the Executive Director approves a notice of intent to proceed, he or she shall notify the project sponsor in writing within 14 days of determining that the notice is complete and shall include a copy of the applicable RWP with the approval. Section 11715 requires a project sponsor to acknowledge receipt and acceptance of the terms and conditions of the RWP by signing and dating a copy of the permit and returning the executed copy of the permit within 14 days.

Section 11737 is necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead refer to the submission of an application to be covered under a RWP. Section 11737 is also necessary to clarify the distinction between an RWP adopted by the Commission and posted on the Commission's website and the copy of the

RWP issued by the Executive Director to the applicant after the Executive Director approves an application to be covered under the RWP – specifically, the copy of the RWP issued by the Executive Director when approving an application will include the applicant’s and any co-applicant’s name and address and the location of the project.

Section 11737(a) is also necessary to inform the applicant that it must acknowledge receipt of and accept the terms and conditions of the RWP by signing and dating the permit and returning a copy of the executed permit to the Executive Director. This subsection is also necessary to advise the applicant that it is not covered under the RWP until the Executive Director receives the signed copy.

Section 11737(b) is necessary to require the Executive Director to provide notice of approval of coverage under a statewide permit in the administrative listing distributed and posted on the Commission’s website in accordance with section 10620(c). The purpose and benefit of this provision is to improve the transparency of the permitting process by providing notice of permitting actions taken by the Executive Director.

Section 11738 – If Your Application is Denied

Section 11738 provides that if an application for coverage under a RWP is denied, the Executive Director will notify the applicant in writing within 10 days of determining that the application is complete and explain the reasons for the denial. This section further provides that if an application is denied, the applicant can apply for an administrative permit or a major permit at any time.

Section 11738 replaces existing sections 11713(a), 11714(b), and 11716. Sections 11713(a) and 11714(b) provide that, if the Executive Director disapproves a notice of intent to proceed, he or she shall notify the project sponsor in writing within 14 days of determining that the notice is complete and shall explain the reasons for the disapproval. Section 11716 provides that if a project sponsor believes the Executive Director has improperly disapproved a notice of intent to proceed, the project sponsor may apply for a Commission permit without waiting 90 days.

Section 11738 is necessary because the amended regulations have eliminated all references to a notice of intent to proceed, and instead refer to the submission of an application to be covered under a RWP. Section 11738 is also necessary to clarify that if any application for coverage under a RWP is denied, the applicant can apply for an administrative or major permit “at any time,” in contrast to the inappropriate and unclear reference in existing section 11716 to applying for a Commission permit “without waiting 90 days.”

The reference to “without waiting 90 days” in existing section 11716 is based on Government Code section 66632(g), which provides that if the Commission denies a permit, the applicant may submit another application for the permit directly to the Commission “after 90 days from the date of the denial.” Existing section 11716 basically provides that this 90-day waiting

period to resubmit a permit application does not apply when the Executive Director denies coverage under a RWP. While that is correct, it is confusing and inappropriate to refer to the inapplicability of a 90-day waiting period where the Executive Director, rather than the Commission, has denied an application for coverage under a RWP. For improved clarity and to avoid the ambiguous reference to “without waiting 90 days,” section 11738 simply and clearly states that an applicant who has been denied coverage under a RWP can apply for an administrative or major permit at any time.

Section 11739 – You Can Appeal if Your Application is Denied

Section 11739 provides that if an applicant believes the Executive Director incorrectly denied its application to be covered under a RWP, the applicant can appeal the Executive Director’s decision to the Commission. This section directs an applicant to submit its appeal in writing to the Executive Director within 30 days, and states that the Executive Director will schedule the appeal for consideration at a regularly scheduled Commission meeting. This section further provides that on appeal, the Commission will decide only whether the Executive Director correctly denied the application.

A problem with the existing regulations is that they do not provide for an appeal to the Commission of the Executive Director’s disapproval of a notice of intent to proceed. Instead, as noted above, existing section 11716 provides that if a project sponsor believes the Executive Director has improperly denied a notice of intent to proceed, the project sponsor may apply for a Commission permit without waiting 90 days.

The purpose of section 11739 is to establish and clearly state that an applicant has the right to appeal to the Commission if the applicant believes the Executive Director has incorrectly denied its application to be covered under a RWP. Section 11739 is necessary to give an applicant whose application for coverage under a RWP has been denied by the Executive Director the same right to appeal to the Commission as these regulations provide for an appeal from certain other Executive Director decisions. See sections 10353 (appeal Executive Director determination not to file an application for a major permit), 10821 (appeal Executive Director denial of application for a nonmaterial amendment to a major permit), and new section 11735 (appeal Executive Director determination that application to be covered under a RWP is missing required information).

Section 11739 is also necessary to ensure that any appeal is filed in a timely manner and that the Executive Director schedules the appeal for consideration by the Commission at a regularly scheduled meeting. This section is also necessary to inform an applicant that the scope of any appeal will be limited to the Commission deciding only whether the Executive Director correctly denied the application.

The benefit of section 11739 will be to expedite the permitting process by allowing an applicant to request that the Commission promptly decide whether an applicant is entitled to be covered

by a RWP before requiring the applicant to go through the more lengthy and burdensome process to apply for and obtain an administrative or major permit.

4. The Information Required to Apply for Coverage Under a RWP is Not Clear

Under the existing regulations, there is ambiguity and uncertainty regarding the information that an applicant submitting a notice of intent to proceed under a RWP is required to submit to enable the Executive Director to determine whether to approve or disapprove the notice and obtain 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 sections (numbered 1-12) and Part II had 10 additional sections (numbered 13-22).

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 authorized by a RWP), 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, the RWP regulation section 11711, entitled “Contents of Notice of Intent to Proceed,” was also amended. Existing section 11711(a)(1), as amended in 1990, requires a notice of intent to proceed under a RWP 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 amended Application Checklist, included as part of the application form, the column headings were changed to refer to a major permit, administrative permit, or RWP, 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 – major, administrative, or RWP – 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 RWP was not required to provide information on any local

government approval or environmental documentation. The RWP 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. (The information specified in five Boxes on the 1998 version of the form was consolidated into two Boxes, reducing the total number of Boxes from 12 to nine.)

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, which was renamed “Checklist of Application Requirements.” As amended at that time, the current Checklist of Application Requirements continues to state that an applicant for any of the three types of permits – major, administrative, or RWP – is required to complete the entire application form. The Checklist also continues to indicate that an applicant for a RWP is not required to provide information on any local government approval or environmental documentation. However, the Checklist was amended in 2008 to provide that when applicable, an applicant for a major permit, an administrative permit, or a RWP 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 RWP regulations were not amended in 2008.

As the preceding discussion demonstrates, there is considerable ambiguity and uncertainty regarding the information required to be submitted with a notice to proceed under a RWP. Section 11711(a)(1), as amended in 1990, 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 as it did at that time. Rather, the Appendix D application form, as amended in 1998 and 2008, requires an applicant for a RWP 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 RWP. The form provides that all applicants, including an applicant submitting a notice to proceed under a RWP, are required to complete Boxes 7 and 8, which call for information on government approvals and environmental impact documentation, respectively. In contrast, the Checklist of

Application Requirements indicates that an applicant for a RWP is not required to provide information on any local government approval or environmental documentation.

Proposal and Rationale

Appendix D will be amended only to the extent of making it no longer applicable to RWPs, and the proposed amendments will adopt new regulations to revise, clarify, and streamline the information required to apply for coverage under a RWP. The amended regulations will identify narratively the specific information required to apply for coverage under a RWP, using an application form to be adopted by the Commission, and will refer to a submission of an application, rather than submission of a notice of intent to proceed.

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

To achieve these objectives, it is necessary to amend the Checklist of Application Requirements at the end of Appendix D by deleting the entire fourth column, with the heading “Regionwide Permit,” which is the only place in Appendix D that references application requirements for RWPs.

Identifying the information required to apply for coverage under a RWP in a number of new regulatory sections will eliminate the uncertainty and ambiguity associated with the existing differences in RWP application requirements between those currently referenced in section 11711(a)(1) and the Appendix D application form. Amending the RWP regulations to adopt tailored information requirements for RWPs has allowed for consideration and integration of the existing differences in the information required to be submitted with a notice of intent to proceed under a RWP versus an ARWP.

The amended regulations are necessary to specify the information requirements to apply for coverage under a RWP narratively. These information requirements will be incorporated into an application form to be adopted by the Commission consistent with the terms of the amended regulations. These changes are necessary to revise, clarify, and streamline the information required to apply for coverage under a RWP. These changes are also necessary to allow the Commission to transition to an online application form for RWPs, which will facilitate processing and tracking applications for coverage under a RWP and approved RWPs.

Following is a section-by-section discussion of each section in Article 5 of the amended regulations.

Article 5. Regionwide Permit Application.

Section – 11740 – Form of Application

Section 11740 states that the Commission will adopt an application form to apply to be covered under a RWP, which will be posted on the Commission's website and available upon request from staff. Section 11740 further provides that a complete application must include the information and documents specified in sections 11741 through 11746.

Section 11740 and the following sections of this Article (sections 11741 through 11746) will replace existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a fully completed application form, Part I only, as set out in Appendix D. These sections will also replace Appendix D to the extent the current Appendix D application form applies to RWPs. As discussed above, these changes are necessary because the application requirements of section 11711 and Appendix D are inconsistent, and Appendix D is internally inconsistent as to the information required to apply for coverage under a RWP.

Sections 11740 and 11741 through 11746 are necessary to clarify and streamline the information required to apply for coverage under a RWP unencumbered by references to the comprehensive application requirements applicable to applicants for a major permit or an administrative permit in Appendix D. In addition, section 11740 is necessary to allow the Commission to transition to an online application form for RWPs, which will facilitate processing and tracking applications for coverage under a RWP and approved RWPs.

Section 11740 is necessary to inform applicants for coverage under a RWP that the Commission has adopted an application form for their use, which is posted on the Commission's website and available on request from staff. This section is also necessary to inform applicants that the complete application must include the information and documents specified in sections 11741 through 11746.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to Government Code sections 11340.9(c), 65940, and 66632(b), and Public Resources Code section 21160. Government Code section 11340.9(c) provides that Chapter 3.5 of the Government Code does not apply to a form prescribed by a state agency; Government Code section 65940 requires a public agency to compile a list or lists to specify in detail the information required for any applicant for a development project; and Government Code section 66632(b) provides that the Commission shall establish reasonable requirements to assure that sufficient information is provided by permit applicants to allow the Commission to act on applications. Public Resources Code section 21160 provides that a public agency may require a permit applicant to submit data and information necessary to enable the agency to determine whether the project may have a significant effect on the environment.

Section 11741 – Application Fee

Section 11741 states that an application must include the application fee for a regionwide permit as set forth in Appendix M. This section further provides that payment can be made by check, money order, or electronic payment.

These proposed amendments will repeal existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a check or money order in the amount specified in Appendix M.

Section 11741 will implement Government Code section 66632(c) and Public Resources Code section 29520(b), which authorize the Commission to require a reasonable filing fee for processing a permit application under the MPA and the SMPA, respectively. The Commission's permit application fees are set forth in Appendix M to its regulations, including the applicable fee for RWP.

Section 11741 is necessary to inform an applicant for coverage under a RWP that their application must include the application fee for a RWP as set forth in Appendix M, and that payment can be made by check, money order, or electronic payment.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to Government Code section 66632(c), which authorizes the Commission to require a reasonable filing fee for processing a permit application under the MPA. Public Resources Code section 29520(b) authorizes the Commission to require a reasonable filing fee for processing a permit application under the SMPA.

Section 11742 – Applicant and Property Owner Information

Section 11742 identifies the applicant and property owner information that must be provided in an application for coverage under a RWP. Subsection (a) requires contact information for each applicant and property owner, and the identification and authorization of anyone authorized to act as the applicant's representative in matters concerning the application. Subsection (b) requires contact information for any applicant representative. Subsection (c) requires proof of the applicant's legal interest in the property as described in Appendix F of these regulations and identifies acceptable proof of legal interest. Subsection (d) requires each applicant, property owner, and any authorized representative to certify the accuracy of the information submitted in and with the application, and to authorize Commission staff to inspect the project site, with 24 hours' notice, while the application is pending.

All of the information specified in section 11742 is currently required in a notice of intent to proceed under a RWP by existing Appendix D, Box 1, entitled Property Ownership and Applicant Information. Moreover, all of the information specified in section 11742, except authorization for Commission staff to inspect the project site, was required by Part I of the version of

Appendix D adopted in 1990, when existing section 11711(a)(1) was amended to require a notice of intent to proceed to contain a “fully completed application form, Part I only, as set out in Appendix D.”

Section 11742 is necessary because these amendments will: (1) repeal existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a fully completed application form, Part I only, as set out in Appendix D; and (2) amend Appendix D to make the current permit application form no longer applicable to RWPs. The purpose of section 11742 is to clarify and streamline the applicant, property owner, and any authorized representative information required to apply for coverage under a RWP.

It is necessary for an application to include contact information for the applicant, property owner, and any authorized representative so that staff is able to communicate with those parties concerning the application, including sending the Executive Director determinations concerning the application and the RWP. It is necessary for the applicant to identify any authorized representative so that the staff is assured that they may communicate with the representative concerning the application and that the representative is authorized to bind the applicant on matters concerning the application.

It is necessary for the application to include proof of the applicant’s legal interest in the property to document that the applicant has the legal right to implement its proposed project, and because Government Code section 66605(g) provides that fill should be authorized when an applicant has valid title to the property in question such that the applicant may fill the property in the manner and for the uses to be approved.

It is necessary for an application to include a certification that the information in the application and accompanying exhibits is accurate because staff and the Executive Director will rely on the accuracy of the submitted information in processing the application and determining whether to approve coverage under the RWP. The certification is also necessary to inform the applicant that any misstatement or omission of the requested information shall be grounds for denying the permit or for suspending or revoking coverage under a permit issued on the basis of these representations.

It is necessary for an application to include authorization for staff to inspect the project site, with reasonable notice, because a site inspection may be necessary to determine if the applicant’s project qualifies for coverage under a RWP or if the project may result in harm to the Bay or Bay resources due to its unique location.

Section 11743 – Project Information

Section 11743 specifies the project information that must be provided in an application for coverage under a RWP. Subsection (a) requires the application to identify the RWPs under which it is applying for coverage and to certify both that the applicant has reviewed the RWPs

under which it is applying and that its project includes only authorized activities described in one or more RWPs.

Subsection (b) requires the application to identify the location of the project. Subsection (c) requires the application to describe the existing conditions of the project site and to provide one or more photographs of the site, identify any Commission permits issued for the site, and identify any listed threatened or endangered species, or candidate for such listing that may be found at the site.

Subsection (d) requires a narrative project description that summarizes the project and its purpose. Subsection (e) requires a timeline stating the month and year work is proposed to begin and the expected completion date. Subsection (f) requires an application to include a project site plan that shows the nature, scope, and location of the proposed work and clearly distinguishes between existing and proposed conditions. Subsection (g) requires an application to include the total project cost.

Subsection (h) requires an application to state whether a number of specified government approvals are required for the project and, if so, to provide information on whether those approvals have been applied for or obtained. Subsection (i) requires information on any environmental impact documentation for the site, including whether any government agency has made a determination that the project is exempt from the need for environmental review or has prepared, or is in the process of preparing, an environmental review document for the project.

Almost all of the information specified in section 11743, except in subsections (h) (information on government approvals) and (i) (environmental impact documentation), is currently required in a notice of intent to proceed under a RWP by existing Appendix D, Box 2, entitled Total Project and Site Information. Moreover, almost all of the information specified in this section, again except in subsections (h) and (i), was required by Part I of the version of Appendix D adopted in 1990, when existing section 11711(a)(1) was amended to require a notice of intent to proceed under a RWP to contain a “fully completed application form, Part I only, as set out in Appendix D.”

Section 11743 is necessary because these amendments will: (1) repeal existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a fully completed application form, Part I only, as set out in Appendix D; and (2) amend Appendix D to make the current permit application form no longer applicable to RWPs. The purpose of section 11743 is to clarify and streamline the project information required to apply for coverage under a RWP.

As for the information specified in subsections (h) and (i) of section 11743, as noted previously, Appendix D is internally inconsistent as to whether this information is required in a notice of intent to proceed under a RWP. The headings of Appendix D, Box 7, entitled Information on

Government Approvals, and Box 8, entitled Environmental Impact Documentation, indicate that this information is required of all permit applicants, but the Checklist of Application Requirements states that this information is not required for a RWP.

The one item of new information specified in section 11743 is that an application is required to include the applicant's certification both that the applicant has reviewed the RWPs under which it is applying and that its project includes only authorized activities described in one or more RWPs. It is necessary for an application to include this certification to expedite the permitting process and avoid project delays that will result if an applicant seeks coverage under a RWP for which its project does not qualify.

All of the project information specified in section 11743 is necessary to enable staff to review and evaluate a proposed project, determine if the project qualifies for coverage under one or more RWPs, and assess the potential environmental impacts of the project, including whether the project may result in harm to the Bay or Bay resources. However, it should be noted that the information specified in subsections 11743(a) through (g) is a streamlined and less detailed list of information in comparison to the Total Project and Site Information called for by Box 2 of Appendix D.

Notwithstanding that Appendix D is internally inconsistent as to whether information on government approvals and environmental impact documentation must be included in a notice of intent to proceed under a RWP, it is necessary for an application for coverage under a RWP to include the information specified in subsections 11743(h) and (i).

The information on government approvals specified in subsection (h) is necessary to enable staff to assess the potential environmental impacts of the proposed project, including whether the project may result in harm to the Bay or Bay resources. This information is also necessary because Government Code section 66632(b) requires the Commission to ensure that a project proponent receives any required local discretionary approval from the appropriate city or county with jurisdiction before the Commission acts on an application. However, the information on government approvals specified in subsection 11743(h), which lists five potentially required approvals, is streamlined in comparison to that called for in Appendix D, Box 7, which lists 14 potentially required approvals.

The information on environmental impact documentation specified in subsection (i) is necessary to enable staff to assess the potential environmental impacts of the proposed project, including whether the project may result in harm to the Bay or Bay resources, and to meet the Commission's obligation under CEQA. However, the information requirements of subsection (h) are less burdensome than those called for in Appendix D, Box 8.

In particular, while subsection (i) requires an applicant to submit a copy of any environmental review document prepared for the proposed project by a government agency, Appendix D, Box 8 states that any certified environmental document must be submitted prior to action on the

permit. Subsection (i) does not require an application to include any certified environment document to ensure this regulation is not inconsistent with Government Code section 65941(b), which prohibits an agency from requiring an applicant for a development project to submit the informational equivalent of an environmental impact report or to otherwise require proof of compliance CEQA as a prerequisite to a permit application being deemed complete.

Section 11744 – Fill Information

Section 11744 specifies the fill information an application must provide if a project includes placing fill in San Francisco Bay, a salt pond, a managed wetland, a certain waterway, or the primary management area of the Suisun Marsh.

Subsection (a) requires information about the quantity of fill. Subsection (b) requires a description of all structures to be built on fill. Subsection (c) requires an explanation of how the project has been designed to minimize the amount of fill. Subsection (d) requires a description of any potential impacts from the fill on water quality and Bay habitats, and any measures taken to avoid or minimize these impacts. Subsection (e) requires information concerning the safety of fill.

All of the information specified in section 11744 is currently required in a notice of intent to proceed under a RWP by existing Appendix D, Box 3, entitled Fill Information. Moreover, much of the information specified in this section was required by Part I of the version of Appendix D adopted in 1990, when existing section 11711(a)(1) was amended to require a notice of intent to proceed under a RWP to contain a “fully completed application form, Part I only, as set out in Appendix D.”

Section 11744 is necessary because these amendments will: (1) repeal existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a fully completed application form, Part I only, as set out in Appendix D; and (2) amend Appendix D to make the current permit application form no longer applicable to RWPs. The purpose of section 11744 is to clarify and streamline the fill information required to apply for coverage under a RWP for a project that will include the placement of fill.

All of the information specified in section 11744 is necessary to enable staff to review and evaluate a proposed project that involves the placement of fill, determine if the project qualifies for coverage under a RWP, and assess the potential environmental impacts of the project, including whether the project may result in harm to the Bay or Bay resources. Nevertheless, the information specified in section 11744 is a streamlined and less detailed list of information in comparison to the Fill Information called for by Appendix D, Box 3.

Section 11745 – Information for Projects Involving Maintenance Dredging and Beneficial Reuse or Disposal of Dredged Sediment

Section 11745 identifies the information that an application must provide if a project includes maintenance dredging and the beneficial reuse or disposal of dredged sediment in San Francisco Bay, a salt pond, managed wetland, a certain waterway, or the primary management area of the Suisun Marsh.

Subsection (a) requires an application to state whether the proposed dredging is for navigation maintenance, facility maintenance, or some other purpose. Subsection (b) states that if an applicant has submitted a complete application for its project to the Dredged Material Management Office and provides a copy of that application to Commission staff, the applicant does not need to submit any of the information identified in subsections (c) through (l).

Subsection (c) requires information on the type of dredging and frequency, whether single episode or multi-episode. Subsection (d) requires an application to state the total volume (in cubic yards) of sediment to be dredged. Subsection (e) requires information on the existing and proposed design depth of the area to be dredged, and the size of the area (in square feet or acres) to be dredged.

Subsection (f) requires information on the type of substrate being dredged, whether subtidal bottom or intertidal bottom, and the sediment type, and requires an application to state if eelgrass is present in the project area. Subsection (g) requires an application to provide the results of testing for biological, chemical, and physical properties of the sediment to be dredged. Subsection (h) requires an application to state the date the area was last dredged, provide the dredged depth and volume of sediment dredged, and identify the beneficial reuse or disposal site used.

Subsection (i) requires an application to include a description of the proposed dredging equipment and any dredged sediment disposal or offloading equipment. Subsection (j) requires an application to provide the name and location of each proposed beneficial reuse or disposal site, including latitude and longitude coordinates, and a map or figure of the area for the dredged sediment placement or disposal, and state if the site is permitted to receive dredged sediment.

Subsection (k) requires a description of how the sediment will be transported to the beneficial reuse or disposal site, and identification of the equipment that will be used to transfer the sediment to the site. Subsection (l) requires information on the volume of sediment to be beneficially reused or disposed of, and, if at multiple sites, the volume to be reused or disposed of at each site.

Except as discussed below, all of the information specified in section 11745 is currently required in a notice of intent to proceed under a RWP that authorizes maintenance dredging by existing Appendix D, Box 6, entitled Dredging and Mining Information. Moreover, much of the information specified in this section was required by Part I of the version of Appendix D adopted in 1990, when existing section 11711(a)(1) was amended to require a notice of intent to

proceed under a RWP to contain a “fully completed application form, Part I only, as set out in Appendix D.”

Section 11745 is necessary because these amendments will: (1) repeal existing section 11711, which requires a notice of intent to proceed under a RWP to include, among other things, a fully completed application form, Part I only, as set out in Appendix D; and (2) amend Appendix D to make the current permit application form no longer applicable to RWPs. The purpose of section 11745 is to clarify and streamline the information that an application for coverage under a RWP must provide if a project includes maintenance dredging and the beneficial reuse or disposal of dredged sediment.

In addition to the information currently required by Appendix D, Box 6, subsection 11745(h) requires information about prior dredging at the site; subsection (i) requires information about proposed dredging equipment and any dredged sediment disposal or offloading equipment; and subsection (k) requires a description of how the sediment will be transported to the beneficial reuse or disposal site, and identification of the equipment that will be used to transfer the sediment to the site. This information is necessary to: (1) confirm that the project involves maintenance dredging rather than new work dredging; (2) evaluate potential environmental impacts associated with the equipment that will be used to dredge, transport, dispose of, or offload the dredged sediment; (3) assess whether any temporary fill may be needed to offload dredged sediment for beneficial reuse; and (4) determine whether the applicant plans to use equipment that has already been permitted or may require further authorization from the Commission or another agency.

All of the information specified in section 11745 is necessary to enable staff to review and evaluate a proposed project that involves maintenance dredging and the beneficial reuse or disposal of dredged sediment to determine if the project qualifies for coverage under a RWP and to assess the potential environmental impacts of the project, including whether the project may result in harm to the Bay or Bay resources. However, except for the new information required by subsections (h), (i), and (k) discussed above, the information specified in section 11745 is a streamlined and less detailed list of information in comparison to the Dredging and Mining Information called for by Appendix D, Box 6.

Section 11746 – Information for a Regionwide Permit that Requires an Adaptive Management, Monitoring, or Mitigation Plan

Section 11746 states that the Commission may adopt RWPs that authorize tidal or habitat restoration projects which include conditions requiring the applicant to prepare and implement an adaptive management, monitoring, or mitigation plan. This section further states that a RWP that requires such a plan will identify the purpose and goals of the plan and describe the required components of the plan. The remainder of this section identifies the information that

an applicant seeking coverage under a permit that requires such a plan must provide in a proposed plan.

Subsection (a) requires the proposed plan to describe the current condition and functionality of the impacted ecosystem. Subsection (b) requires the proposed plan to identify measurable performance standards and success criteria to meet the plan's goals (as stated in the RWP) and the time frame necessary to achieve each performance standard.

Subsection (c) requires the proposed plan to identify the monitoring parameters, monitoring schedule, and the protocols that will be used to determine if each performance standard has been met. Subsection (d) requires the proposed plan to describe the long-term management and maintenance practices that will be used to achieve the plan's goals and performance standards. Subsection (e) requires the proposed plan to identify the reporting schedule for the time frame necessary to achieve the plan's goals and performance standard.

None of the existing RWPs authorize tidal or habitat restoration projects. However, in the future, the Commission may adopt RWPs that authorize such projects. San Francisco Bay Plan policies require that habitat projects include a monitoring program, and as appropriate, an adaptive management plan and a mitigation program. See Bay Plan Tidal Marshes and Tidal Flats Policy 6 (any habitat project should include clear and specific biological and physical goals, success criteria, a monitoring program, and as appropriate, an adaptive management plan), Subtidal Areas Policy 3 (same), and Mitigation Policy 8 (when compensatory mitigation is necessary, a mitigation program describing the design, construction, and management of the mitigation areas should be reviewed and approved by or on behalf of the Commission).

Section 11746 is necessary to enable the Commission to adopt RWPs that authorize tidal or habitat restoration projects. More specifically, it is necessary for section 11746 to state that the Commission may adopt RWPs that authorize such projects, which will include conditions requiring the applicant to prepare and implement an adaptive management, monitoring, or mitigation plan. To provide clarity and definite standards for an applicant in preparing a proposed plan, it is necessary for section 11746 to state that a RWP requiring such a plan will identify the purpose and goals of the plan and describe the required components of the plan. Similarly, to provide clarity and definite standards for an applicant, it is necessary for subsections (a) through (e) to identify the information that an application must provide in a proposed plan when seeking coverage under a RWP which requires the applicant to prepare and implement an adaptive management, monitoring, or mitigation plan.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to San Francisco Bay Plan Tidal Marshes and Tidal Flats Policy 6, Subtidal Areas Policy 3, and Mitigation Policy 6. Tidal Marshes and Tidal Flats Policy 6 describes the information required for habitat projects located in Tidal Marshes and Tidal Flats, Subtidal Areas Policy 3 describes the information required for habitat projects located in Subtidal Areas; Mitigation Policy 6 provides that when compensatory mitigation is necessary, a

mitigation program describing the design, construction, and management of the mitigation areas should be reviewed and approved by or on behalf of the Commission.

III. ADD NEW INTRODUCTORY ARTICLE TO THE PERMITTING REGULATIONS

The Commission considers applications and issues permits for many different types of proposed uses or activities, particularly large, complex, multi-use projects. In addition, the MPA authorizes the Commission to provide by regulation for the Executive Director to issue 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.” 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 permits, administrative (or minor) permits, 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 RWP program; those regulations were amended in 1996 to establish the ARWP 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 RWPs and ARWPs. A problem with the existing regulations is that, 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.

In addition, 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 do not result in adverse impacts to the environment or public access or raise concerns related to protection of the Bay or Bay resources. Examples of de minimis activities in the shoreline band include:

- Routine repairs and maintenance;
- Remodeling or altering 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 has also resulted in potentially avoidable enforcement actions for alleged violations of the MPA associated with such activities.

Finally, Government Code section 66632(i), which establishes a 90-day limitations period to seek judicial review of a Commission decision under the MPA to deny a permit application or to attach conditions to a permit approval, 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 or action under the SMPA, states that an aggrieved person shall challenge such a decision or action “by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.”

Proposal and Rationale

To make the regulations more user-friendly for permit applicants, permittees, and the public and to clarify the distinctions between the different types of permits, the proposed amendments will repeal the first article of Chapter 3 of the regulations, which contains a single section defining the term “major permits,” and replace it with a new article that will define all four types of permits (after repeal of the existing ARWP regulations) and include a number of general provisions related to permitting.

The new article will include provisions to explain how the type of required permit is determined based on the nature and scope of a proposed project; inform prospective applicants that they may request a pre-application meeting with staff; identify certain de minimis uses or activities in the shoreline band for which no permit is required; and clarify that an aggrieved party may challenge any permitting decision made by the Commission or the Executive Director by filing a petition for a writ of mandate under Code of Civil Procedure section 1094.5.

Specifically, the proposed amendments will repeal existing Article 1 of Chapter 3, Subchapter 1, which consists of a single section defining the term “major permits,” and adopt a new article in

its place consisting of nine sections. These 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.

Chapter 3 is currently entitled “Major Permit Procedures: Applications, Amendments to Applications, and Application Summaries.” Subchapter 1 of Chapter 3 is currently entitled “Definitions,” and Article 1 of this subchapter also is currently entitled “Definitions.” Article 1 consists of a single section – section 10300 – which is entitled “Major Permits” and defines a major permit.

The title of Chapter 3 will be amended to read “Permit Definitions and General Provisions; Major Permits Procedures: Applications and Amendments to Applications.” The titles of both Subchapter 1 and Article 1 will be amended to read, “Permit Definitions and General Provisions.”

These changes are necessary because existing Article 1 and the single section in this Article (and Subchapter) will be repealed and replaced with a new article with sections to identify and define the four types of permits, explain how the type of permit required for a project is determined, inform prospective applicants that they may request a pre-application meeting with staff; identify certain de minimis uses or activities in the shoreline band for which no permit is required; and clarify that permitting decisions may be challenged by filing a petition for a writ of mandate under Code of Civil Procedure section 1094.5. The benefits of these changes will be to clarify and provide greater transparency to the Commission permitting program, and to make the regulations more user-friendly for prospective applicants, permittees, and the public.

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,” as discussed below. This change is necessary to adopt a new Article 1, of Chapter 3, Subchapter 1, that will include sections to define the four types of Commission permits, including a more precise definition of a major permit (in a new section 10301).

New section 10300 is entitled “Types of Permits” and will identify the four types of Commission permits: (a) major permit; (b) administrative permit; (c) regionwide permit; and (d) emergency permit. This section is necessary to make the regulations clearer and more user-friendly to permit applicants, permittees, and the public by identifying in one section the four different Commission permits. The benefit of this section will be to provide greater clarity to permit applicants, permittees, and the public regarding the different types of permits.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to Public Resources Code section 29509(b), which authorizes the Commission to provide by regulation for the Executive Director to issue permits in cases of 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. A benefit of the revised definition is that it is more precise than the existing definition because the revised definition includes the language triggering the requirement for a permit under the MPA (“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 SMPA (“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 MPA or SMPA “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.”

These changes to the definition of major permit are necessary to make the definition more precise and to clarify for permit applicants, permittees, and the public the activities for which a major permit is required.

Section 10302 – Administrative Permit

Existing section 10600 is entitled “Administrative Permit” and defines 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.” This change is necessary to adopt a new Article 1, of Chapter 3, Subchapter 1, which will define the four types of Commission permits, including a more detailed definition of administrative permit.

New section 10302 will set forth a revised definition of the term “administrative permit” in comparison to existing section 10600, which will be repealed. A benefit of the revised definition is that it is more detailed than the existing definition because the revised definition will state that an administrative permit: (1) is issued by the Executive Director; and (2) is a permit issued for an activity described as minor repairs or improvements in sections 10601 or 10602, other than a RWP adopted by the Commission to authorize a specific category of minor repairs or improvements.

Another benefit of the revised definition of administrative permit is that it will clarify that both administrative permits and RWPs 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 RWP in section 10303, a RWP is adopted by the Commission to authorize a specific category of minor repairs or improvements that the Commission has determined will have no substantial impact on areas within its jurisdiction. The Executive Director approves coverage under (and issues a copy of a RWP to an applicant) in accordance with the less burdensome application and procedural requirements for a RWP as set forth in the amended Chapter 17 regulations.

These changes to the definition of administrative permit are necessary to clarify for permit applicants, by reference to sections 10601 and 10602, those minor repairs or improvements for which an administrative permit is required, and to clarify that the Executive Director issues such permits.

Section 10303 – Regionwide Permit

As discussed above, the existing regulations do not define a RWP. 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.”

The rationale for new section 10303 is discussed thoroughly above in Part II.B.2. In summary, this section is necessary to: (1) add a definition of the term “regionwide permit” to the regulations; (2) clarify that the activities that may be authorized by a RWP are minor repairs or improvements; (3) revise the standard for adoption of a RWP from will have no “substantial” impact to will have no “significant” impact” on areas within the Commission’s jurisdiction; and (4) expand the scope of the RWP permitting program to include areas within the Commission’s jurisdiction under the SMPA, which will streamline the Commission’s permitting process in Suisun Marsh and promote consistency in permitting process under the MPA and the SMPA.

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 than 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.

The purpose and benefit of section 10304 is to add a definition of the term “emergency permit” to the regulations.

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

New section 10305 consists of four subsections, (a) through (d), and describes how the type of permit required for a project is determined based on the nature and scope of the proposed activity.

The purpose of this section is to clarify that a proposed project first should be evaluated to determine if it qualifies for authorization under a RWP, which involves the least burdensome and most streamlined application requirements and processing procedures. If the project does not qualify for coverage under a RWP, the proposed activity or 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 RWP and a major permit. Only if a proposed project does not qualify for authorization under a RWP or an administrative permit must an applicant apply for a major permit. Finally, this section states that a property owner or 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 RWPs for certain activities that are minor repairs or improvements “as described in or within the scope of sections 10601 or 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 RWPs do not, and future RWPs need not, exactly track the language used in sections 10601 or 10602 to describe various minor repairs or improvements, and because a RWP may authorize minor repairs or improvements under multiple subsections of 10601 or 10602 for similar activities or for different areas of the Commission’s jurisdiction.

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

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 RWPs. This subsection refers applicants 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 RWPs or are not minor repairs or improvements as described in sections 10601 or 10602. This subsection refers applicants 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 applicants to sections 10640 and 10641 for the application requirements for an emergency permit.

The purpose and benefit of section 10305 is to clarify for property owners or other project proponents how to determine the type of permit required for a project based on the nature and scope of proposed activities. This section is necessary to clarify that an applicant should first evaluate a proposed project to determine if it qualifies for authorization under an adopted RWP, which involves the least burdensome and most streamlined application requirements and processing procedures. If the project does not qualify for coverage under an adopted RWP, an applicant should next evaluate whether the proposed project qualifies for authorization under an administrative permit, which involves application requirements and procedures that are intermediate in detail and scope between those for a RWP and a major permit.

This section further clarifies that only if a proposed project does not qualify for authorization under an adopted RWP or an administrative permit must an applicant apply for a major permit. Finally, this section is necessary to clarify that a property owner or project proponent may apply for an emergency permit only in an “emergency” situation as defined in the regulations.

Section 10306 – Pre-application Meeting with Staff

New section 10306 will inform permit applicants that they have the opportunity to request a pre-application meeting with Commission 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. The purpose and benefit of this section is to increase the transparency of the permitting process by informing prospective permit 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 Commission 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 or complex projects and any project that will require a major permit.

Subsection (c) states that for small or straightforward 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 a prospective applicant's questions in a phone conversation or email.

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

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). This section provides that 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 location.

The purpose of section 10307 is to eliminate the 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 any adverse impacts to the environment or public access or raise concerns related to the protection of the Bay or Bay resources. To meet this objective, 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 location.

A permit is required if any of the uses or activities listed in section 10307 will adversely impact existing public access or block views of the Bay from the nearest public road or other publicly accessible location, so that permit conditions for a proposed project can be developed and considered that would avoid or minimize such adverse impacts. Existing public access or views of the Bay are typically required by the conditions of Commission permits for properties adjacent to or nearby a project site. Avoiding or minimizing adverse impacts to existing public access or views of the Bay is necessary to avoid or minimize conflicts between, and ideally to coordinate, the conditions of existing Commission permits and the permit for a proposed project.

Avoiding or minimizing such adverse impacts through permit conditions is also necessary to implement numerous MPA provisions and Bay Plan policies requiring the Commission to maximize feasible public access and provide for the enhancement and preservation of views of the Bay and its shoreline from public thoroughfares and other public spaces. *See e.g.*, Government Code §§ 66602, 66602.1, 666324, Bay Plan Public Access Policies 1, 2, 10, and 11, and Bay Plan Appearance, Design, and Scenic Views Policies 2 and 14.

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, such as garages, carports, storage sheds, tool sheds, or playhouses.
- (3) Construction of an Accessory Dwelling Unit (ADU).
- (4) Renovation, remodeling, or enlargement of an existing structure that does not increase the building footprint.
- (5) Reconstruction, replacement, or alteration 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 and that will not serve a flood protection function or require drilled piers or pile driving.
- (7) Installation, replacement, alteration, or removal of landscaping, gardens, and plantings.
- (8) Installation, replacement, alteration, or removal of 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 (duplexes), no permit is required for:

- (1) Routine repairs and maintenance.
- (2) Construction, replacement, or alteration of accessory structures, such as waste disposal or recycling stations, utility structures, signage associated with the existing use, and other facilities, provided such structures do not change 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 and that will not serve a flood protection function or require drilled piers or pile driving.
- (5) Installation, replacement, alteration, or removal of landscaping, gardens, and plantings.
- (6) Installation, replacement, alteration, or removal of a fence or gate less than five feet in height.

Subsection (c) provides that no permit is required for the 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. As also discussed below, this provision has been moved from existing subsection 10125(b)(5), which currently provides that a subdivision or other division of land under the stated circumstances is 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.

Finally, subsection (h) provides that no permit is required for environmental remediation activities, including installation of borings to collect soil or groundwater samples, installation and sampling of groundwater monitoring wells, and removal or treatment of contaminated soil or groundwater, where the California Department of Toxic Substances Control, the San Francisco Bay Regional Water Quality Control Board, a Certified Unified Program Agency as provided in Health and Safety Code section 25404(a), 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 potentially 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 potential remediation technologies). The Commission's permits for such activities typically include conditions for site investigation and remediation that have previously been developed and imposed by other federal or state agencies with the applicable expertise.

Under subsection (h), no permit would 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 would continue to be required for environmental remediation activities in other areas of the Commission's jurisdiction.

The benefits of section 10307 include eliminating or reducing the regulatory burden on project proponents from needing to apply for and obtain permits, and the burden on Commission staff from needing to process permits for the listed de minimis uses or activities conducted in the shoreline band. The benefits also include avoiding the regulatory burden on property owners or other project proponents and Commission staff from enforcement actions for alleged violations of the MPA 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 related benefit of listing the uses or activities in the shoreline band for which no permit is required is that section 10307 will allow Commission regulatory staff to focus its time on and dedicate more resources to processing permits in critical programmatic areas, including large, complex, multi-use projects, and projects to promote habitat restoration, sea level rise adaptation, and shoreline resiliency. In this way, section 10307 implements one of the pre-application "best practices" recommended by the California Assembly Select Committee on Permitting Reform, in its final report (March 2025), which is for regulatory agencies to prioritize their permitting objectives and workloads.

To achieve these benefits, it is necessary to list, in subsections 10307(a) through (h), the uses or activities in the shoreline band for which no permit is required, provided that such 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.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, a reference to Government Code section 66633(e), which authorizes the Commission to do any and all other things necessary to carry out the purposes of the MPA.

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

New section 10308 provides 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.

The purpose and benefit of section 10308 is to 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 these regulations.

“The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, ‘quasi-judicial’ or ‘adjudicative acts,’ that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5.” *Beach and Bluff Conservancy v. City of Solana Beach* (2018), 28 Cal. App. 5th 244, 258; *California Water Impact Network v. Newhall County Water District* (2008), 161 Cal. App. 4th 1464, 1482. In contrast, an agency’s enactment of a rule constitutes a legislative or quasi-legislative act and is reviewed by ordinary or traditional mandate under Code of Civil Procedure section 1085. *Beach and Bluff Conservancy*, 28 Cal. App. 5th at 258.

“The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action.” *Beach and Bluff Conservancy*, 28 Cal. App. 5th at 259; *California Water Impact Network*, 161 Cal. App. 4th at 1483 n.19. Traditional mandamus under section 1085 applies to “quasi-legislative” decisions, defined as those involving the formulation of a rule to be applied to all future cases, while administrative mandamus under section 1094.5 applies to “quasi-judicial” decisions, which involve the actual application of such a rule to a specific set of existing facts. *Beach and Bluff Conservancy*, 28 Cal. App. 5th at 259.

Permitting decisions, whether made by the Commission or the Executive Director involve applying the law – particularly the MPA, the SMPA, the Commission’s regulations, and the enforceable policies of the San Francisco Bay Plan, the Suisun Marsh Protection Plan, and the Suisun Marsh Local Protection Program – to the specific set of facts presented by a permit application and, therefore, are adjudicatory or “quasi-judicial” decisions. The distinction between adjudicatory and quasi-legislative actions is reflected in section 10282 of the Commission’s regulations, which concerns *ex parte* communications and is entitled “Definitions of a Quasi-Judicial Proceeding and a Quasi-Legislative Proceeding.” As explained in that regulation, an adjudicatory action “affects specific rights or interests of an individual or business entity based on specific facts, such as granting of a permit.” 14 C.C.R. § 10282.

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 MPA 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 SMPA. 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 for violations of law.

Similarly, the judicial review provisions of many other environmental statutes specify that challenges to agency permitting decisions shall be brought by filing a petition for writ of mandate in accordance with Code of Civil Procedure section 1094.5. *See, e.g.*, Public Res. Code § 30801 (any decision or action of the California Coastal Commission); Water Code § 13330 (any decision or order of the State Water Resources Control Board); Health and Safety Code § 40864 (a decision by any air pollution control district hearing board).

Thus, section 10308 is necessary to clarify that any challenge to a permitting 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.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to Government Code section 66632(i), Public Resources Code section 29602, and Code of Civil Procedure section 1094.5. Government Code section 66632(i) provides for judicial review of Commission permitting decisions under the MPA; Public Resources Code section 29602 provides for judicial review of Commission decisions under the SMPA; and Code of Civil Procedure section 1094.5 provides that judicial review of administrative decisions shall be by filing a petition for writ of mandate.

IV. SECTION-BY-SECTION DESCRIPTION OF OTHER AMENDMENTS TO UPDATE AND CLARIFY THE REGULATIONS

Following is a section-by-section description of the problem statement, purpose, and rationale for additional amendments to selected regulations in numerical section order.

Chapter 1. General Provisions; Article 1. Interpretation of Regulations

Section 10112 – How to Calculate Deadlines

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 by the regulations or calculating the deadline for submission of documents. This problem occurs especially when, in counting the number of days allowed for an action, the due date or deadline appears to fall on a weekend or holiday.

Proposal and Rationale

New section 10112 will describe how to calculate the due date or deadline by which to perform any action required by the regulations. This section implements and is consistent with Civil Code sections 7 and 10 and Government Code sections 6700(a), 6701, and 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 is necessary to clarify for the members of the public, permittees, respondents in enforcement actions, and staff how to compute the time by which any action or submission of any document required by the regulations must be done or completed, particularly when the last day appears to fall on a Saturday, Sunday, or state holiday.

The Authority and Reference note will include, in addition to certain other statutory citations discussed previously, references to Civil Code sections 7 and 10 and Government Code sections 6700, 6701, and 6702. Civil Code section 7 and Government Code sections 6700(a), 6701, and 6702 establish the days that are holidays under state law; Civil Code section 10 governs the computation of time in which any act required by law is to be done.

Chapter 1. General Provisions; Article 2. Definitions

Section 10125 – Substantial Change

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 MPA 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 MPA 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.

A problem with this regulation is that subsection (b) applies both to areas of the Commission’s MPA 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 them separately in determining what uses or activities constitute a substantial change of use in each type of area.

Another problem with section 10125 is that there is ambiguity and uncertainty regarding whether a permit is required for certain de minimis uses or activities conducted in the shoreline band that typically do not result in any adverse impacts to the environment or public access or raise concerns for the protection of the Bay or Bay resources. 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.

Proposal and Rationale

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 or blocks views of the Bay from the nearest public road or other publicly accessible locations.

Subsections (a)(1) and (a)(3) are taken, with minor modifications, from existing subsection (b)(2) and (b)(3), which currently define, in part, a substantial change of use in the Bay, any certain waterway, or the shoreline band.

It is necessary to add subsection (a)(2) 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, the text of this provision will also be added as redesignated subsection (c)(2) as part of the description of a substantial change in use in the shoreline band, as discussed below.

Subsection (a)(4) is taken, with two modifications, from existing subsection (b)(4). First, subsection (a)(4) is limited to a substantial change 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. Second, subsection (a)(4) includes as a substantial change “block views of the Bay from the nearest public road or other publicly accessible location.”

The reference to adverse impacts to future public access in existing subsection (b)(4) is problematic because property owners or 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 easily determine 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.

For these reasons, and to improve the clarity of section 10125, it is necessary to omit the reference to adverse impacts to future public access in subsection (a)(4) and to limit this subsection to adverse impacts to existing public access.

Adding a reference in subsection (a)(4) to any construction, work on a structure, or activity that “blocks views of the Bay from the nearest public road or other publicly accessible location” is necessary to implement the Bay Plan’s policies that provide for the enhancement and preservation of views of the Bay and its shoreline from public thoroughfares and other public spaces. See Bay Plan Appearance, Design, and Scenic Views Policies 2 and 14.

For the same reasons, the text of this provision will also be added as amended and redesignated subsection (c)(4) as part of the description of a substantial change of use in the shoreline band, as discussed below.

Unlike existing subsection (b)(1), new subsection (a) does not limit a substantial change of use in the Bay or a certain waterway 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 the construction of or work on a structure or other activity in the Bay or a certain waterway because a cost threshold may lead a prospective permit applicant to conclude incorrectly that no permit is required if the estimated cost is less than the cost threshold. However, regardless of the estimated cost, construction of or work on a structure or other activities 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 substantial change in use. This change is necessary to 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 is necessary to 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 statute (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 will 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 is necessary to 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).

Before describing the changes to redesignated subsection (c), this is to reiterate that, as discussed in detail above in Part III, new section 10307 will be added to identify certain de minimis uses or activities conducted in the shoreline band that do not require a permit. The uses or activities listed in section 10307 do not require a permit in the shoreline band (with limited exceptions) because such uses and activities do not involve a substantial change in use or the placement of fill under Government Code section 66632(a).

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. It is necessary to delete this provision 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, as noted above, has been incorporated into new section 10307, which identifies certain de minimis uses and activities conducted in the shoreline band that do not require a permit.

Many of the de minimis 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. In addition, 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 that has 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.” It is necessary to add this subsection 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. This change is also necessary to make this subsection consistent with subsection (a)(2).

Third, former subsection (b)(3), which has been redesignated as subsection (c)(3), will be revised to improve its clarity and to be consistent with subsection (a)(3).

Fourth, former subsection (b)(4), which has been redesignated as subsection (c)(4), will be revised to be limited to a substantial change that will adversely impact existing public access or 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. Subsection (c)(4) will also include as a substantial change any construction, work on a structure, or activity that “blocks views of the Bay from the nearest public road or other publicly accessible locations.”

As discussed above, the reference to adverse impacts to future public access in existing subsection (b)(4) is problematic because property owners or 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 property owners or other permit applicants to know or be able to easily determine the location of future public access nearby their 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 existing or future public access.

For these reasons and to improve the clarity of section 10125, it is necessary to omit the reference to adverse impacts to future public access in subsection (c)(5). This change is also necessary to make this subsection consistent with subsection (a)(4).

As also discussed above, including as a substantial change under subsection (c)(4) “block views of the Bay from the nearest public road or other publicly accessible location” is necessary to implement the Bay Plan’s policies that provide for the enhancement and preservation of views of the Bay and its shoreline from public thoroughfares and other public spaces. *See Bay Plan Appearance, Design, and Scenic Views Policies 2 and 14.*

Fifth, former subsection (b)(5), which has been redesignated as 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 in existing subsection (b)(5) to future public access. In addition, a reference will be added to this subsection to a subdivision or other division of land that will substantially affect “views of the Bay from the nearest public road or other publicly accessible location.” These changes are 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.” However, 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 in Part III, 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.”

Chapter 1. General Provisions; Article 3. Boundary and Jurisdictional Questions

Section 10130 – Exclusion of 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 SMPA to include, among other things, “extraction of materials.”

Section 10130 of the regulations currently excludes from the requirement for a permit under the MPA and SMPA 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.

Proposal and Rationale

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 is necessary to clarify for both members of 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 are necessary to section 10130 to accurately quote the text of the MPA and SMPA.

Section 10133 – Determination of Commission Jurisdiction

Section 10133 currently is 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 of 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 San Francisco 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 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.

A problem with section 10133 is that it 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 a result of work authorized by a Commission permit or for other reasons. Circumstances that may result in a change in the nature of the Commission's jurisdiction include, for example, 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.

Moreover, the title of section 10133 is inaccurate because the section refers to determining the Commission's jurisdiction in general and is not limited in scope to determining shoreline and map boundaries.

Proposal and Rationale

The title of section 10133 will be amended to read "Determination of Commission Jurisdiction." The purpose of this change is to clarify the scope of section 10133. This change is necessary to 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 and clarify that the Commission will determine its jurisdiction based on existing conditions if the nature of an area has changed: (1) as authorized by a Commission permit, except as provided in section 10710; (2) as the result of the failure to maintain any use of land or water or any human-made works; (3) as the result of the natural destruction of and failure to timely repair any human-made works, except as provided in section 10123(a); or (4) as the result of an area becoming subject to tidal action due to periodic inundation with tidal waters or sea level rise.

This new subsection further provides that for purposes of subsection (d)(3), "timely repair" means within one year after the event or occurrence causing the natural destruction of the human-made works or, if the affected property owner submits within 180 days of the event or occurrence a written request to the Commission for additional time and provides an estimate of

the time that will be reasonably necessary to complete the repairs, for such longer period of time as may be specified by Commission resolution to be timely under the circumstances.

New subsection (d) is necessary to clarify and provide notice to property owners that where the nature of an area has changed either as authorized by a Commission permit or as the result of any of the other circumstances specified in the regulation, the Commission's jurisdiction shall, with few exceptions, be determined based on existing conditions.

As discussed below, section 10710, referenced in new subsection 10133(d)(1), provides that an area subject to the Commission's Bay or certain waterways jurisdiction, under Government Code sections 66610(a) and (e), respectively, remain subject to that same jurisdiction even if filled or otherwise altered pursuant to a Commission permit or by other means.

New subsection 10133(d)(2) 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.

New subsection 10133(d)(3) is a parallel and complementary provision to section 10123(a), which provides that an area that would fall within the Commission's jurisdiction only as the result of the natural destruction of a man-made works shall remain excluded from the Commission's jurisdiction provided the affected property owner completes the repairs of the destruction within one year or, if the affected property owner requests an extension of time, such longer period as may be specified by the Commission.

Where section 10123(a) addresses areas remaining excluded from the Commission's jurisdiction provided that necessary repairs are made within one year or such longer period of time as determined by the Commission to be reasonable after the natural destruction of a man-made works, new subsection 10133(d)(3) addresses areas remaining subject to the same type of jurisdiction as prior to the natural destruction of a human-made works, provided the necessary repairs are made within one year or such longer period of time as determined by the Commission to be reasonable.

New subsection 10133(d)(4) is necessary to state and 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.

The Authority and Reference note will be amended to: (1) add an authority citation to Public Resources Code section 29201(e); (2) delete the reference to Government Code section 66602; and (3) add a reference to *Sweeney v. San Francisco Bay Conservation & Development Comm'n* (2021) 62 Cal.App.5th 1, 14-16. Public Resources Code section 29201(e) authorizes the

Commission to adopt regulations consistent with the SMPA. Government Code section 66602, which contains legislative findings and declarations as to the necessity for providing locations for water-oriented land uses and increased public access, is not relevant to the determination of the Commission's jurisdiction under section 10133. In the *Sweeney* case, the Court of Appeal upheld the Commission's determination that due to prolonged lack of maintenance, the nature of an area had changed from a managed wetland to tidal marsh. These changes are necessary to accurately provide the statutory authority and references applicable to section 10133.

Chapter 6. Permit Procedures: Administrative and Emergency Permits

Subchapter 1. Procedures for Administrative Permits

Subchapter 1 currently is entitled "Procedures for Permits for Minor Repairs or Improvements (Administrative Permits)." The problem is that 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."

Article 1. Definitions

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 a new section 10302, which will set forth a revised definition of "administrative permit." This change is necessary to adopt a new Article 1, of Chapter 3, Subchapter 1, which will define the four types of Commission permits, including a more detailed 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" that the Executive Director may authorize by 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 by defining 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."

The introductory paragraph of section 100601 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 MPA 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 MPA] 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 100601 is inaccurate and misleading as a potential ground for determining that an activity described or listed in this section is a minor repair or improvement.

Proposal and Rationale

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 and benefit of this change is to more accurately describe the basis for determining that the activities described or listed in section 10601 are minor repairs or improvements. This change is necessary to delete the inaccurate and misleading language of existing clause (a).

Following the introductory paragraph, the following additional changes will be made to section 10601.

Subsection 10601(a) applies to certain activities in San Francisco Bay and areas within the Commission’s “certain waterways” jurisdiction.

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. The problem is that reference to section 10702(b) in this provision was inadvertently not deleted in 2022 when section 10702 was repealed. Therefore, it is necessary to amend subsection 10601(a)(3) to substitute the term “an existing structure” in place of “principal structures, as defined in section 10702(b),” which will be deleted. This is not a substantive change, because in the context of this regulation, a principal structure means the same thing as an existing structure. This change is necessary to clarify this provision and avoid confusion because section 10702 has been repealed.

Additional changes to subsection (a) include minor editorial revisions to the introductory clause and to subsections (a)(1) through (a)(5). These changes are necessary to improve the clarity and conciseness of the text, but none alter the meaning of any of these provisions.

Similarly, it is necessary to amend subsection (a)(4) to update the proper name of the San Francisco Bay Regional Water Quality Control Board. It is also necessary to amend subsection (a)(10) to add a reference to “beneficial reuse” as the preferred alternative to the disposal of dredged sediment.

Subsection 10601(b) applies to 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 indeterminate, 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 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.” See Bay Plan Appearance, Design, and Scenic Views Policies 2 and 14. 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 does not involve any substantial enlargement or any substantial change in uses is a minor repair or improvement. It is necessary to amend subsection (b)(5) 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 the reconstruction or replacement of an existing structure.

In addition, to improve the clarity of subsection (b)(5), it is 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 is necessary to make this subsection consistent with section 10125 (both the existing section and as amended), which includes alteration of a structure as an activity that may qualify as a substantial change of use.

The term “substantial enlargement” in subsection (b)(5) 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. For this reason, it is necessary to amend subsection (b)(5) 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 to the changes described above, 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 change the meaning of any of these provisions. In addition, 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.

Finally, the Authority and Reference note will be amended to: (1) delete the reference to Public Resources Code section 29501(e); and (2) add references to Public Resources Code sections 29501(a) and 29520(a). Public Resources Code section 29501(e) authorizes the Commission to revoke any delegation of its permitting authority under the SMPA and is not inapplicable to section 10601 of the regulations. The correct reference is to Public Resources Code section 29501(a), which authorizes the Commission to issue permits for any development within the primary management area of the Suisun Marsh. As noted previously, Public Resources Code Section 29520(a) provides that, except as expressly provided in the SMPA, the Commission shall

use the procedures set forth in the MPA for the issuance of permits under the SMPA. These changes are necessary to provide the correct statutory references applicable to section 10601.

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” that may be authorized administratively.

This section is currently entitled “Administrative Permits Related to Dredging and Disposal Projects.” It is necessary to amend the title of this section to include a reference to beneficial reuse, which is the preferred alternative to the disposal of dredged sediment. For the same reasons, the introductory sentence of this section and the text of subsections (d) and (g) will be amended to add references to beneficial reuse.

In addition, the amendments to section 10602 include numerous minor editorial revisions. These revisions are necessary to improve the clarity and conciseness of the text, but none alter the meaning of any of these provisions. It is also necessary to amend subsection (f) 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.

The Authority and Reference note will be amended to: (1) delete the reference to Public Resources Code section 29501(e); and (2) add references to Public Resources Code sections 29501(a) and 29520(a). These changes are necessary to accurately cite the statutory references applicable to section 10602.

Article 3. Approval or Denial of Administrative Permits

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.

A problem with existing section 10620 is that the first sentence of subsection (a) is unclear and confusing because it refers to any permit application for “minor repairs or improvements.” Existing section 10600, which is being repealed, refers to an administrative permit as a permit for minor repairs or improvements. However, 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.

Another problem with existing section 10620 is that it 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 of the Executive Director's approval of an administrative permit. Similarly, the regulations do not require notice of three other permitting actions that may be taken 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 under new section 11737. 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 such listing.

A third problem with existing section 10620 is that subsection (b) requires the listing of administrative permits ready to be acted upon to be either mailed or sent by electronic mail at least five days prior to a Commission meeting date. Specifically, mailing the listing, which typically is not prepared until shortly before a Commission meeting, at least five days prior to the meeting, means that sometimes the mailed listing is not received by the recipients far enough in advance of the date of the Commission meeting.

Proposal and Rationale

To clarify 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 is also necessary to 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)).

To improve the transparency of the permitting process and provide notice of permitting actions taken by the Executive Director, it is necessary to amend section 10620 by adding a new subsection (b) stating that the administrative listing shall include a section providing notice of the Executive Director's approval or granting 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, new subsection (b) 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.

In addition, it is necessary to redesignate existing subsection (b) as subsection (c), and to amend subsection (c) to clarify that the administrative listing will be distributed by electronic mail and

to delete the current reference to possibly mailing the listing. This change is necessary because mailing the listing, which typically is not prepared until shortly before a Commission meeting, at least five days prior to the meeting, means that sometimes the mailed listing is not received by the recipients far enough in advance of the date of the Commission meeting. It is no longer necessary or standard staff practice to mail the listing because email addresses have been provided, are otherwise available, or can be requested from the parties to whom the listing is required to be sent under subsection 10620(a) (each permit applicant whose application is listed, any person who requested receipt of the list, and agencies that have jurisdiction by law with respect to a proposed activity). In addition, the administrative listing is posted on the Commission's website and is available for any member of the public to access at their convenience.

Subchapter 2. Emergency Permits

Article 2. Procedures

Section 10654 – Notice of Granting Emergency Permits

This section is currently 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.

For consistency with new section 10620(c), discussed above, it is necessary to amend section 10654 to require the Executive Director to provide notice of granting each emergency permit in the administrative listing distributed and posted on the Commission's website in accordance with section 10620(c). The purpose and benefit of this change is to improve the transparency of the permitting process by providing notice of permitting actions taken by the Executive Director.

As discussed above, Section 10620 will be amended, by adding new subsection (c), to state that the administrative listing shall include a section providing notice of the Executive Director's approval or granting of each administrative permit, emergency permit, nonmaterial amendment to a major permit, nonmaterial amendment to an administrative permit, and coverage under a regionwide permit. It is necessary to amend section 10654 so that it will be consistent with section 10620(c) and with the amendments to sections 10810 and 10822 and with new section 11737, regarding notice of other permitting actions taken by the Executive Director. The amendment to section 10654 is not a substantive change but rather is necessary to ensure consistency among these regulatory provisions.

Chapter 7. Special Rules; Article 2. Other Special Rules

Section 10710 – Continuing Commission Jurisdiction

This section 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.

The problem is that section 10710 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 MPA, as established in Government Code section 66610 – that is, San Francisco Bay, the shoreline band, salt ponds, managed wetlands, and certain waterways. Under this incorrect interpretation, any of these areas remains 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 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).

Proposal and Rationale

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.

The purpose and benefit 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 MPA. 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.

The Authority and Reference note will be amended to add a reference to Government Code section 66610, which establishes the different types of areas of the Commission's jurisdiction under the MPA.

Chapter 8. Amendments to Permits; Article 2. Amendments to Administrative Permits

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.

For consistency with new section 10620(c), discussed above, it is necessary to amend section 10810 to add a new subsection (d) to require the Executive Director to provide notice of approval of a nonmaterial amendment to an administrative permit in the administrative listing distributed and posted on the Commission's website in accordance with section 10620(c). The purpose and benefit of this change is to improve the transparency of the permitting process by providing notice of permitting actions taken by the Executive Director.

Amending section 10810 by adding a new subsection (d) is also necessary so that this section will be consistent with the amendments to sections 10654 and 10822 and with new section 11737, regarding notice of other permitting actions taken by the Executive Director.

Article 3. Amendments to Major Permits

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 major permit if 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 a major permit.

For consistency with new section 10620(c), discussed above, it is necessary to amend section 10822 by redesignating the existing text as subsection (a) and adding a new subsection (b) to require the Executive Director to provide notice of approval of a nonmaterial amendment to a major permit in the administrative listing distributed and posted on the Commission's website in accordance with section 10620(c). The purpose and benefit of this change is to improve the transparency of the permitting process by providing notice of permitting actions taken by the Executive Director.

Amending section 10822 by adding a new subsection (b) is also necessary so that this section will be consistent with the amendments to sections 10654 and 10810 and with new section 11737 regarding notice of other permitting actions taken by the Executive Director.

Economic Impact Assessment

The proposed amendments will not create or eliminate jobs within California, create new businesses or eliminate existing businesses within California, or affect the expansion of businesses currently doing business within California. The proposed 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. Thus, the amendments will incrementally reduce the costs of the Commission's regulatory program by a modest amount and will correspondingly reduce the amounts collected by the Commission in annual permit application fees.

It is difficult to estimate the reduction in permitting costs (and collected application fees) that will result from clarifying that no permit is required (and no application fees will be collected) for certain de minimis activities conducted entirely in the shoreline band. However, the reduction in costs (and application fees) will not 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 an 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 application fee would be between \$200 and \$600 for projects with total costs under \$600,000.

If the proposed 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 the Commission to issue approximately 15 permits (primarily regionwide permits and non-material amendments to existing 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 amendments clarifying that no permit is required for certain de minimis activities in the shoreline band will not decrease costs of application fees for projects that involve new development in the shoreline band or for projects involving work in the Bay or other areas of the Commission's jurisdiction, because permits will continue to be required for such projects.

The benefits of the proposed amendments are primarily non-monetary. The benefits include improvements and clarifications to the regionwide permit program by providing more detail as to how the Commission adopts, amends, or revokes a regionwide permit, how a permit applicant applies for coverage under a regionwide permit, and how the Executive Director reviews an application for coverage under a regionwide permit. The benefits also include clarifying and streamlining the information required to apply for coverage under a regionwide permit.

The benefits of the proposed amendments include increased clarity and transparency for permit applicants and the public by adding a new introductory Article to the permitting regulations with sections to define the different types of permits, describe how the type of permit required is determined depending on the nature and scope of a proposed project provide, and set forth general provisions applicable to all types of permits. Eliminating permit requirements for certain de minimis activities in the Commission's shoreline band jurisdiction will reduce permitting costs for some small projects. The benefits of the proposed amendments also include revisions to update and improve the clarity of selected regulations and to increase transparency by providing for notice of permitting actions taken by the Executive Director.

An analysis of economic and fiscal impacts is contained in the accompanying Economic and Fiscal Impact Statement (Form 399), including the supplement thereto.

Impact on Small Businesses

The proposed amendments will impact small businesses that apply for a Commission permit to the same extent as they will impact other businesses, individuals, local government agencies, and state agencies that apply for a permit. However, as discussed above, the proposed amendments will not impose any direct or indirect costs on individuals, businesses, including small businesses, local government agencies, or state agencies. Moreover, as also discussed

above, the amendments will incrementally reduce the costs of the Commission's regulatory program by eliminating permit fees for certain de minimis activities in the shoreline band by clarifying that no permit is required for such activities. Thus, the proposed amendments will incrementally reduce the costs incurred by all regulated entities, including small businesses, associated with permit applications.

Reasonable Alternatives

One alternative, referred to as Alternative 1, is that the Commission would not adopt any of the proposed amendments to its regulations. Under this alternative, the Commission would continue to adopt regionwide and abbreviated regionwide permits, project sponsors would continue to submit notices of intent to proceed under such permits, and the Executive Director would continue to review such notices in accordance with the existing regulations. In addition, there would continue to be confusion and inconsistencies between the regulation and Appendix D, and within Appendix D, as to the information required to be submitted as part of a notice to proceed under a regionwide permit. The Commission would not adopt a new introductory article to the permitting regulations or any of the proposed amendments to clarify, revise, and update selected regulations.

The Commission will likely reject this alternative because it would not meet the objectives of the proposed amendments to: (1) streamline the regionwide permit process for straightforward projects that will not result in significant adverse environmental impacts; (2) add a new introductory Article to the permitting regulations with sections to define the different types of permits, identify de minimis activities within the Commission's shoreline band jurisdiction that do not require a permit, and state general provisions applicable to all types of permits; and (3) clarify, revise, and update other selected regulations governing the Commission's permitting process and the determination of the Commission's jurisdiction in certain circumstances.

Another alternative, referred to as Alternative 2, is that the Commission would adopt most of the proposed amendments, but decline to adopt some of the proposed amendments as to certain regulations. This alternative could involve a number of sub-alternatives that would each be limited in scope and relate only to a particular section or subsection of the regulations for which the Commission would decline to adopt the proposed amendments.

A third alternative, referred to as Alternative 3, is that the Commission would adopt most of the proposed amendments, but as to certain regulations, the Commission would adopt revised or alternative amendments. This alternative, like Alternative 2, could involve a number of sub-alternatives that would each be limited in scope and relate only to a particular section or subsection of the regulations for which the Commission would decline to adopt revised or alternative amendments.

No alternatives to the proposed amendments as to specific existing or new regulations were identified in comments by Commissioners or members of the public at the Commission briefings on the proposed set of amendments on May 15 or September 4, 2025, or during the discussion of the proposed amendments during the Sea Level Rise Commissioner Working Group meeting on June 5, 2025.

Technical Studies and Other Materials Relied Upon

The Commission did not rely on any technical studies, reports, or similar documents in proposing these amendments to its regulations. The documents included in the rulemaking as of the date of this Initial Statement of Reasons are listed in the accompanying Notice of Proposed Rulemaking.

No Comparable Federal Regulations

There are no existing comparable federal regulations or statutes. The proposed amendments to the Commission regulations would not conflict with or duplicate any federal regulations addressing the same issues.

California Environmental Quality Act (CEQA)

The proposed amendments, like the existing regulations, address and govern the Commission's permitting processes. The Commission may adopt a regionwide permit only for a specific category of activities that the Commission has determined will have no significant impact on areas within the Commission's jurisdiction, and the requirement that a regionwide permit include a factual finding showing that the authorized activities are either statutorily or categorically exempt under CEQA or will not have any individually or cumulatively significant adverse effect on the environment will ensure that a RWP will not be adopted for activities that may have significant adverse effects on the environment. *See* proposed sections 10303 and 11710(c)(3).

Similarly, the new section clarifying that no permit is required for certain de minimis uses or activities in the shoreline band lists only uses or activities that do not result in any adverse impacts to the environment or public access or raise concerns related to the protection of the Bay or Bay resources. In addition, 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 location. *See* proposed section 10307.

There is no possibility that the other proposed amendments, which relate exclusively to administrative or procedural matters associated with permitting, may have a significant effect on the environment.

For these reasons, the Commission's consideration or adoption of the proposed amendments is exempt from CEQA. 14 C.C.R. § 15061(b)(3). The proposed amendments are also categorically exempt from CEQA as an action by a regulatory agency for the protection of natural resources and the environment. 14 C.C.R. §§ 15307 and 15308; *see also id.* § 15061(b)(2).