

**ATTACHMENT THREE**  
**INITIAL STATEMENT OF REASONS**  
**April 18, 2008**

San Francisco Bay Conservation and Development Commission

Proposed Changes to Appendix M  
Commission Permit Application Fees  
Commission Regulations, Title 14, Division 5

**Background**

The San Francisco Bay Conservation and Development Commission (BCDC) is a State agency that issues permits for the placement of fill, the extraction of materials worth more than \$20, and any substantial change in use to any land, water, or structure located within the Commission's McAteer-Petris Act jurisdiction, and for work in the Suisun Marsh within the Commission's Suisun Marsh Preservation Act jurisdiction. Permits are categorized by law and regulations as administrative ("minor") permits issued with the Commission's concurrence, major permits that receive Commission review and approval, minor or major amendments to permits, and pre-approved regionwide permits for the most minor sorts of work in the Commission's jurisdiction.

Both the McAteer-Petris Act (Cal. Govt. Code Sections 66600 through 66694) and the Suisun Marsh Preservation Act (Cal. Pub. Res. Code Sections 29000 through 29612) grant BCDC the authority to require the payment of a permit application fee before BCDC files a permit application. BCDC has adopted a set of permit application fees and a process for changing the fees annually (14 Cal. Code of Regulations Division 5 Appendix M).

The State Legislature has directed BCDC to recover 20% of the cost of its regulatory program through the collection of permit application fees. In 2004, BCDC raised its permit fees and provided for an annual adjustment in order to recover 20 percent of the total regulatory program costs on a year-to-year basis. However, this regulation has not succeeded. Each year the fee revenue fell short of the 20 percent target revenue.

BCDC staff surveyed the permit history including a five-year history of major permits and a two-year history for minor permits and for permit amendments. The survey chronicled the total project cost for each permit issued. This survey forms the basis for the proposed regulation that would establish an array of permit application fees based on the cost of the project and that would adjust fees every five years.

**Problem**

Currently, fees are to be recalculated every year by comparing the amount of revenue taken in for the prior fiscal year with the total regulatory program costs for the new fiscal year. In a year when few, or only small, projects were proposed the revenue would be much lower. Also, every year BCDC's total program costs tended to rise. Further, the very largest, most expensive projects are not proposed every year, but only every few years. Since 2004 when the current regulation was passed, the fees have never generated revenues close to the 20 percent target. It is possible that the Bay Area economy was depressed during these years, so fewer projects were proposed. Further, as program costs increased, the revenue collected has been only about 10 percent of our total program costs.

## **Proposal**

BCDC has held a series of workshops with the public and has developed a proposed revised regulation. The workshop participants did not all agree on all elements of the proposal, but the proposal reflects an overall consensus of the workshop participants. In particular, the workshop examined an increase in the number of categories of permit applications, based on the cost of the projects, as a basis for the fees.

BCDC staff surveyed the permit history including a five-year history of major permits and a two-year history for minor permits and for permit amendments. The survey chronicled the total project cost for each permit issued. BCDC staff learned that the very largest projects do not occur every year, but only periodically, and that the costs of projects of all sizes varies considerably and unpredictably. This survey forms the basis for the proposed regulation.

The Commission proposes to change the current schedule of fees in two ways. First, the proposed regulation would create more categories of projects based on the total project cost (TPC). As the TPC increases, so would the application fee. This new array of projects based on TPC would apply to applications for the major and minor permits and for permit amendments. Fees for low-cost projects would decrease. Fees for the higher-cost projects, generally over \$10 million, would increase.

Second, the regulation would provide for a re-calculation of the fees every five years rather than every year. This will allow the collection of fee data over a number of years so that the fees will reflect the occasional very large project, and balance years that experience a low volume of permit applications. The re-calculation of fees every five years would be based on data and would not be a discretionary calculation.

The formula includes calculation of: (1) the average fees generated over five years; and (2) twenty percent of the highest fiscal year total regulatory program costs during the five years (target revenue). If the average revenue generated from fees is more than five percent higher or lower than the target revenue, then the Executive Director will divide the target revenue derived from subparagraph (c)(1)(C) by the average revenue generated from fees. This is the adjustment factor that would be

multiplied by the then-existing fee schedule. The result would be the fee schedule that would be in effect for the following five years.

### **Reasons and Explanations**

**Increase in fees.** Overall, an increase in the average fees is expected to better generate the 20 percent target revenue. Projects that are smaller or are generally low cost, however, would experience a decrease in permit fees. Lowering the fees will keep the fees collected in proportion to the cost and type of project. For example, one regionwide permit authorizes routine repair and maintenance of outfall pipes, and another regionwide permit authorizes the replacement of those pipes. The current regulation would increase the fee to \$460 for a small repair project, and \$960 to replace the pipe. The Commission believes those fees are too large given the minor nature of the work. On the other hand, very expensive projects currently require a relatively small fee given the extensive work required by the staff and Commission to review, analyze, approve and monitor the project. Generally, due to the proposed fee schedule, projects costing more than \$10 million will incur application fees larger than now exist. Because the fees would still be a small percentage of the TPC, and that the net increase in fees over existing levels is an even smaller percentage of TPC, the cost impact is not significant.

**Expansion in Fee categories.** Generally, the staff spends more time with the larger, more complex project applications (such as an application to replace the East Span of the Bay Bridge) than the smaller, lower-cost project applications (such as an application for a single boat dock). That is because larger projects generally raise more issues of law and policy and require more analysis, legal support, and time spent in meetings and in public hearings, among other activities. The proposed higher fees, then, would be in proportion to the amount of staff time necessary to process the applications. The expanded categories would also allow the smaller, low cost projects to be assigned a lower fee in proportion to the staff effort and analysis required to process the applications.

**Recalculation at Five Year Intervals.** The proposal would require a recalculation of fees every five years. The formula would compare the average fees generated over five years with the average TPC for the same period. This five-year period would allow up- and down-years to balance each other and would allow the occasional large project to be included in the fee revenues. Further, the effect of one high-revenue or low-revenue year would have less impact on the recalculation of fees because it would be averaged among five years of revenue.

**Method to Calculate the Anticipated 20 Percent Revenue from the Expected Applications.** The Commission surveyed its permit applications over five years for major permit applications and over two years of minor permits and permit amendments. The projects were assigned to the proposed fee categories based on the stated TPC. Typically, applicants for an amendment have not provided the TPC in their applications. In those cases, the staff used its best professional judgment in reviewing the proposed project, estimating a TPC, and assigning the application to one of the proposed fee categories.

The staff then determined the average number of permit applications that it had received each year during the survey period. This average number of projects, and the average TPC, was used to project the fees that would be generated by the proposed fee categories. The staff compared the expected fees with the total regulatory program costs for Fiscal Year 07-08 and adjusted the fees until the 20 percent target was reached.

### **Alternatives**

One alternative to the proposed fee schedule would leave the fees at current levels. This, however, is not a realistic option because this schedule has not generated the target revenue.

A second alternative would raise the fees based on a calculation provided in the existing regulation. In this case, fees for most of the small and lower-cost projects in each project category would increase fairly significantly. The highest cost projects would also experience a fee higher than the current level but at a very tiny fraction of the total project cost. This would result in a net cost for all applicants. For smaller projects, the application fee would be very large compared to the cost of the project itself, and for this reason is probably not acceptable.

A different schedule of fees might also generate the target fee revenue; however, the proposed fees are fairly arrayed to reflect the type and expense of the project and the type and amount of work generated at the Commission to process the application.