

San Francisco Bay Conservation and Development Commission

Proposed Amendments to Commission Regulations, Title 14, Division 5

Legend of Proposed Amendments:

- Amendments Proposed with Notice of Proposed Rulemaking (Originally Proposed Amendments)

Deletions to Existing Text Shown in Strikeout: ~~Example~~

Additions to Existing Text Shown in Underscore: Example

- Revised Proposed Amendments Subject to Additional 15-Day Public Review Period

Deletions to Existing Text Shown in Double Strikeout: ~~Example~~

Additions to Existing Text Shown in Double Underscore: Example

Chapter 1. General Provisions

1. Amend Section 10120 to read:

10120. Emergency.

“Emergency,” as used in the McAteer-Petris Act, the Suisun Marsh Preservation Act, and in these regulations other than in the context of calling an emergency meeting means a sudden, unexpected situation that poses an immediate danger to life, health, property, or essential public services and that demands action by the Commission more quickly than the Commission's normal permit procedures would allow. A sudden, unexpected situation that poses an immediate danger to life, health, property, or essential public services may include, for example, an accident, sabotage, vandalism, fire, flood, earthquake, or soil or geologic movements.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 11125.5, Government Code; and Section 29509(a), Public Resources Code.

2. Amend Section 10121 to read:

10121. San Francisco Bay and Certain Waterways Jurisdiction.

(a) These regulations shall refer to the upland boundary of the Commission's jurisdiction over “San Francisco Bay,” pursuant to Government Code Section 66610(a) (“San Francisco Bay” jurisdiction), and the upland boundary of the Commission's jurisdiction over those certain waterways listed in Government Code Section 66610(e) (“certain waterways” jurisdiction) as “the shoreline.” The shoreline shall be defined as being located at mean high water in those areas other than tidal

marsh and ~~at five feet above mean sea level~~ in areas of tidal marsh at the upland edge of such areas up to five feet above mean sea level. Where necessary to distinguish the upland edge of the Commission's San Francisco Bay jurisdiction from the upland edge of the Commission's certain waterways jurisdiction, these regulations refer to the former as "San Francisco Bay shoreline" and the latter as "the certain waterways shoreline."

(b) The Commission's San Francisco Bay and certain waterways jurisdictions include all tidally-influenced bodies of water having the nature of open water, however named, including sloughs, harbors, straits, channels, estuaries, bays, marinas, basins, and coves up to the shoreline.

(c) The Commission's San Francisco Bay jurisdiction includes those tidally-influenced portions of other waterways that flow into San Francisco Bay, however named, that are in fact parts of San Francisco Bay rather than tributaries and that are shown as parts of San Francisco Bay on the San Francisco Bay Plan Maps, including but not limited to:

Map No.	Name and Location
4	Castro Creek (Richmond) adjacent to the remaining marsh
6	Mt. Eden Creek (Hayward), passing through the remaining marsh
6	Alameda Creek Flood Control Channel (Hayward), passing through the remaining marsh
7	Coyote Creek, bayward of the railroad crossing (Fremont and Santa Clara County)
7	San Francisquito Creek (Palo Alto), bayward of the inland boundary of the Faber Tract
6	Redwood Creek (Redwood City), bayward from the Redwood City Municipal Yacht Harbor
5	Islais Creek (San Francisco)
4	Corte Madera Creek, bayward of the railroad crossing (Marin County)
1 & 4	Galinas Creek (Marin County), bayward of the junction of the North and South Forks
1	Novato Creek (Marin County), bayward of the eastern high tension line as it existed on September 17, 1965
1	Petaluma River, bayward of the Highway 37 bridge (Marin and Sonoma Counties)
1	Tolay Creek, bayward of the northernmost point of Lower Tubbs Island near the Island Land Club (Sonoma County)

1	Sonoma Creek, bayward of the Highway 37 bridge (Sonoma and Solano Counties)
2	Napa River, bayward of the Highway 37 bridge (Vallejo).

(d) The Commission's San Francisco Bay jurisdiction includes Spoonbill Creek and the unnamed cut running northward just east of Collinsville, Solano County, but not including water areas lying generally southward of a line drawn from Simmons Point northeasterly along the southern shoreline of Chipps Island, Van Sickle Island, and the mainland, to the mouth of Marshall Cut.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66610(a), Government Code; *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal. App. 4th 1050, 29 Cal. Rptr. 2d 518.

3. Amend Section 10123 to read:

10123. Areas Excluded from Commission Jurisdiction.

(a) An area that would fall within the Commission's jurisdiction only as the result of the natural destruction of a man-made works, such as a dike, levee, or other similar tidal control structure, shall remain excluded from the Commission's jurisdiction: (i) for a period ending one year after the event or occurrence causing the natural destruction of a man-made works if the affected property owner completes the repairs of the destruction within one year of the event or occurrence; or (ii) if the affected property owner gives the Commission written notice within one-hundred and eighty (180) days of the event or occurrence causing the natural destruction of a man-made works and provides an estimate of the time that will be required to complete the repairs of the destruction that exceeds one year after the event or occurrence causing such natural destruction, for a period ending one year after the Commission has given an affected property owner written notice of the potential extension of the Commission's jurisdiction as a result of the destruction, or for such longer period as may be specified by Commission resolution based upon its finding that repairs of the destruction could not physically be completed within one year after receipt of written notice of the event or occurrence causing such natural destruction the potential extension of the Commission's jurisdiction; and

(b) An area that would fall within the Commission's "San Francisco Bay" jurisdiction or within its "certain waterways" jurisdiction shall be and remain excluded from the Commission's jurisdiction if it could, on and at all times subsequent to September 17, 1965, have been removed from being touched by tidal waters by simply closing a functioning tidal gate.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66610(a) and (e), Government Code; and *Blumenfeld v. San Francisco Bay Conservation and Development Commission*, 43 Cal. App. 3d 50 (1974); and *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal. App. 4th 1050, 29 Cal. Rptr. 2d 518.

4. Amend Section 10125 to read:

10125. Substantial Change.

“Substantial change in use” includes any one of the following:

(a) as to any “salt pond” or “managed wetland,” any change in use including abandonment which, for the purposes of this section, shall include any draining of water except temporary draining for a short period of time in accordance with routine operating practice; or

(b) as to other areas within the Commission's McAteer-Petris Act jurisdiction, any construction, reconstruction, or alteration of a structure, or any other activity, whether or not involving a structure, if the construction, reconstruction, or alternation of a structure or the activity either:

(1) has an estimated cost of ~~\$250,000~~ \$500,000 or more;

(2) involves a change in the general category of use of a structure or of water or land, i.e., agriculture, residential, commercial, office, industrial, recreational, vacant non-use, etc.;

(3) involves a substantial change in the intensity of use, to either a substantially greater or lesser intensity of use;

(4) adversely affects (i) existing public access or (ii) 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; or

(5) is any subdivision of land pursuant to the Subdivision Map Act (Government Code Section 66410 et seq.) or other division of land, including a lot split, where the subdivision or other division of land will substantially affect either present or future public access to or along the shoreline or substantially affect either the present or future suitability of a water-oriented priority land use site for that priority use, but not 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.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66632(a) and 66654, Government Code.

Chapter 2. The Commission, the Staff, and the Advisory Boards

5. Amend Section 10213 to read:

10213. Meeting Notice.

Written notice of the time and place of a regularly scheduled meeting and a preliminary agenda shall be mailed by first class mail or sent by electronic mail, and shall also be made available on the Commission's website, not less than ten (10) working days before the meeting. ~~If an interruption in regular mail service occurs, alternative notice may be given. Such alternative notice shall consist of telephoning~~

~~each Commissioner and each Alternate and publishing a notice of the time and place of the meeting and a summary of the preliminary agenda in a newspaper of general circulation not less than ten (10) working days before the meeting.~~

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code.

6. Amend Section 10214 to read:

10214. Who Shall Receive Notice.

The notice shall be mailed or sent by electronic mail to Commission members, to all parties to the proceedings on the agenda, to interested organizations and individuals, to owners and residents of nearby property identified by the applicant pursuant to Appendix D item 20, to any person who requests the notice in writing, and to all agencies that have jurisdiction by law with respect to any proposed activity that is listed in the notice. The Executive Director may require each person requesting the notice to provide the necessary number of self-addressed, stamped, four-inch by nine and one-half inch envelopes for the purpose of mailing the notice or the person's electronic mail address.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code; and Section 21080.5(d)(2)(C), Public Resources Code.

7. Amend Section 10244 to read:

10244. Recording of Meetings.

Commission meetings shall be recorded electronically unless equipment failure prevents this. The Commission staff shall retain each recording for at least one year, ~~and shall make it the recording~~ reasonably available for replaying at the Commission's offices, and post or provide access to the recording on the Commission's website.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11124.1(b) and 66632, Government Code; and Section 29520, Public Resources Code.

8. Amend Section 10245 to read:

10245. Minutes of Meetings.

~~(a) The Commission shall keep full and accurate minutes of all Commission actions taken and its meetings and make them available to the public.~~

~~(b) The Executive Director and the Chair at a particular meeting shall sign the minutes.~~

~~(c) Signed minutes shall be the original evidence of actions taken by the Commission.~~

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

9. Amend Section 10270 to read:

10270. Membership and Function of Design Review Board.

(a) The Design Review Board shall consist of seven (7) members of the design professions, including at least one (1) architect, one (1) landscape architect, and one (1) engineer.

(b) The Board shall advise the Commission and the staff on the appearance and design of projects for which a Commission permit or consistency determination is needed, particularly as the project affects public access to the Bay and shoreline.

(c) Four members shall constitute a quorum for Board meetings and shall be the minimum necessary for the Board to consider any matter.

(d) The Chair of the Commission may designate with the concurrence of the Commission up to ten seven former Board members individuals to act as a pool of alternates to substitute for ~~current~~ Board members who cannot participate in any Board meeting or the consideration of any specific matter at any Board meeting.

(e) When fewer than all seven members of the Board will be available to participate in the Board's consideration of a matter, the Executive Director may designate one or more alternate Board members selected from the pool established ~~by the Commission~~ pursuant to paragraph (d) to substitute for the Board member or members who cannot participate in the Board's consideration of and action on that matter so long as the total number of Board members that considers a matter does not exceed seven.

(f) When designating an alternate Board member pursuant to paragraph (e), the Executive Director shall select an individual in a professional discipline and with professional experience as much as possible like those of the Board member who cannot participate in the Board's consideration of the particular matter.

(g) Alternate Board members designated pursuant to paragraphs (e) and (f) shall have the same powers and authority to participate in the Board's consideration and action on any matter as a regular Board member.

(h) The term of appointment of Board members or alternates pursuant to subsections (a) or (d) shall be five years and may be renewed by the Executive Director for two successive periods of five years as a member or an alternate.

(i) Sections 10280 to 10289 (Chapter 2, Article 8, Ex Parte Communications) shall apply to Board members.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66633(b), Government Code; and Section 29520(a), Public Resources Code.

10. Amend Section 10271 to read:

10271. Membership and Function of Engineering Criteria Review Board.

(a) The Engineering Criteria Review Board shall consist of not more than ~~eleven~~ ~~(11)~~ nine (9) members, including at least one (1) geologist or engineering geologist, one (1) civil engineer specializing in soils, one (1) structural engineer, and one (1) coastal engineer, and one (1) architect.

(b) The Board shall advise the Commission on problems relating to the safety of fills and of structures on fills for projects within the Commission's Bay or certain waterways jurisdictions for which a Commission permit or consideration of a consistency determination is needed.

(c) ~~Six~~ Five members shall constitute a quorum for Board meetings and shall be the minimum necessary for the Board to consider any matter.

(d) The Chair of the Commission may designate with the concurrence of the Commission up to ~~seven~~ four individuals to act as a pool of alternates to substitute for current Board members who cannot participate in any Board meeting or the consideration of any specific matter at any Board meeting.

(e) When fewer than all ~~eleven~~ nine members of the Board will be available to participate in the Board's consideration of a matter, the Executive Director may designate one or more alternate Board members selected from the pool established pursuant to paragraph (d) to substitute for the Board member or members who cannot participate in the Board's consideration of any action on that matter so long as the total number of Board members that considers a matter does not exceed ~~eleven~~ nine.

(f) When designating an alternate Board member pursuant to paragraph (e), the Executive Director shall select an individual in a professional discipline and with professional experience as much as possible like those of the Board member who cannot participate in the Board's consideration of the particular matter.

(g) Alternate Board members designated pursuant to paragraphs (e) and (f) shall have the same powers and authority to participate in the Board's consideration and action on any matter as a regular Board member.

(h) The term of appointment of Board members or ~~alternatives~~ alternates pursuant to subsection (a) or (d) shall be five years and may be renewed by the Executive Director for two successive periods of five years as a member or an alternate.

(i) Sections 10280 to 10289 (Chapter 2, Article 8, Ex Parte Communications) shall apply to Board members.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66633(b), Government Code; Section 29520(a), Public Resources Code; and San Francisco Bay Plan.

11. Amend Section 10281 to read:

10281. Definition of an Ex Parte Communication.

(a) An ex parte communication is any oral or written communication, direct or indirect, regarding a pending adjudicatory proceeding between a member of the Commission and either any party to the pending Commission adjudicatory proceeding or a member of the public that does not occur in a Commission public hearing, Commission workshop, or other official Commission proceeding or on the official Commission record for the proceeding. Except as provided in subsection 10281(b), this includes any communication to a member of the Commission from any party to a pending adjudicatory proceeding or from a member of the public concerning such a proceeding whether or not the Commissioner receiving the communication responds thereto.

(b) The Commission is required by law to provide an opportunity for members of the public to address the Commission on each agenda item noticed for consideration at a Commission meeting, including pending adjudicatory proceedings, before or during the Commission's consideration of the item. In light of the public's right to address the Commission, an ex parte communication does not include a letter, email message, or other written communication to the Commission or a member of the Commission commenting on a pending adjudicatory proceeding if the communication is included in the official Commission record for the proceeding provided that the Commissioner receiving the communication does not respond thereto.

(c) If the Executive Director is copied on a letter, email, or other written communication to the Commission or a member of the Commission or if the Executive Director has received such a communication as a public comment submission to the Commission, the Executive Director shall include the communication in the official Commission record for the proceeding and distribute it to the Commission prior to the Commission's consideration of the matter that is the subject of the communication, and no Commissioner shall have an obligation to disclose the communication. If such a communication is addressed to one or more members of the Commission individually and is not copied to or received by the Executive Director, any Commissioner receiving such a communication shall forward it to the Executive Director, who shall include the communication in the official Commission record for the proceeding and shall distribute it to the Commission prior to the Commission's consideration of the matter that is the subject of the communication, and no Commissioner shall have an obligation to disclose the communication.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11125.7, 11405.20, 11405.30, 11405.40, 11405.50, 11405.60, 11405.70, 11405.80, 11410.10, 11410.20,

11430.10, 66632, ~~and 66638~~ and 66641.6, Government Code; and Sections 29520, 29524, ~~and 29601,~~ and 29610-29611, Public Resources Code.

12. Amend Section 10283 to read:

10283. General Policy and Disclosure of Ex Parte Communications.

(a) Except as provided in section 10284, ~~Ex~~ parte communications are prohibited in adjudicatory actions. However, ~~if such a prohibited~~ an impermissible ex parte communication occurs, any Commission member who receives, responds to, or engages in an ex parte communication concerning any adjudicatory matter pending before the Commission shall disclose the content of the communication on the record.

(b) The disclosure shall occur in writing as provided in subsections 10283(c) or (d), as applicable, prior to or at the Commission meeting at which same time as the Commission considers the matter that is the subject of the ex parte communication or during that meeting prior to the Commission's consideration of the agenda item that is the subject of the communication.

(c) Compliance with this disclosure requirement regarding the receipt of an ex parte communication in written form shall be accomplished by ~~sending~~ submitting a copy of the written communication and any response to the communication to the ~~Commission~~-Executive Director as soon as practicable after the communication for inclusion into the record of the matter that is the subject of the ex parte communication.

(d) Compliance with this disclosure requirement regarding the receipt of an ex parte communication orally shall be accomplished by submitting a memorandum to the Executive Director as soon as practicable after the communication for inclusion into the record of the matter that is the subject of the ex parte communication.

(e) The memorandum required by paragraph (d) shall include the substance of the communication, any response by the recipient Commission member, and the identity of each person from whom the recipient Commission member received the communication.

(f) This policy shall not apply to quasi-legislative matters such as the adoption of or the amendment to a Commission plan, the adoption of or the amendment of a Commission regulation, and Commission comments on proposed or pending legislation.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 11430.40, 66632, ~~and 66638~~ and 66641.6, Government Code; and Sections 29520, 29524, ~~and 29601,~~ and 29610-29611, Public Resources Code.

13. Amend Section 10284 to read:

10284. Permissible Ex Parte Communications.

The following types of ex parte communications are not prohibited by these regulations and do not require any disclosure into the record:

- (a) communications specifically authorized by statute and required for the disposition of an adjudicatory matter;
- (b) the communication involves a matter of procedure or practice that is not in controversy;
- (c) the communication is from an employee or representative of BCDC who has not served as an investigator, prosecutor, or advocate during the proceeding or in its pre-adjudicative state-stage and whose purpose is to assist or advise the Commission;
- (d) the communication is from an employee or representative of BCDC and concerns a settlement proposal advocated by the employee or representative; and
- (e) the communication is from an employee or representative of BCDC and involves a non-prosecutorial proceeding.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.20, 11430.30, 66632, ~~and 66638~~ and 66641.6, Government Code; and Sections 29520, 29524, ~~and 29601~~ and 29610-29611, Public Resources Code.

14. Amend Section 10286 to read:

10286. Notification of Parties and Interested Persons.

(a) As soon as is practicable, the Executive Director shall notify in writing and prior to the Commission's consideration of the matter that is the subject of an ex parte communication, all parties to a proceeding and all persons interested in the proceeding shall be notified that a Commissioner has received an impermissible ex parte communication. If the disclosure occurs prior to the Commission meeting at which the Commission considers the matter that is the subject of the ex parte communication, the Executive Director shall provide notice by mail or email and by posting notice of the disclosure on the Commission's website with the materials for that Commission meeting. If the disclosure occurs at the Commission meeting at which the Commission considers the matter that is the subject of the ex parte communication, the disclosure shall occur in writing as provided in subsections 10283(c) or (d), as applicable, and notice of the disclosure shall be provided orally on the record by the Commissioner making the disclosure prior to the Commission's consideration of the matter that is the subject of the communication.

(b) If the communication was received orally, the Executive Director or the Commissioner providing notice of the disclosure shall include a copy of the

memorandum and any response to the communication as required by Sections 10283(d) and (e) with the written notification.

(c) If the communication was received in writing, the Executive Director or the Commissioner providing notice of the disclosure shall include a copy of the written communication and any response to the communication as required by Section 10283(c) with the written notification.

(d) In either case, the notice shall also state that ~~the any party or person being notified~~ may request an opportunity to address the Commission concerning the communication either at the Commission meeting at which the Commission considers the matter that is the subject of the communication ~~must request such an opportunity to address the Commission concerning the communication~~ or within 10 days of receiving the notice of the communication as required by this section ~~or the party or person shall waive the opportunity to address the Commission concerning the communication.~~

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632, and 66638 and 66641.6, Government Code; and Sections 29520, 29524, and 29601 and 29610-29611, Public Resources Code.

15. Amend Section 10287 to read:

10287. Party Opportunity to Respond to an Ex Parte Communication.

If a party or person requests an opportunity to address the Commission concerning the communication either at the Commission meeting at which the Commission considers the matter that is the subject of the communication or within 10 days of receiving notice of the communication as required by Section 10286, the Commission shall grant the request and may allow the requesting party to present rebuttal evidence concerning the subject of the ex parte communication.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632, and 66638 and 66641.6, Government Code; and Sections 29520, 29524, and 29601 and 29610-29611, Public Resources Code.

16. Amend Section 10288 to read:

10288. Ex Parte Communications After the Close of the Public Hearing and After the End of the Time Period for Receipt of Written Communications; Public Comments and Responses.

(a) If an ~~oral~~-ex parte communication occurs after the close of the public hearing or a ~~written ex parte communication occurs after~~ the deadline for submitting written comments but before the Commission has voted on the matter that is the subject of the communication, the ex parte communication shall be disclosed as

required by Section 10283 and notice of the communication shall be provided as required by Section 10286.

(b) The Commission Chair or the Commission may determine that the communication contains new or different information pertinent to the decision being made. The Commission Chair or the Commission may also determine that reopening the public hearing is therefore necessary to protect the integrity of the decision-making process.

(c) If the Commission chair or the Commission makes both such determinations, it shall circulate the communication to the entire Commission and may reopen the public hearing to allow the public sufficient opportunity to comment on and to rebut the information contained in the communication unless a legal deadline for voting prevents reopening the hearing.

(d) If necessary, either the deadline for Commission voting shall be extended or the Commission shall deny the application because of the public's inability to comment on the new or different information.

(e) If a conflict occurs between this section and Commission Regulation Section 10430, this section shall take precedence.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632, ~~and 66638 and 66641.6~~, Government Code; Sections 29520, 29524, ~~and 29601 and 29610-29611~~, Public Resources Code.

17. Amend Section 10289 to read:

10289. Field Trips.

(a) A Commission member may take an individual field trip to the site of a proposed project or a pending enforcement action to observe site conditions in relation to any issue raised in the pending adjudicatory matter so long as the Commission member discloses the fact of the field trip and the substance of all that he or she observed to the Commission as soon as practicable afterwards.

(b) The Commission's policy on ex parte communications shall apply to any communication that involves a Commission member that occurs during a field trip either by an individual Commission member or by the Commission.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 11430.20, 11430.30, 11430.40, 11430.50, 66632, ~~and 66638 and 66641.6~~, Government Code; and Sections 29520, 29524, ~~and 29601 and 29610-29611~~, Public Resources Code.

Chapter 3. Major Permits Procedures: Applications, Amendments to Applications, and Application Summaries

18. Amend Section 10315 to read:

10315. Submittal of Design Review Board Materials.

~~(a) An applicant or prospective applicant for a Bay Commission permit for a project that requires review by the Design Review Board shall submit, except as provided in subsection (g) below, all of the following to the Commission staff at least 14 days prior to the scheduled Design Review Board meeting at which the Board will review the project all required documents as identified or described in the Commission pamphlet entitled "BCDC's Design Review Board: What It Is, How it Works" (or any successor pamphlet) or all documents as requested in writing by or on behalf of the Executive Director as necessary for Board evaluation of the proposed project.~~

~~(1) a description of the proposed project that complies with subsection (b) of this section;~~

~~(2) an 8 1/2 " by 11 " vicinity map that complies with Appendix F; and~~

~~(3) ten (10) copies, 8 1/2 " by 11 " in size, and one (1) copy, at a scale of either 1 " = 20 ', 1 " = 30 ', or 1 " = 40 ' and which can be read from a distance of 20 feet, of each of the following:~~

~~(A) a site plan that complies with subsection (c) of this section,~~

~~(B) a public access detail plan that complies with subsection (d) of this section,~~

~~(C) one cross section that designates the elevations of and clearly illustrates the relationship between 1. the shoreline, 2. the top of the bank, 3. any existing or proposed public access path, 4. the floor of a representative structure, and 5. the top of a representative building, and~~

~~(D) if the public access being proposed for a project contains two or more public access areas that differ substantially in quality or width or distance from the line of highest tidal action, additional cross sections for each such different public access area that provide the information required in subsection 10315(a)(3)(C).~~

~~(b) The description of the proposed project shall contain the following information:~~

~~(1) proposed uses of the project;~~

~~(2) the dimensions, areas, and height of all structures;~~

~~(3) the area of the parcel(s) on which the project will be constructed, the area of the parcel(s) that is upland, the area of the parcel(s) that is tideland, and the area of the parcel(s) that is submerged lands;~~

~~(4) the length of the shoreline measured along the shoreline;~~

~~(5) the area of the project site that is located within the Commission's "shoreline band" jurisdiction pursuant to Govt. Code section 66610(b);~~

- (6) the area of proposed public access;
- (7) the status of the project in the local governmental approval process;
- (8) the amount of proposed dredging;
- (9) the amount of proposed riprap or other shoreline protection; and
- (10) the volume of proposed fill in cubic yards and the area of proposed fill in square feet.

(c) The site plan shall show or contain the following information:

- (1) the location and dimensions of all proposed solid fill, buildings, bulkheads, piers, docks, decks, pipes, outfalls, and other similar structures;
- (2) the location and elevation of all existing and proposed riprap;
- (3) the footprints of all existing buildings to be removed (outlined with dashed lines), all existing buildings to remain (outlined with solid lines), and all proposed buildings (outlined with solid lines with interiors shaded);
- (4) existing and proposed service areas for delivery, storage, garbage, and other similar uses;
- (5) existing and proposed fences, with type of material(s) and height;
- (6) existing and proposed on-site driveways, streets, drop-off areas, and parking;
- (7) existing and proposed pedestrian circulation, including sidewalks and paths;
- (8) existing and proposed public access areas, including paths, plazas, and landscaped areas;
- (9) areas of marsh, salt pond, managed wetland, and mudflats;
- (10) existing and proposed contours;
- (11) all existing and proposed easements across the site;
- (12) if a marina is included in the project:
 - (A) the berthing layout;
 - (B) the dimensions for docks and ramps and an indication if they are supported by pilings or are floating;
 - (C) the location and dimensions of the drop-off areas;
 - (D) the location of all security gates;
 - (E) the location of all gear storage areas;
 - (F) the location and dimensions of the harbormaster office;
 - (G) the location of all restrooms;
 - (H) the location of all existing and proposed showers;

- (I) the location of all existing and proposed gas docks;
 - (J) the location of all existing and proposed pumpout facilities;
 - (K) the location of all existing and proposed oily waste disposal facilities;
 - (L) the location of all existing and proposed launch ramps or hoists;
 - (M) the location of all existing and proposed small boat trailer parking and storage;
and
 - (N) the location of all existing and proposed guest berthing.
- (d) The public access detail plan shall show or contain the following information:
- (1) the locations and dimensions of all existing and proposed areas of fill for public access;
 - (2) the locations, typical widths, and typical elevations of all existing and proposed paths;
 - (3) the location, dimensions, and elevations of all existing and proposed seating areas;
 - (4) the location and dimensions of all existing and proposed irrigated landscaped areas (distinguish areas containing either trees, tall shrubs, low shrubs, groundcover, or lawn);
 - (5) the location and dimensions of all existing and proposed nonirrigated landscaped areas (distinguish areas containing either trees, tall shrubs, low shrubs, groundcover, and lawn);
 - (6) the location and height of all existing and proposed berms or mounds;
 - (7) the location and type of all existing and proposed lighting;
 - (8) the location of all existing and proposed restrooms;
 - (9) the types of paving materials;
 - (10) the location and number of spaces of all existing and proposed public parking;
 - (11) the location of all existing and proposed public access signs;
 - (12) the location of all connections from existing or proposed public access to the nearest public areas or public sidewalks;
 - (13) the location and dimensions of all existing and proposed view corridors;
 - (14) seasonal wind directions;
 - (15) the location and dimensions of all areas of midday shadow cast by structures on the longest and shortest days of the year; and
 - (16) dimensions of the minimum, maximum and average widths of the overall public access areas.

~~(e) The cross section(s) required by subsection 10315(a)(3)(C) and 10315(a)(3)(D), the site plan required by subsections 10315(c), and the public access detail plan required by subsection 10315(d) shall all contain the following information:~~

~~(1) a title;~~

~~(2) the name and address of the person who prepared the plan;~~

~~(3) the date of the plan;~~

~~(4) a north arrow;~~

~~(5) a scale;~~

~~(6) the location and the elevation of the line of highest tidal action;~~

~~(7) the location and elevation of the top of the bank;~~

~~(8) the location and elevation of the landward limit of the Commission's 100-foot shoreline band jurisdiction;~~

~~(9) the location and dimensions of all parcel lines; and~~

~~(10) the location of any contiguous parcels owned by an applicant or coapplicant.~~

~~(f) All elevations shown on the cross section(s), the site plan, or the public access detail plan shall be shown in National Geodetic Vertical Datum.~~

~~(g) The Executive Director may modify or waive any or all of the project description, site plan, public access plan, elevations, or tidal datum reference point requirements of this section if he or she determines that the information is not necessary for Design Review Board evaluation of the proposed project.~~

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(b), Government Code; Section 29520(a), Public Resources Code; San Francisco Bay Plan, Public Access, Finding b (page 26), Policy Policies 9 (page 28) and 12; and *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal. App. 4th 1050, 29 Cal. Rptr. 2d 518.

19. Amend Section 10316 to read:

10316. Submittal of Engineering Criteria Review Board Materials.

An applicant or prospective applicant for a Bay-Commission permit for a project that requires review by the Engineering Criteria Review Board (ECRB) shall submit to the Commission staff, at least ~~14~~ 30 days prior to the scheduled ECRB meeting at which the Board ECRB will review the project, all of the following basis of engineering design criteria needed to accommodate ECRB review: thirteen 12' x 18' reductions of any all geotechnical reports and geologic findings, structural plans, engineering analyses including any coastal engineering analysis, and design calculations, if required to support analyses, and architectural renderings of the proposed project needed to accommodate ECRB review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66605(e) and 66632(b), Government Code; Section 29520(a), Public Resources Code; San Francisco Bay Plan, Safety of Fills, Findings a, b, c (page 13), and Policies 1 and 2 (pages 13 and 14).

20. Amend Section 10360 to read:

10360. Distribution of Applications.

The Executive Director shall distribute not less than twenty-eight (28) days prior to the Commission hearing on the application one (1) copy of the fully completed and properly executed application form, any attachments or exhibits to the application form that provide a complete project description, and drawings the project site plan to the following persons or agencies:

- (a) U.S. Army Corps of Engineers (San Francisco or Sacramento District);
- (b) California Department of Fish and Wildlife (Manager, Region III);
- (c) San Francisco Bay Regional Water Quality Control Board;
- (d) State Lands Commission;
- (e) ~~Deputy Attorney General assigned to the Commission;~~
- (f) U.S. Fish and Wildlife Service (Sacramento Office); and
- ~~(g)~~ (f) National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service.

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

21. Amend Section 10370 to read:

10370. Non-Material Amendments to Pending Major Permit Applications.

(a) An applicant whose application for a major permit is currently pending may submit a request to amend the application nonmaterially at any time prior to the mailing or reading of the staff recommendation on the previously pending application, whichever occurs first.

(b) The applicant shall submit the request for a non-material amendment to a permit application by letter that specifies the nature of the amendment and is signed by the applicant or his or her authorized representative. If there are two or more co-applicants, each co-applicant (or co-applicant's representative) shall sign the letter requesting the amendment.

(c) After the submittal of a request to amend nonmaterially a pending application for a major permit, the Executive Director shall determine whether or not to file the amended application based on whether the amendment to the application will or will not materially change the application. If the Executive

Director concludes that the amendment will materially change the application, he or she shall refuse to file the amended application and shall return it to the applicant with a written statement of the reasons why he or she believes that the amendment would materially change the application and a statement that the applicant must now submit a new application that complies with the filing requirements of Section 10310 for the project as amended to amend the application, and shall continue to process the original application. If the Executive Director determines that the amendment will not materially change the application, he or she shall file the amended application and shall continue to process and the Commission shall act on the amended application in accordance with the Commission's regulations for processing and acting on major permit applications.

(d) The filing of a request for a nonmaterial amendment to a pending major permit application shall automatically supersede the original application, and the amended application shall thereafter be the only application considered as pending before the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632, Government Code; and Sections 29520 and 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal.App.3d 936, 940.

22. Amend Section 10371:

10371. Material Amendments to Pending Major Permit Applications.

(a) An applicant whose application for a major permit is currently pending may submit a request to amend the application materially at any time prior to the mailing or reading of the staff recommendation on the previously pending application, whichever occurs first.

(b) The applicant shall submit the request for a material amendment to a permit application by letter. If there are two or more co-applicants, each co-applicant (or co-applicant's representative) shall sign the letter requesting the amendment. The applicant shall include the following in any request to amend materially a pending major permit application and the Executive Director shall file the request only if the request contains the following:

(1) an agreement in writing that the time periods within which the Commission must act under the McAteer-Petris Act and the Permit Streamlining Act on a permit application begin as of the date of the filing of the request to amend the application and

(2) an application for the project as amended that meets all the filing requirements contained in these regulations for a major permit application.

(c) After the submittal of a request to amend materially a pending application for a major permit, the Executive Director shall determine whether or not to file the amended application based on whether the amended application complies with the

filing requirements included in Section 10310. If the Executive Director concludes that the amended application does not comply with the filing requirements contained in Section 10310, he or she shall return it to the applicant with a written statement of the reasons why the amended application does not comply with Section 10310 and a list of the materials needed to bring the amended application into conformance with the filing requirements of Section 10310 and shall continue to process the original application. If the Executive Director determines that the amended application does comply with the filing requirements of Section 10310, he or she shall file the amended application and shall process the application and the Commission shall vote on the application in full conformance with all of the regulations that govern the filing, processing, and Commission action on a major permit application.

(d) The filing of a request for a material amendment to a pending permit application shall automatically supersede the original application, and the application as modified by the request for amendment shall thereafter be the only application pending before the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal.App.3d 935, 940.

Chapter 5. Major Permit Procedures: Approval or Denial of Permits

23. Amend Section 10501 to read:

10501. Contents of Resolution of Approval.

A resolution granting an application in whole or in part shall:

- (a) summarize briefly but completely the project to be approved and any differences from the project described in the application;
- (b) authorize the project;
- (c) state clearly and briefly the terms and conditions to which the permit will be subject;
- (d) state the specific findings of fact that support, as applicable, all of the following conclusions:
 - (1) that the project conforms to either:
 - (A) the relevant provisions of California Government Code Sections 66600 through 66661 and the San Francisco Bay Plan if the project comes under the Commission's jurisdiction under California Government Code Sections 66610 and 66632, or
 - ~~(B) the relevant provisions of California Public Resources Code Section 29000 through 29612, the San Francisco Bay Plan, and the Suisun Marsh Protection Plan if~~

~~the project comes under the Commission's jurisdiction under California Public Resources Code Sections 29101, 29500, and 29501 and there is no certified local protection program for the Suisun Marsh, or~~

~~(C) (B) the relevant provisions of California Public Resources Code Sections 29000 through 29612, the San Francisco Bay Plan, and the Suisun Marsh Protection Plan or of the certified local protection program for the Suisun Marsh if a certified local protection program exists and if the project comes under the Commission's jurisdiction under California Public Resources Code Section 29101, 29500, and 29501.~~

(2) that the project is consistent with the public trust needs for the area;

(3) that if the Commission is a responsible agency, ~~either the lead agency has either (i) determined that the project is statutorily or categorically exempt, or (ii) that the lead agency has either prepared and adopted certified either a negative declaration on which the Commission has relied or (iii) prepared and certified an environmental impact report on which the Commission has relied, and the basis for any Commission findings made pursuant to Public Resources Code section 21081 and Title 14 of the California Code of Regulations sections 15091(a) and 15093(b);~~ and

(4) that if the Commission is the lead agency, ~~either (i) the Executive Director has determined that the project is statutorily or categorically exempt, or (ii) the Executive Director has determined that the project will not have any significant adverse effect on the environment, or (iii) the Commission has prepared an environmental assessment that complies with Section 11521, and the basis for any Commission findings made pursuant to Public Resources Code section 21081 and Title 14 of the California Code of Regulations sections 15091(a) and 15093(b) the terms and conditions of the Commission permit together with the actions of other agencies make the project consistent with California Public Resources Code Sections 21000 through 21177.~~

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66600, 66601, 66602, 66602.1, 66603, 66605, 66632(f) and 66632.4, Government Code; and Sections 21080.1, 21080.5, 21081, 29501(a), and 29520(a), Public Resources Code.

24. Amend Section 10504 to read:

10504. Staff Recommendation—Presentation.

Before any motion on an application may be made, the Executive Director shall present the staff recommendation to the Commission. The Executive Director should mail by first class mail or send by electronic mail the staff recommendation ~~in writing~~ to the Commission, the applicant, and each interested party from whom a written request has been received, and should also make available on the

Commission's website, at least six (6) days prior to the meeting at which the matter is noticed. However, if the Executive Director cannot do so, he or she shall read the recommendation in full to the Commission at the meeting at which the matter is noticed for voting or provide copies of a written recommendation to each Commissioner and each interested party present at the meeting at which the matter is noticed. When copies are provided, the Chair shall allow sufficient time for each person to read the recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Sections 29501(a) and 29520(a), Public Resources Code.

25. Amend Section 10505 to read:

10505. Applicant's Comments and Commission Questions

(a) The applicant or the applicant's representative shall have an opportunity to state briefly and specifically his or her views on the Executive Director's recommendation immediately following the presentation of the recommendation.

(b) If the Executive Director has not mailed by first class mail or sent by electronic mail his or her recommendation to the applicant at least six (6) days prior to the meeting at which he or she scheduled the vote and if the applicant states that he or she is not prepared to state his or her views on the recommendation, the applicant may request postponement of the matter until the Commission's next scheduled meeting.

(c) If such a postponement would not extend beyond the expiration of the ninety (90) day period established by subdivision (f) of Government Code Section 66632 and beyond the time limit established by Government Code Sections 65950 through 65957.1, the applicant's comments and all Commission discussion, further questions, and voting shall be automatically postponed to the next scheduled Commission meeting.

(d) If such a postponement would extend beyond the expiration of the ninety (90) day period established by Government Code Section 66632, further action on the application shall be postponed only if the applicant agrees on the record to extend that period to allow the Commission to vote.

(e) If such postponement would extend beyond the expiration of the time limits established by Government Code Sections 65950 through 65957.1, further action on the application cannot be postponed.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950-65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

26. Amend Section 10514 to read:

10514. Commission Findings on Permits.

(a) If the Commission vote is consistent with the Executive Director's recommendation, the findings and conclusions contained in the recommendation shall become the Commission's findings and conclusions unless the Commission expressly adopts different or additional findings.

(b) If the Executive Director recommends approval and the Commission approves the application with additional terms or conditions or different terms or conditions than those recommended by the Executive Director, those members of the Commission who voted for approval ~~shall~~ may state their reasons for requiring the additional or different terms or conditions ~~after the vote becomes final and any Commissioner who votes for approval who fails to state his or her reasons for requiring the additional or different terms or conditions shall be presumed to have based his or her vote on the testimony or other evidence in the record that supports the Commission's action.~~

(c) If the Executive Director recommends approval and the Commission denies the application, all members who vote "no" on the application ~~shall~~ may state their reasons for their "no" vote ~~after the vote becomes final and any Commissioner who votes to deny the application who fails to state his or her reasons for his or her "no" vote shall be presumed to have based his or her vote on the testimony or other evidence in the record that supports the Commission's action.~~

(d) If the Executive Director recommends denial and the Commission votes to approve the application, all members who vote "yes" ~~shall~~ may state their reasons for their "yes" vote ~~after the vote becomes final and any Commissioner who votes to approve the application who fails to state his or her reasons for his or her "yes" vote shall be presumed to have based his or her vote on the testimony or other evidence in the record that supports the Commission's action.~~

(e) When the Commission has voted on a permit application in a manner that is not consistent with the Executive Director's recommendation, the Executive Director shall prepare draft findings based on the statements made by those Commission members who voted consistent with the outcome of the vote and on such other ~~materials~~ testimony or other evidence in the record before the Commission as the Executive Director believes is necessary to support the Commission's decision legally or is otherwise appropriate. The Executive Director shall present proposed findings to the Commission at the meeting following the vote on the application, at which time the Commission shall vote on the proposed findings. Only those Commission members who voted consistent with the prevailing decision may vote on whether or not to adopt the proposed findings. The vote shall be by a majority of those present and voting. If those present and voting do not adopt the proposed findings that the Executive Director has submitted, they can either make such changes as they determine are appropriate and adopt the findings at that meeting or direct the

Executive Director to prepare further proposed findings and submit them to the Commission at the next meeting, in which case those who voted consistent with the prevailing decision may again vote on whether to adopt the further proposed findings. This cycle shall continue until the Commission has adopted findings to support its decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Sections 29501(a) and 29520(a), Public Resources Code; *Sierra Club v. City of Hayward* (1981) 28 Cal. 3d 840, 858-60; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514-17; and *Foundation for San Francisco Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal. App. 3d. 893, 906-907.

27. Amend Section 10521 to read:

10521. Mailing to Permittee(s).

(a) The Executive Director shall sign and shall mail the permit to all permittee(s) within fifteen (15) working days following the approval, ~~provided that if the permit authorizes the disposal of any dredged material in either the Commission's "San Francisco Bay" jurisdiction or the Commission's "certain waterways" jurisdiction, the applicant must also submit a user fee as provided for in section 10522 before the Executive Director shall sign and mail the permit.~~

(b) Within five days of the Commission approval, an applicant may request in writing that the Executive Director extend to 30 working days the time period specified in subsection (a) within which the Executive Director must issue the permit. Upon receipt of such a timely request, the Executive Director shall not issue the permit until the permittee agrees to its issuance or until the 30th working day after the approval of the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

28. Repeal Section 10522 as follows:

~~**10522. User Fee for Disposal of Dredged Material into Commission's "Bay" or "Certain Waterways" Jurisdictions.**~~

~~(a) For the disposal of dredged materials into either the Commission's "San Francisco Bay" jurisdiction or the Commission's "certain waterways" jurisdiction other than as part of a "beneficial use project," as defined in subsection (c), the applicant shall submit prior to the issuance of any permit a check or money order in the amount equal to the product of \$0.07 multiplied by the number of cubic yards proposed to be disposed.~~

~~(b) If the sum of all user fees collected pursuant to this section to help finance the Commission's participation in the Long Term Management Strategy program~~

exceeds \$210,000, the Commission shall not require any further user fees pursuant to this section and shall return to all permit applicants all user fees collected in excess of \$210,000.

(c) “Beneficial use projects,” as that term is used in California Government Code Section 66667(b) and in these regulations, are those projects in the Commission's “San Francisco Bay” or “certain waterway” jurisdictions where the dredged material will be used (1) as construction material, and (2) in one of the following types of projects: (A) habitat improvement; (B) repair or improvement of levees; (C) port or public access facilities; or (D) other Commission-approved fill projects.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632 and 66667, Government Code.

Chapter 6. Permit Procedures: Administrative and Emergency Permits

29. Amend Section 10601 to read:

10601. Minor Repairs or Improvements.

“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:

(a) with respect to activities in San Francisco Bay and areas within the Commission's “certain waterways” jurisdiction:

(1) the construction of a new single boat dock and associated docking facilities (such as lifts, gangways, and pilings) no larger than ~~1,000~~ 1,500 square feet or a new multiple boat dock and associated facilities no larger than 5,000 square feet, or up to 20,000 square feet of expansion of boat docking facilities within an existing marina;

(2) the installation of new shoreline protective works and repairs to ~~existing~~ protective works, such as bulkheads, levees, natural or nature-based features, and riprap, that meet the following criteria:

(A) the size of the new work(s) or the repairs to the existing work(s) constitute the minimum amount of fill necessary to stabilize existing dikes and banks or to provide improved fish or wildlife habitat, and

(B) the new work or repairs to existing work(s) would cover less than 10,000 square feet ~~of the horizontal projection of the work below the shoreline~~ the Bay or a certain waterway;

(3) 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 in area;

(4) the placement of outfall pipes approved by the California Regional Water Quality Control Board, San Francisco Bay Region;

(5) the placement of utility cables or pipelines on or under the bottom of the Bay or a certain waterway;

(6) routine repairs, reconstruction, replacement, removal, ~~and~~ or maintenance of a structure that do not involve any substantial enlargement or change in use;

(7) minor fill for improving shoreline appearance that complies with section 10700 and that does not exceed 1,000 square feet in area; ~~and~~

(8) minor fill for improving public access that complies with section 10701 and that does not exceed ~~1,000~~ 5,000 square feet in area;

(9) ~~minor fill for~~ habitat restoration or enhancement activities that would cover less than not exceed 10,000-20,000 square feet of in the Bay or a certain waterway, would include the minimum amount of fill necessary to improve wildlife habitat, and would not have significant adverse habitat conversion impacts; and

(10) extraction or dredging of no more than 10,000 cubic yards of materials to enhance tidal connectivity or restore habitat or the disposal of such materials within an existing site for such purposes.

(b) with respect to activities in the 100-foot shoreline band:

(1) the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change of use of any area so long as the placement, extraction, or change in use does not have a significant adverse effect on ~~present existing or possible future maximum feasible public access to the Bay consistent with the project,~~ on present or possible future use for a designated ~~priority water-related~~ water-oriented priority land use, and or on the environment;

(2) the construction of one- and two-family residences and ancillary residential structures on any parcel except in cases where the parcel was subdivided after June 17, 1987 and the subdivision was not authorized by a Commission permit, or when the residence would adversely affect existing physical or visual public access, or affect potential visual public access;

(3) any substantial change in use of a structure built on piles placed over the Bay prior to September 17, 1965 where the change in use does not involve any change in the structure, piles, or the extent of water coverage;

(4) the installation of new shoreline protective works and repairs to ~~existing~~ protective works, such as bulkheads, levees, natural or nature-based features, and riprap, in the minimum amount necessary to stabilize existing dikes and banks or to provide improved fish or wildlife habitat;

(5) routine repairs, reconstruction, replacement, removal, ~~and~~ or maintenance of a structure that do not involve any substantial enlargement or any substantial change in uses; and

(6) any subdivision of land or other division of land.

(c) with respect to activities in salt ponds and managed wetlands:

(1) the reconstruction of ~~existing~~ power transmission towers, communication towers, and walkways providing access to such towers; ~~and~~

(2) the installation of new shoreline protective works and repairs to protective works, such as bulkheads, levees, natural or nature-based features, and riprap, in the minimum amount of fill necessary to stabilize existing dikes or to provide improved wildlife habitat;

~~(3) minor fill for habitat restoration or enhancement activities that would cover less than 10,000 square feet of the not exceed 50 acres in salt ponds or managed wetlands and would include the minimum amount of fill necessary to improve wildlife habitat; and~~

(4) extraction or dredging of no more than 10,000 cubic yards of materials to enhance tidal connectivity or restore habitat or the disposal such materials within an existing site for such purposes.

(d) with respect to activities in the Suisun Marsh:

(1) one or more of the activities listed in paragraph (a), (b), or (c) of this section;

(2) any subdivision of land or other division of land, including lot splits;

(3) the removal of vegetation;

(4) the discharge of any gaseous, liquid, or thermal waste as approved by the California Regional Water Quality Control Board, San Francisco Bay Region;

(5) the grading of any materials; and

(6) the construction, reconstruction, relocation, demolition, or alteration of the size of any one- or two-family residence, duck club structure, farm structure and ancillary structures, and any facility of any private, public, or municipal electrical generating facility with a capacity of less than ten (10) megawatts electrical (10MWe), and any other private, public, or municipal utility facility of less than 10,000 square feet.

(e) with respect to activities anywhere in the Commission's jurisdiction:

(1) the placement of a temporary structure provided that the structure is removed no later than 180 days after its placement and the area is returned to its pre-existing condition within a reasonable time thereafter;

(2) the temporary substantial change in use of water, land, or a structure, provided that the initial use is reestablished no later than 180 days after the temporary change in use;

(3) any other activity similar to those listed in paragraphs (a), (b), (c), and (d) of this section that would have no greater adverse impact on the Bay than the listed activities; and

(4) the placement of facilities required for environmental quality testing that does not involve ~~placement of fill~~, a change in use or alteration of public access for a period of time longer than provided by the permit for completion of the work, and would not otherwise have a substantial effect on Bay-related resources.

(f) with respect to dredging or disposal activities located anywhere within the Commission's jurisdiction, those activities specified in Section 10602.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(a) and (f), Government Code; and Sections ~~29201(e)~~ 29501(e) and 29505, Public Resources Code.

30. Amend Section 10610 to read:

10610. Application.

For an activity asserted to be “minor repairs or improvements,” an applicant shall furnish:

(a) one (1) original copy of a fully completed and properly executed application form which these regulations contain as Appendix D;

(b) exhibits to the application form as provided by Appendix F and Section 10625;

(c) an executed Certificate of Posting of “Notice of Pending BCDC Application” form as provided by Appendix E;

(d) evidence that all local discretionary approvals (i.e., all approvals other than ministerial permits such as building permits) have been received, or for subdivisions or other land divisions requiring a Commission permit for which final local approval or disapproval has not been granted, a statement that the local government either favors the project, with or without conditions, or does not favor the project; and

(e) a check or money order in the amount shown in Appendix M.

Section 10311 (Chapter 3, Subchapter 2, Article 1) of these regulations shall apply to applications for administrative permits.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

31. Amend Section 10612 to read:

10612. Amendment to Administrative Permit Applications.

(a) An applicant for an administrative permit may amend the application after the application has been filed at least two days prior to the mailing of the administrative listing for the application.

(b) An applicant who wants to amend an application for an administrative permit shall submit the amendment request by a letter that fully describes the amended project and is signed by the applicant or his or her authorized representative. If there are two or more co-applicants, each co-applicant (or co-applicant's representative) shall sign the letter requesting the amendment.

(c) The submittal of a request to amend a pending administrative permit application shall automatically supersede the original application, and the amended application shall thereafter be the only application considered to be submitted to the Commission.

(d) If the Executive Director determines that the amended project still qualifies as a "minor repair or improvement," the Executive Director shall notify the applicant that the amendment has been filed and shall thereafter proceed according to these regulations to complete processing of the amended application as an application for an administrative permit.

(e) If the Executive Director determines that the project as amended no longer qualifies as a minor repair or improvement, the Executive Director shall notify the applicant of the Executive Director's determination and that the applicant can apply for a major application to authorize the amended project.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632(f), Government Code; and Section 29520, Public Resources Code.

32. Amend Section 10620 to read:

10620. Administrative Listing.

(a) Before acting on any permit application for "minor repairs or improvements," the Executive Director shall submit a list of the applications that are ready to be acted on to the Commission, to each applicant whose application is listed, to any persons who requested receipt of the list in writing, and to all agencies that have jurisdiction by law with respect to the proposed activity that is the subject of the matter listed. The list shall include the following for each application:

(1) the name and address of each of the applicant(s);

(2) the date on which the application was filed;

(3) an informative summary of the work proposed, including the location of the proposed project;

- (4) the number assigned to each application;
- (5) the name of the responsible staff member;
- (6) whether the Executive Director recommends approval or denial of the application or has not yet reached a decision; and
- (7) a summary of all significant environmental points raised during the review process and a staff response to each of those points.

(b) The listing will be mailed or sent by electronic mail and posted on the Commission's website at least five (5) days prior to a regularly scheduled Commission meeting date. Any further significant environmental concerns raised after the list was submitted, along with the staff response to each concern, shall be provided to the Commission at the regularly scheduled meeting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Sections 21080.5(d)(2)(C), 21080.5(d)(2)(D) and 29520, Public Resources Code.

33. Amend Section 10621 to read:

10621. Executive Director's and Commission's Action After Listing.

(a) The Executive Director cannot act on an administrative permit application if either one of the following sets of circumstances exist:

(1) when the Commission holds a meeting within 14 days of the mailing of the administrative listing, one or more Commissioner has objected at the meeting to the issuance of the administrative permit and the Commission has determined at that meeting by a majority of those present and voting that the Commission should process the application as a major permit application;

(2) when the Commission does not hold a meeting within 14 days of the mailing of the administrative listing, one or more Commissioner has submitted to the Executive Director a written objection to the issuance of the administrative permit within 14 days of the mailing of the administrative listing and the Commission has determined at the first meeting following the objection by a majority of those present and voting that the Commission should process the application as a major application;

(b) The Executive Director can act on an application for an administrative permit despite the restrictions contained in subsection (a) of this section if compliance with subsection (a) would prevent the Executive Director and Commission from acting within the 90-day time period within which the McAteer-Petris Act requires action on a permit application.

(c) If the Commission determines that the Commission should consider the application the Executive Director shall within five (5) working days notify the applicant that he or she has denied the application with the reasons for denial being

that the activity could not be properly considered as a minor repair or improvement and with information on how to proceed.

(d) If the Commission does not determine that the Commission should consider the application, the Executive Director shall act on ~~that~~ the application within ~~five (5) working days~~ the 90-day time period within which the McAteer-Petris Act requires the Commission to act on a permit application.

(e) At any time before the Executive Director acts on an administrative permit application, an applicant may either withdraw the application permanently or may remove the application temporarily from the Commission's active consideration. Section 10421 (Chapter 4, Subchapter 1, Article 3) of these regulations shall apply to the withdrawal of an application permanently or removal of an application temporarily from active consideration.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Sections 29501(a) and 29520, Public Resources Code.

34. Amend Section 10652 to read:

10652. Criteria for Granting Permit.

The Executive Director shall grant an emergency permit, upon reasonable terms and conditions, which may include an expiration date and a requirement to submit a regular permit application by a specified date, if he or she finds that:

(a) An emergency exists and requires action more quickly than can reasonably occur when following the Commission's procedures for issuing permits; and

(b) The work proposed would be consistent with California Government Code Section 66600 through 66661, the San Francisco Bay Plan, California Public Resources Code Section 29000 through 29612, the Suisun Marsh Protection Plan, California Public Resources Code Sections 21000 through 21177, the certified Suisun Marsh local protection program, and these regulations, as they might apply.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66653, Government Code; and Section 29509, Public Resources Code.

35. Amend Section 10653 to read:

10653. Documentation Subsequent to Issuance of an Emergency Permit.

Within five (5) working days after having received an emergency permit, the permittee shall deliver to the Executive Director descriptive material concerning the emergency work that is ~~substantially similar to the documentation required in applications for administrative permits requested by the Executive Director when~~ issuing the emergency permit and all appropriate fees for the work emergency permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

Chapter 7. Special Rules

36. Amend Section 10700 to read:

10700. Minor Fills for Improving Shoreline Appearance.

The Commission may approve the placement of minor fill to improve shoreline appearance, including the mooring of an historic ship as defined in Section 10703 or the repair, maintenance, renovation, remodeling, rehabilitation, or replacement of a pre-existing residential structure as defined in Section 10705, only if, in addition to the other findings required by Cal. Government Code Section 66605 and the San Francisco Bay Plan, the Commission finds and declares that:

(a) the fill is necessary because:

(1) the present appearance of the Bay and shoreline in the area adversely affects enjoyment of the Bay and its shoreline within the site area itself or within adjacent areas of the Bay or shoreline, and

(2) it is either physically impracticable or economically infeasible to improve the appearance without filling;

(b) the amount of filling approved is the minimum necessary to improve shoreline appearance;

(c) the proposed project would improve the shoreline appearance; and

(d) the fill will not adversely affect enjoyment of the Bay and its shoreline within the fill area itself or within adjacent areas of the Bay and shoreline and the fill will not have any adverse effect on present or possible future use of the area for any designated priority water-related use or for public access, and

(e) with regard to a pre-existing residential structure, the requirements of subdivisions (b) and (c) above will be deemed met if (i) the repair, maintenance, rehabilitation, renovation, remodeling or replacement will not substantially enlarge the size of the pre-existing structure, (ii) will not be out of character or scale with any nearby structures, (iii) will cover less no more of the Bay surface than the pre-existing structure, and (iv) will not change the use of the pre-existing structure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66605 and 66632, Government Code; and Sections 29501(a) and 29520(a), Public Resources Code.

37. Repeal Section 10702 as follows:

~~10702. Using the Bay as a Design Asset~~

~~(a) The Commission may approve the extension of an accessory structure, such as a boat dock, and portions of a principal structure on pilings over water when the~~

Commission, in addition to findings required by Cal. Government Code Section 66605 and the San Francisco Bay Plan, including those that require that fill in San Francisco Bay be either for a water-oriented use, minor fill to improve shoreline appearance, or minor fill to improve public access, finds and declares that:

~~(1) either:~~

~~(A) the extension is necessary to allow actual use of the water, i.e., for mooring boats, or~~

~~(B) the extension is:~~

~~(i) designed by means such as location, window placement, and size to afford to occupants of the structure a feeling of closeness to the surface of the Bay waters that cannot be achieved except by the extension of portions of structures over water on piles; and~~

~~(ii) designed so as not to adversely affect enjoyment of the Bay and its shoreline by residents of, employees of, and visitors to the structure or adjacent areas of the Bay or shoreline; and~~

~~(2) the extension is not inconsistent with the public trust.~~

~~(b) "Portions of a principal structure" means those portions of a structure that (1) would improve shoreline appearance, (2) would cover no more than 1,500 square feet of the Bay's surface, and (3) would not exceed two stories in height, provided that the Executive Director, if the project constitutes a minor repair or improvement, or the Commission may allow greater coverage or height if it finds that exceptional circumstances such as (1) steepness of terrain, (2) shallowness of a lot as it existed on November 10, 1969, or (3) design of a project to preserve adjacent areas having high natural resource values justifies the greater coverage or height.~~

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66605, Government Code; Sections 29008 and 29501(b), Public Resources Code; and San Francisco Bay Plan, Other Uses of the Bay and Shoreline, Policy 2.

Chapter 8. Amendments to Permits

38. Amend Section 10810 to read:

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

(a) An application for a nonmaterial amendment to an administrative permit shall be made by letter. If there are two or more co-permittees, each co-permittee shall sign the letter requesting the amendment. The application shall state the total cost of the project described in the amendment request, shall contain an adequate description of the proposed amendment, shall include appropriate maps and

drawings, and shall include a check or money order in the amount shown in Appendix M.

(b) The Executive Director shall approve a nonmaterial amendment to an administrative permit only if he or she finds that the proposed amendment is nonmaterial and is consistent with either (1) California Government Code Sections 66600 through 66661, the San Francisco Bay Plan, California Public Resources Code Sections 21000 through 21177, and the Commission's Regulations if the Commission has jurisdiction under California Government Code Sections 66610 and 66632, (2) California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, California Public Resources Code Sections 21000 through 21177, and the Commission's regulations if the Commission has jurisdiction under California Public Resources Code Section 29101, 29500, and 29501 and the Commission has not certified a Suisun Marsh Local Protection Program or, (3) either California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan, or the certified Suisun Marsh Local Protection Program, in addition to California Public Resources Code Sections 21000 through 21177 and the Commission's regulations if the Commission has jurisdiction under Public Resources Code Section 29101, 298500, and 29501 and if the Commission has certified a Suisun Marsh Local Protection Program.

(c) When the Executive Director approves a nonmaterial amendment to an existing administrative permit, he or she shall not impose any new permit condition or modify any existing permit condition except when the new or modified condition either (1) relates solely to the non-material amendment, (2) is required by changes in the law or in regulations, or (3) is needed to make existing conditions consistent with the proposed amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

39. Amend Section 10820 to read:

10820. Applications for Nonmaterial Amendments to Major Permits.

(a) An application for a nonmaterial amendment to a major permit shall be made by letter. If there are two or more co-permittees, each co-permittee (or co-permittee's authorized representative) shall sign the letter requesting the amendment. The application shall state the total cost of the project described in the amendment request, shall contain an adequate description of the proposed amendment, shall include appropriate maps and drawings, and shall include a check or money order in the amount shown in Appendix M.

(b) When the Executive Director approves a nonmaterial amendment to an existing major permit, he or she shall not impose any new permit condition or modify any existing permit condition except when the new or modified condition either (1) relates solely to the non-material amendment, (2) is required by changes

in the law or in regulations, or (3) is needed to make existing conditions consistent with the proposed amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

40. Add Chapter 8, Article 4, Section 108310 to read:

Article 4. Assignment of Permits

10830. Permit Assignment.

The rights, duties, and obligations contained in a Commission permit are assignable. When a permittee transfers any interest in any property on which an activity is authorized to occur or which is necessary to achieve full compliance with one or more conditions to a permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment in a form acceptable to the Executive Director. The Executive Director may approve the assignment, in full or in part, of the rights, duties, and obligations contained in a permit. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment (which may be included in the permit assignment) that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

Chapter 10. Amendments to the San Francisco Bay Plan or the Suisun Marsh Protection Plan, and Other Planning Matters

41. Amend Section 11001 to read:

11001. Preparation, Contents and Circulation of Draft Adequate Descriptive Notice.

(a) If the Commission or the Executive Director proposes an amendment or other change either to the San Francisco Bay Plan, to a Commission special area plan, to the San Francisco Bay Area Seaport Plan, or to the Suisun Marsh Protection Plan or if anyone else proposes such an amendment by submitting a fully completed application form as required by section 11000, the Executive Director shall prepare a draft descriptive notice.

(b) The draft descriptive notice shall indicate the scope of the proposed amendment and shall recommend a date for public hearing.

(c) At least 10 days prior to the meeting at which the Commission will determine whether or not to proceed with a proposed amendment or other change to the San Francisco Bay Plan, to a Commission special area plan ~~or total design plan~~, to the San Francisco Bay Area Seaport Plan, or to the Suisun Marsh Protection Plan, or any

other plan administered by the Commission, the Executive Director shall mail to all Commission members by first class mail or electronic mail, and shall also make available on the Commission's website, a copy of the draft descriptive notice and any other materials that the Executive Director believes that the Commission will need to understand fully the proposed amendment.

NOTE: Authority cited: Sections 66632(f), ~~and 66651~~, and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Section 29202, Public Resources Code.

42. Amend Section 11002 to read:

11002. Commission Determination to Initiate Amendment Process; Adoption and Mailing of Descriptive Notice.

(a) When the Commission receives the draft descriptive notice, it may invite written comment or hold a public hearing and shall thereafter determine by a majority vote of those present and voting whether it wants to initiate the amendment process.

(b) If the Commission determines to initiate the amendment process, the Commission shall make any changes in the notice that it deems appropriate and shall also set the date for the public hearing on the proposed amendment.

(c) The descriptive notice as adopted by the Commission after having made any appropriate changes shall be the "adequate descriptive notice" that Government Code Section 66652 requires.

(d) At least 30 days prior to the date of the public hearing on the proposed amendment, the Executive Director shall mail by first class mail or electronic mail, and shall also make available on the Commission's website, a copy of any descriptive notice that the Commission has approved to all Commissioners and Alternates, to each of the six (6) governmental agencies listed in Section 10360 (U.S. Army Corps of Engineers; California Department of Fish and Wildlife; San Francisco Bay Regional Water Quality Control Board; State Lands Commission; U.S. Fish and Wildlife Service; and National Marine Fisheries Service), to all interested agencies, organizations, and individuals, to all agencies that have jurisdiction by law with respect to any proposed activity that is listed in the notice, and to any other person, agency, or organization who requests such notice in writing.

NOTE: Authority cited: Sections 66632(f), ~~and 66651~~, and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(C) and 29202, Public Resources Code.

43. Amend Section 11003 to read:

11003. Staff Planning Report

(a) Not less than thirty (30) days prior to the initial public hearing on the proposed amendment, the Executive Director shall distribute a staff planning report

on the proposed amendment to all persons, agencies, and organizations who received a descriptive notice of the proposed amendment and to anyone else who requests such in writing.

(b) The staff planning report shall contain:

(1) the background of the proposed amendment, the name of the agency, organization, or individual who proposed the amendment, and the reason for the proposal;

(2) a description of the proposed amendment that shall include the specific language, map designation, or other change proposed, and, for any change in any plan map, graphic exhibits that indicate the precise location and nature of the proposed change;

(3) a statement describing the effect the proposed change would have on any existing finding, policy, or map designation contained in the San Francisco Bay Plan, a Commission special area plan, the San Francisco Bay Area Seaport Plan, the Suisun Marsh Protection Plan, or any other plan administered by the Commission;

(4) a statement describing the consistency of the proposed change with the findings and declarations of policy in the McAteer-Petris Act (California Government Code Sections 66600 through 66694) if an amendment to the San Francisco Bay Plan is proposed;

(5) a statement describing the consistency of the proposed change with the findings and declarations of policy contained in the Suisun Marsh Preservation Act of 1977 (California Public Resources Code Sections 29000 through 29612) if an amendment to the Suisun Marsh Protection Plan is proposed;

(6) an environmental assessment that contains the information described in section 11521 of these regulations and, which shall either (i) state that the proposed amendment will have no significant adverse environmental impacts or (ii) shall describe any possible significant adverse effects that the proposed amendment would have on the environment and shall describe any public benefits of the proposed amendment, any feasible mitigation measures that would lessen the significant adverse environmental impact(s) and shall evaluate any feasible alternatives to the change;

(7) a summary of and responses to written comments received following distribution of the descriptive notice ~~but at least 10 days prior to the mailing of the up to the time the staff planning report is mailed and responses to those comments;~~

~~(8) a summary of and responses to all significant environmental points raised up to the time the staff planning report is mailed;~~

~~(9)~~ [8] if the proposed amendment involves a change in a water-oriented priority land use boundary description, a draft revision of such boundary description; and

~~(10)~~ [9] a preliminary staff recommendation on the proposed amendment.

NOTE: Authority cited: Sections 66632(f), 66651 and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(D) and 29202, Public Resources Code.

44. Amend Section 11005 to read:

11005. Staff Planning Recommendation

(a) Following the final public hearing on the proposed amendment, the staff shall prepare a staff planning recommendation on the proposed amendment.

(b) The staff planning recommendation shall contain:

(1) a summary of comments and responses to all comments on the proposed amendment received either in writing prior to the close of the public comment period or at the public hearing which the staff planning report did not already summarize and respond to;

~~(2) a summary of and responses to all significant environmental points raised but not summarized and responded to in the staff planning report;~~

~~(3)~~ (2) any revisions to the Executive Director's initial environmental assessment and analysis of the environmental effects of the proposed amendment;

~~(4)~~ (3) a final recommendation for Commission action on the proposed amendment, which may include approval, modifications, or disapproval of the proposed amendment;

~~(5)~~ (4) if the proposed amendment involves a change in a water-oriented priority land use boundary description, a recommendation for the precise wording of such change; and

~~(6)~~ (5) if the Executive Director recommends approval of the amendment in original or modified form, a draft resolution of adoption that conforms to the provisions of Section 11006.

(c) The ~~staff~~ Executive Director shall mail by first class mail or electronic mail, and shall also make available on the Commission's website, a copy of the staff planning recommendation to all agencies, organizations, and individuals who received a staff planning report and to anyone else who requests in writing to receive a copy of the recommendation. Such mailing shall take place not less than six (6) days prior to the date of the scheduled Commission action on the proposed amendment.

(d) If the staff recommends an amendment that is substantially different from the amendment proposed in the staff planning report, the Executive Director shall prepare and distribute a new staff planning report in conformity to Section 11003 and the Commission shall hold another public hearing no earlier than thirty (30) days after the distribution of the new staff planning report. The Commission shall wait to consider or vote on the Executive Director's recommendation at least fourteen (14) days following the holding of the additional public hearing.

(e) If the Commission does not determine that the staff is recommending an amendment that is substantially different from the amendment proposed in the staff planning report, the amendment being recommended shall be conclusively presumed not to be substantially different.

NOTE: Authority cited: Section 66632(f), 66651, and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(D) and 29202, Public Resources Code.

45. Amend Section 11008 to read:

11008. Payment of Costs of Processing of an Amendment to a Commission Planning Document.

(a) Whenever a person, agency, or organization other than the Commission or the Executive Director proposes that the Commission amend any of its planning documents other than deleting a park priority use designation from private property based on an alleged lack of substantial probability that a public entity will be committed to the acquisition of the property within three years beginning on January 1 of the year following the Commission's consideration of the proposed amendment, that person, agency, or organization shall be responsible for paying the Commission's full costs of processing and acting on the application as determined pursuant to this section, provided that the total amount of payments required shall not exceed one hundred and twenty percent (120%) of the estimated total cost as determined by the Commission staff.

(b) At the time of submitting the application required by section 11000, any person, agency, or organization required by section 11008(a) to pay for the cost of amending the Commission planning document ~~shall submit to the Commission a cashier's check in the amount of \$5,000 payable to the Commission and shall~~ execute an agreement that obligates the person, agency, or organization to pay all such Commission costs of processing and acting on the application as determined pursuant to this section.

(c) The agreement required by Section 11008(b) shall include in it an estimate of the total cost of the Commission's processing and acting on the application, including the direct costs of all Commission staff time, a reasonable figure for staff overhead, and all consultant costs. The amendment applicant shall not be responsible, and the agreement shall so state explicitly, for the payment of any charges in excess of one hundred and twenty percent (120%) of the estimated cost contained in the agreement.

(d) Before the Commission determines to commence processing the amendment request by adopting and issuing the descriptive notice, the Commission may at the request of the amendment applicant modify downward the estimated total cost of the Commission's processing and acting on the amendment application. If the Commission modifies the estimated cost downward, the agreement between the

Commission and the amendment applicant shall be modified to reflect the modified estimated cost.

(e) After the Commission commences processing an application to amend a Commission planning document, the Commission shall submit on a ~~quarterly~~ monthly basis to the amendment applicant a bill for the actual costs incurred, including overhead, by the Commission, the Commission's staff, and the Commission's consultants during the preceding ~~quarter~~ month.

(f) The applicant for the plan amendment shall pay the bill received pursuant to section 11008(e) within 30 days of receipt of the bill. Failure to make full payment on any such bill within 30 days of its receipt shall allow the Commission and the staff to discontinue work on the application until such complete payment has been made.

(g) After either (1) the Commission and its staff completes all work, including voting, on a pending plan amendment application, (2) the applicant formally withdraws the pending application, or (3) the applicant abandons the application, the Commission shall apply the \$5,000 deposit to the remaining unpaid costs for processing the application. If any of the \$5,000 remains after paying all of the unpaid costs of processing the application, the Commission shall refund the remaining funds to the applicant. If the unpaid costs of processing the application exceed \$5,000, the Commission shall within 30 days bill the applicant for all of these unpaid costs that exceed the \$5,000 deposit of processing the application.

(h) If the Commission abandons its consideration of an application to amend a Commission planning document pursuant to section 11008(i) or otherwise fails to act on the application, the person, agency, or organization who submitted the amendment application shall remain responsible for paying all of the costs, including overhead, of processing and acting on the application that the Commission incurred prior to the abandonment or failure to act.

(i) Abandonment of a plan amendment application shall occur only when the Executive Director or Commission concludes that no reasonable probability exists that the amendment applicant intends to pursue the application based on all of the circumstances that surround the pending plan amendment application.

(j) Nonpayment of an overdue bill for prior costs associated with a plan amendment application for a period of three months shall constitute evidence that a plan amendment applicant has abandoned the application unless the applicant submits written evidence to the contrary and the Executive Director concludes that the applicant does not intend to abandon the application and that reasonable grounds exist to explain the nonpayment.

(k) A plan amendment applicant may at any time appeal from the amount of funds stated as due in a bill from the Commission staff by submitting in writing within 10 days of receipt of the bill a statement of precisely what the applicant believes is incorrect about the bill, what the amendment applicant believes the correct bill should be, and all documentation that the amendment applicant wants

to submit to support his or her contention(s). Thereafter, the Executive Director shall determine within 10 days of receipt of the written appeal whether to grant or to deny the appeal in whole or in part. If the amendment applicant is still not satisfied with the proposed bill after the Executive Director has ruled on the appeal, the applicant may meet with the Chairman to try to resolve the dispute and ultimately present his or her claim to the Commission. The Commission shall be the final arbiter of the fee that the amendment applicant must pay.

NOTE: Authority cited: Section 66632, 66651, and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 29202 and 29418, Public Resources Code.

46. Amend Section 11020 to read:

11020. Other Planning Matters.

To the extent that other planning matters, pursuant to Government Code Section 66630 and Government Code 66658 require environmental documentation pursuant to the California Environmental Quality Act, the procedures outlined in this chapter for plan amendments, including the preparation of a staff planning report, the holding of a public hearing, and the preparation and vote on a staff planning recommendation, shall be followed with the following exceptions:

(a) the staff planning report and the staff planning recommendation may be combined into one document, entitled “Joint Staff Report and Recommendation”; and

(b) if the staff prepares a joint report and recommendation, the staff shall mail, by first class mail or electronic mail, and shall also make available on the Commission’s website, the document at least thirty (30) days prior to the public hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66630 and 66658, Government Code; and Section 29201(f), Public Resources Code.

Chapter 11. Special Area Planning

47. Amend Section 11101 to read:

11101. Special Area Planning Procedures.

(a) The Commission, the Executive Director, a local government, or any other person may propose that the Commission develop a special area plan.

(b) After such a proposal has been made, the Executive Director shall prepare a brief summary and report on the proposal that shall include the following information:

(1) the boundaries of the area involved;

(2) the issues and concerns to be addressed in the planning process and the reasons for developing a special area plan;

(3) the estimated cost and personnel needed to complete the study and the source of the funds needed to pay for it;

(4) an estimate of the amount of time that it would take to complete the special area planning process;

(5) whether the Executive Director recommends that the Commission develop a special area plan;

(6) whether the Executive Director recommends that a joint special advisory committee be appointed to assist in preparing the special area plan and the recommended membership of any such advisory committee; and

(7) any other information the Executive Director deems appropriate.

(c) The Executive Director shall mail, by first class mail or electronic mail, and shall also make available on the Commission's website, the report and, if the Executive Director recommends that the Commission develop a special area plan, a draft resolution that complies with Section 11102 to the Commission, to all interested parties, to all affected local jurisdictions, and to all other persons who have requested such report in writing.

(d) The Executive Director shall schedule a public hearing prior to the Commission's determination whether or not to develop a special area plan. The public hearing shall occur no earlier than ten (10) days after the Executive Director mails first class mail or electronic mail and makes available on the Commission's website the report on the proposal to develop a special area plan.

(e) The Commission shall determine whether to develop a special area plan by majority vote at any time after the public hearing. If the Commission determines that it wants to develop a special area plan, it shall make that determination by resolution that complies with the requirements of Section 11102.

NOTE: Authority cited: Sections 66632(f) and 66651, Government Code. Reference: Section 66651, Government Code; and San Francisco Bay Plan, P. 39, 41 Part V, The Plan Maps.

Chapter 12. Certification and Amendment of Suisun Marsh Local Protection Program

48. Amend Section 11202 to read:

11202. Commission Distribution of an Endorsed Local Protection Program or Components Thereof.

(a) The County shall furnish to the Commission fifteen (15) copies of an endorsed local protection program or component thereof, and within fifteen (15) days of its receipt by the Commission, the Commission shall distribute mail by first class mail or electronic mail, and shall also make available on the Commission's website, a copy of

the program or component to the following agencies for comment for a period of not more than sixty (60) days:

- (1) California Department of Fish and Wildlife;
- (2) California Department of Public Health;
- (3) All local governments in the County;
- (4) Regional Water Quality Control Board, San Francisco Bay Region;
- (5) State Lands Commission;
- (6) Attorney General's Office (Deputy Assigned to the Commission);
- (7) U.S. Army Corps of Engineers, San Francisco District;
- (8) Delta Stewardship Council; and

~~(8)~~ (9) Any other governmental agencies and interested parties who have requested a copy of the program.

(b) The Commission shall ~~publish once a week~~ make available on the Commission's website no later than for at least two weeks beginning at least thirty (30) days prior to the public hearing notice of the availability of the endorsed local protection program or component for public inspection at the Commission office in a newspaper of general circulation and on the Commission's website.

(c) With respect to the number of copies that paragraph (a) of this section requires the County to submit, the Executive Director may waive any or all of the requirement if he or she determines that any of the agencies already have a copy of the program or component.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400-29424, Public Resources Code.

49. Amend Section 11203 to read:

11203. Contents and Distribution of Staff Summary.

(a) The Executive Director shall prepare a brief summary of a proposed local protection program component or proposed amendment to the local protection program or a local protection program component.

(b) The summary shall include staff comments, which shall be clearly distinguished as such, and shall cover the following matters:

(1) whether the proposed component or proposed amendment conforms to the provisions of California Public Resources Code Sections 29000 through 29612, the policies of the Suisun Marsh Protection Plan, and the policies of the San Francisco Bay Plan, and if the proposed component or proposed amendment does not so conform, a specific explanation of how it does not so conform;

(2) a summary of all environmental documentation that the lead agency has prepared;

(3) what action the sponsor of the proposed component or proposed amendment has taken; and

(4) a summary of all comments that the staff has received and a brief response to all comments.

(c) The staff shall mail, by first class mail or electronic mail, and shall also make available on the Commission's website, the staff summary with a copy of the proposed component or amendment and any environmental document at least six (6) days prior to the public hearing to all Commissioners and Alternates, to the sponsor of the proposed component or amendment, to other affected local governments, to all persons who have requested such mailing in writing, and to the agencies listed in Section 11202(a).

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400-29424, Public Resources Code.

50. Amend Section 11204 to read:

11204. Public Hearing(s).

(a) The Commission shall hold a public hearing on the local protection program or component or amendment within ninety (90) days of its receipt from the County.

(b) The Executive Director shall mail by first class mail or electronic mail, and shall also make available on the Commission's website, notice of the public hearing to all Commissioners and their Alternates, to each of the governmental agencies listed in paragraph (a) of Section 11202, to all interested agencies, organizations, and individuals, and to any other person who requests such notice in writing.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400-29424, Public Resources Code.

51. Amend Section 11205 to read:

11205. Staff Recommendation.

(a) The Executive Director may request the sponsor of the proposed local protection program, component, or amendment to provide any additional information or commitment that he or she deems necessary to prepare the recommendation and shall report any failure to comply with such requests to the Commission.

(b) The Executive Director shall prepare a staff recommendation that shall contain the following:

(1) responses to all comments received either in writing or at the public hearing;

(2) ~~any necessary revisions to the initial environmental assessment;~~

~~(3)~~ a recommendation for Commission action on the certification of the local protection program, component, or amendment, which can only be to certify or to refuse to certify, with or without recommendations to the appropriate local agency and county on what the Commission believes would be necessary for it to certify the program, component, or amendment; and

~~(4)~~ (3) a draft resolution of certification that complies with Section 11206 or a draft resolution of refusal to certify that complies with Section 11207.

(c) The Executive Director shall mail, by first class mail or electronic mail, and shall also make available on the Commission's website, the staff recommendation to all Commissioners and Alternates, to the sponsor of the proposed component or amendment, to other affected local governments, to all persons who have requested such mailing in writing, and to the agencies listed in Section 11202. The mailing shall occur not less than six (6) days prior to the date of the scheduled Commission vote.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400-29424, Public Resources Code.

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

52. Amend Section 11420 to read:

11420. Contents of Local Marsh Development Authorization.

Any marsh development authorization issued by a local government shall be in writing and shall include the following:

(a) a notice to the permittee that the authorization shall not become final until all of the following time periods have passed:

(1) the time period for appealing the action to a higher body within the local government as provided for in the local procedures, and

(2) the twenty (20) working day period after the Commission has received notice of the local government's final action;

(b) a statement that specifically indicates that the local government issued the authorization wholly or partly as a permit required by the Suisun Marsh Preservation Act; and

(c) specific findings that support the issuance of the authorization by relating the facts of the project to the ~~applicable policies of the Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act if the Commission has not yet certified the local protection program or, after the Commission has certified the local protection program, to the policies of the~~ certified Suisun Marsh Local Protection Program.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502, 29503, 29521 and 29522, Public Resources Code.

53. Amend Section 11421 to read:

11421. Finality of Local Marsh Development Authorization.

(a) No local marsh development authorization shall become effective until all time periods for appealing the action within the local government and to the Commission have expired without the filing by any aggrieved person or by any two members of the Commission of an appeal or until the Commission determines that an appeal raises no substantial issue of compliance with ~~either~~ California Public Resources Code Sections 29000 through 29612, ~~and the Suisun Marsh Protection Plan, if no certified Suisun Marsh Local Protection Program exists or with~~ and the certified Suisun Marsh Local Protection Program if one does exist.

(b) The twenty (20) working day time period for appealing to the Commission shall not commence until the receipt of the notice of final local action as required by Section 11430.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code.
Reference: Sections 29502, 29522 and 29523, Public Resources Code.