

San Francisco Bay Conservation and Development Commission

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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Notice of Proposed Rulemaking to Amend Commission Regulations

Concerning Administrative/Procedural, Permitting, and Planning Matters

California Code of Regulations Title 14, Division 5

PUBLIC HEARING

The San Francisco Bay Conservation and Development Commission (“Commission”) will hold a public hearing on the subject of this Notice of Proposed Rulemaking on March 18, 2021 at its regularly scheduled meeting, which will begin at 1:00 p.m., and will be held online and by teleconference due to the COVID-19 public health orders and in accordance with the Governor’s Executive Order No. N-29-20 issued on March 17, 2020. The hearing will concern proposed changes to the Commission’s regulations governing administrative/procedural, permitting, and planning matters that are codified at Title 14 of the California Code of Regulations, Division 5. At the hearing, any person may present comments, arguments, or statements orally or in writing relevant to the proposed action described in the Informative Digest (below). Information regarding how to access the March 18, 2021, Commission meeting online or by teleconference will be provided in a meeting notice and agenda provided to interested parties and posted on the Commission’s website not less than ten days prior to the meeting date.

Following the public hearing, the Commission may adopt the proposal substantially as described below or may modify the proposal. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for at least 15 days prior to its adoption from the person designated in this Notice as the Contact Person. Any proposed modifications will be mailed to those persons who submit written comments, provide oral comments, or have requested notification of any changes to the proposal. Please notify the Commission to receive a meeting notice and any notices of change to the hearing date (see Contact Person, below).

WRITTEN COMMENT PERIOD

Any person or organization may submit written comments on the proposed regulatory action. The written comment period closes at 5 p.m. on March 18, 2021. The Commission will only consider comments received by that time. Please submit written comments to:

Marc Zeppetello, Chief Counsel
San Francisco Bay Conservation and Development Commission



375 Beale Street, Suite 510
San Francisco, California 94105
Telephone: (415) 352-3655
Email: marc.zeppetello@bcdca.gov

AUTHORITY AND REFERENCE

Authority: Government Code Sections 11400.20, 66632(f), 66651, and 66652; and Public Resources Code Sections 29201(e) and 29521.

References: Government Code Sections 11124.1, 11125, 11125.5, 11125.7, 11430.10, 11430.20, 11430.40, 11430.50, 65943, 65950-65957.1, 66600, 66601, 66602, 66602.1, 66603, 66605, 66605(e), 66610(a), 66610(e), 66630, 66632, 66632(a), 66632(d), 66632(f), 66632,4, 66633(b), 66638, 66641.6, 66651, 66652, 66653, 66654, 66658 66679(c); and Public Resources Code Sections 21080.5(d)(2)(C), 21080.5(d)(2)(E), 29202, 29400-29424, 29418, 29501(a), 29502, 29503, 29509, 29509(a), 29520, 29520(a), 29521, 29522, 29523, 29524, 29601, and 29610-29611.

INFORMATIVE DIGEST

The Commission is a State agency that issues permits for: (1) the placement of fill, extraction of materials worth more than \$20, or any substantial change in use of any water, land, or structure located within the area of the Commission's jurisdiction as established under the McAteer-Petris Act ("MPA"), California Government Code sections 66600 through 66694; and (2) any development within the area of the Commission's jurisdiction as established under the Suisun Marsh Preservation Act ("SMPA"), California Public Resources Code sections 29000 through 29612. The Commission also considers: (1) requests to amend the San Francisco Bay Plan, including a number of special area plans, the Suisun Marsh Protection Plan, and the Suisun Marsh Local Protection Program; and (2) appeals of any action by certain local government agencies on an application for a marsh development permit under the SMPA.

The Commission has adopted a set of regulations that are codified at Title 14 of the California Code of Regulations, Division 5, sections 10110-11990. The regulations cover a wide range of topics including, but not limited to: (1) general provisions; (2) the Commission, staff, and advisory review boards; (3) major permit procedures; (4) administrative and emergency permits; (5) amendments to permits; (6) special rules; (7) amendments to the San Francisco Bay Plan or other Commission plans; (8) certification of and amendments to the Suisun Marsh Local Protection Program; and (9) marsh development permits issued by local governments and appeals therefrom.

The Commission is proposing amendments to approximately 50 separate regulations codified at Title 14 of the California Code of Regulations, Division 5 concerning administrative/procedural, permitting, and planning matters. In summary, the proposed amendments will: (1) clarify and

revise certain requirements governing Commission meetings and adjudicatory proceedings; (2) clarify and revise the requirements applicable to the Commission's advisory boards; (3) clarify and revise the definitions of certain terms; (4) clarify the requirements for certain permit applications, the issuance of emergency permits, the contents of certain staff reports, and the findings to be made by the Commission in support of certain permitting actions; (5) clarify and revise the descriptions of activities that the Executive Director may authorize by an administrative permit; and (6) repeal certain outdated provisions that are no longer authorized by statute.

Objectives and Anticipated Benefits of the Proposed Amendments

The objectives of the proposed amendments are to improve and update the Commission's administrative procedures, clarify certain permitting and planning requirements, and improve the clarity and consistency of the Commission's regulations. The proposed amendments will not impose any direct or indirect costs on individuals, businesses, local government agencies, or state agencies. The proposed amendments will incrementally reduce the Commission's administrative costs by allowing certain notices and other documents to be provided by electronic mail and posted on the Commission's website, rather than requiring that such notices and documents be mailed via United States mail, and by eliminating the need for a court report to attend and prepare full minutes of each Commission meeting.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Commission's regulations are the only state regulations concerning the MPA, SMPA, and Commission permits issued under either of those Acts and Commission plan documents adopted under the MPA. Therefore, the proposed amended regulations are neither inconsistent nor incompatible with existing state regulations.

No Comparable Federal Statutes or Regulations

There are no federal statutes or regulations applicable to the MPA, SMPA, or Commission permits or plan documents. Therefore, neither the Commission's existing regulations nor the proposed amendments differ from an existing comparable federal statute or regulation.

DETERMINATIONS REGARDING THE PROPOSED ACTION

The Commission has made the following determinations or initial determinations:

Mandate imposed on local agencies or school districts by proposed amendments: None.

Cost or savings to any state agency:

The proposed amendments to the Commission's regulations will not impose any direct or indirect costs on state agencies that apply to the Commission for a permit, permit amendment,

or amendment to a Commission plan document. By clarifying certain permitting and planning requirements, including clarifying and revising the descriptions of activities that the Executive Director may authorize by an administrative permit, the proposed amendments may reduce incrementally the costs incurred by state agencies to process permit applications (including amendments) and requests to amend Commission plan documents.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The proposed amendments will not impose any direct or indirect costs on individuals, businesses, or other private parties that apply to the Commission for a permit, permit amendment, or amendment to a Commission plan document.

Significant effect on housing costs: None.

Results of the Economic Impact Assessment:

The proposed amendments to the Commission's regulations will not create or eliminate jobs within California, create new businesses or eliminate existing businesses within California, or affect the expansion of businesses currently doing business within California. The proposed amendments will not impose any direct or indirect costs on individuals, businesses, local government agencies, or state agencies.

The benefits of the proposed amendments are primarily non-monetary. The benefits will include improved and updated Commission administrative procedures, clarification of certain permitting and planning requirements, and improved clarity and consistency of the Commission's regulations. The proposed amendments will reduce incrementally the Commission's administrative costs by allowing certain notices and other documents to be provided by electronic mail and posted on the Commission's website, rather than requiring that such notices and documents be mailed via United States mail, and by eliminating the need for a court report to attend and prepare full minutes of each Commission meeting. In addition, by clarifying certain permitting and planning requirements, including clarifying and revising the descriptions of activities that the Executive Director may authorize by an administrative permit, the proposed amendments may reduce incrementally the costs incurred by regulated entities to process permit applications (including permit amendments) and requests to amend Commission plan documents.

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

Significant effect on housing costs: None.

Business reporting requirements: None.

Determination of effect on small business: The proposed amendments may affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Alternatives to the proposed regulatory action are described in the accompanying Initial Statement of Reasons. The Commission invites interested persons to present comments on the proposed amendments and alternatives at the scheduled public hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to:

Marc Zeppetello, Chief Counsel
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105
Telephone: (415) 352-3655
Email: marc.zeppetello@bcdc.ca.gov

The backup contact person for these inquiries is:

Margie Malan, Legal Secretary
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105
Telephone: (415) 352-3675
Email: margie.malan@bcdc.ca.gov

AVAILABILITY OF THE TEXT OF THE PROPOSED AMENDMENTS TO REGULATIONS AND THE INITIAL STATEMENT OF REASONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the California Regulatory Notice Register, the rulemaking file consists of:

- (1) this Notice;
- (2) the text of the proposed amendments to the regulations, with proposed deletions shown in strikeout and proposed inserts shown in underscore;
- (3) the Initial Statement of Reasons;
- (4) the Economic and Fiscal Impact Statement (Form 399) and supplement thereto;
- (5) Staff Report on Proposed Amendments to Commission Regulations Concerning Administrative/Procedural, Permitting and Planning Matters; Recommendation to Commence the Rulemaking Process to Adopt the Proposed Amendments (December 4, 2020);
- (6) Minutes of December 17, 2020 Virtual Commission Meeting, at 1, 9-25 (agenda item 8).

Copies of these documents may be obtained from the Commission's website at www.bcdc.ca.gov under the link to Latest News. Copies may also be obtained by contacting Marc Zeppetello at the address, telephone number, or email address listed above.

The proposed regulations were prepared pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulations are non-technical and written to be easily understood by the affected parties.

AVAILABILITY OF CHANGES OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments, the Commission may adopt the proposed regulatory changes substantially as described in this notice. If the Commission makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as modified. Please send requests for copies of any modified regulations to Marc Zeppetello at the address indicated above. The Commission will accept written comments on the modified text for 15 days after the date on which the modified proposed regulations are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon the Commission's adoption of the regulations, copies of the Final Statement of Reasons may be obtained by contacting Marc Zeppetello at the above address.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the proposed amendments to regulations (in ~~strikeout~~ and underlined format), as well as the Final Statement of Reasons once it is completed, can be obtained from the Commission website at www.bcdc.ca.gov.