

San Francisco Bay Conservation and Development Commission

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NOTICE OF ADDITIONAL 15-DAY PUBLIC REVIEW PERIOD

PROPOSED AMENDMENTS TO COMMISSION REGULATIONS

CONCERNING ADMINISTRATIVE/PROCEDURAL, PERMITTING, AND PLANNING MATTERS

San Francisco Bay Conservation and Development Commission
Proposed Amendments to Commission Regulations, Title 14, Division 5

On January 27, 2021, the San Francisco Bay Conservation and Development Commission (“Commission”) issued a Notice of Proposed Rulemaking, an Initial Statement of Reasons, and proposed amendments to the Commission’s regulations concerning administrative/procedural, permitting, and planning matters that are codified at Title 14 of the California Code of Regulations, Division 5. The public review and comment period on the proposed amendments commenced on January 27th and ran through March 18, 2021. In addition, the Commission held a public hearing on the proposed amendments at its March 18th meeting.

Following issuance of the Notice of Proposed Rulemaking and proposed amendments, staff made additional proposed revisions to: (1) section 10271 (14 C.C.R. § 10271), which governs the membership and function of the Engineering Criteria Review Board (“ECRB”); and (2) section 10601 (14 C.C.R. § 10601), which describes the categories of activities within the different areas of the Commission’s jurisdiction that constitute “minor repairs or improvements” that the Executive Director may authorize by an administrative permit (after the application for such a permit is listed for the Commission’s consideration). The reasons for these additional proposed revisions were explained, and the revisions were set forth, in the staff report for the March 18th public hearing. These revisions were also discussed in the staff presentation that immediately preceded the public hearing. Based on a Commissioner comment during the discussion following the public hearing, one further change was made to section 10271.

During the discussion following the March 18th public hearing, several Commissioners also provided comments regarding the proposed amendments to certain of the regulations governing ex parte communications. To address those comments, at the Commission meeting April 15th, BCDC’s Chief Counsel provided a briefing on the existing regulations governing ex parte communications and the proposed amendments to those regulations. Based on Commissioner comments during the discussion following the briefing, further changes were made to: (1) section 10286 (14 C.C.R. § 10286), which addresses notification of parties and interested persons; and (2) section 10287 (14 C.C.R. § 10287), which addresses a party’s opportunity to respond to an ex parte communication. In addition, a change was made to section 10289 (14 C.C.R. § 10289), which addresses field trips. With the addition of section 10289 to the set of revised proposed amendments, changes were also made to the Authority and Reference note for section 10289 for consistency with the changes previously proposed to the Authority and Reference notes for the other regulations governing ex parte communications.



All the post-Notice of Proposed Rulemaking changes to sections 10271, 10286, 10287, 10289, and 10601 are shown in the revised proposed amendments accompanying this notice and are described below.

Any person or organization may submit written comments on the revised proposed amendments to the Commission's regulations concerning administrative/procedural, permitting, and planning matters. **The written comment period closes on May 19, 2021.** Any comments should address, and be limited to, the proposed revisions to the originally proposed amendments. The proposed revisions are described below.

Please submit written comments to:

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REVISIONS TO THE ORIGINALLY PROPOSED AMENDMENTS TO THE COMMISSION REGULATIONS CONCERNING ADMINISTRATIVE/PROCEDURAL, PERMITTING, AND PLANNING MATTERS

Section 10271.

Eight revisions have been made to section 10271, which addresses the membership and function of the ECRB. The first three revisions are to the first sentence of this section, which the original proposal redesignated as subsection 10271(a). This subsection has been revised to: (1) reduce the maximum number of ECRB members from eleven to nine; (2) insert the words "or engineering geologist" after the word "geologist," so that the first identified qualification of at least one ECRB member reads, "geologist or engineering geologist;" and (3) delete "architect" as a qualification of at least one ECRB member.

The original proposal added subsection 10271(c) to specify that six members shall constitute a quorum for ECRB meetings. Consistent with the proposed reduction in the maximum number of ECRB members from eleven to nine, the fourth revision is that subsection 10271(c) has been revised to specify that five members shall constitute a quorum.

The original proposal added subsection 10271(d) to specify that the Chair of the Commission may designate with the concurrence of the Commission up to seven individuals to act as a pool of alternates. The fifth revision is that subsection 10271(d) has been revised to reduce the number of alternates from seven to four.

The original proposal added subsection 10271(e) to authorize the Executive Director to designate one or more alternate Board members to substitute for a Board member or members who cannot participate in the Board's consideration of a matter. Consistent with the proposed reduction in the maximum number of ECRB members from eleven to nine, as discussed above,

the sixth and seventh revisions are that subsection 10271(e) has been revised to change each of the two references to “eleven” ECRB members to “nine.”

Finally, the eight revision corrects a typographical error in proposed new subsection 10271(h) by changing the word “alternatives” to “alternates.”

Section 10601

The original proposal included numerous changes to section 10601 to provide greater specificity and clarity regarding the activities that may be authorized by an administrative permit. Additional revisions have been made to two new proposed subsections, 10601(a)(9) and 10601(c)(3), and to one existing subsection, 10601(e)(4), as discussed below.

The original proposal added a new subsection 10601(a)(9) to allow minor fill for habitat restoration that would cover less than 10,000 square feet of the Bay or a certain waterway to be authorized by an administrative permit. This subsection has been revised to allow habitat restoration “or enhancement activities that would not exceed 20,000 square feet in the Bay or a certain waterway, would include the minimum amount of fill necessary to improve wildlife habitat, and would not have significant adverse habitat conversion impacts.”

The original proposal added a new subsection 10601(c)(3), to allow minor fill for habitat restoration that would cover less than 10,000 square feet of a salt pond or managed wetlands to be authorized by an administrative permit. This subsection has been revised to allow habitat restoration “or enhancement activities that would not exceed 50 acres in salt ponds or managed wetlands and would include the minimum amount of fill necessary to improve wildlife habitat.”

The original proposal did not include any changes to subsection 10601(e)(4), which authorizes “the placement of facilities required for environmental quality testing.” This subsection has been revised to delete the words “placement of fill” because the placement of facilities required for environmental quality testing may unavoidably involve the placement of minor amounts of fill within an area of the Commission’s jurisdiction.

Section 10286

The original proposal included amending subsection 10286(a) to clarify that: (1) if the disclosure occurs prior to the Commission meeting, 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; and (2) if the disclosure occurs at the Commission meeting at which the Commission will consider 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 by the Commissioner making the disclosure prior to the Commission’s consideration of the matter that is the subject of the communication. For consistency with these changes, subsections 10286(b) and 10286(c) have each been revised to insert the words “or the Commissioner providing notice of the disclosure” after the words “Executive Director,” because the identity of the person providing notice of the disclosure will depend on whether the disclosure occurs prior to or at the Commission meeting

at which the Commission considers the matter that is the subject of the ex parte communication.

Further revisions have been made to subsection 10286(d) for clarity and consistency. As revised, this subsection states that the notice shall also state that “any party or person 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 or within 10 days of receiving the notice of the communication as required by this section or shall waive the opportunity to address the Commission concerning the communication.”

Section 10287

Further revisions have also been made to section 10287 for clarity and consistency. As revised, this section states that 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.”

Section 10289

Section 10289 provides that a Commission member make take an individual field trip to the site of a proposed project or pending enforcement action 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. This section has been revised to insert the words “to observe site conditions in relation to any issue raised in the pending adjudicatory matter” after the words “may take an individual field trip to the site of a proposed project or pending enforcement action.” This change has been made to clarify that to qualify as a “field trip” under this section, the purpose of a Commission member’s site visit would be to observe site conditions in relation to any of the issues raised in the pending adjudicatory matter.

In addition, the Authority and Reference note to this section would be amended to add references to Government Code section 66641.6 and Public Resources Code sections 29610-29611. Government Code section 66641.6 authorizes the Commission, after hearing, to issue an enforcement order setting administrative civil liability and Public Resources Code sections 29610-29611 are the penalty provisions of the Suisun Marsh Preservation Act. Commission enforcement proceedings that may result in the imposition of administrative civil liability are adjudicatory proceedings subject to the Commission’s regulations on ex parte communications.