

San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

NOTICE OF PROPOSED RULEMAKING TO AMEND COMMISSION REGULATIONS FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TITLE 14, DIVISION 5, CHAPTER 15

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 August 19, 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-08-21 issued on June 11, 2021. The hearing will concern proposed changes to the Commission’s regulations for implementation of the California Environmental Quality Act (“CEQA”) that are codified at Title 14 of the California Code of Regulations, Division 5, Chapter 15. 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 August 19, 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 August 19, 2021. The Commission will only consider comments received by that time. Please submit written comments to:

Greg Scharff, Chief Counsel
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Telephone: (415) 352-3655
Email: greg.scharff@bcdc.ca.gov



AUTHORITY AND REFERENCE

Authority: Government Code Section 66632(f); and Public Resources Code Sections 21082 and 29201(e).

References: Government Code Section 66632(a); and Public Resources Code Sections 21000, 21080.4, 21080.5, 21081, 21081.6, 21082.1, 21084, 21089, 21091, 21092, 21092.2, 21104, 21153, 21166, 29202, 29502(a), and 29250(b).

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, Chapter 15, sections 11500-11561, for implementation of CEQA. The Commission is proposing amendments to these regulations.

In summary, the proposed amendments to the regulations governing when the Commission is the CEQA lead agency would:

- Add a regulation to address the Commission's obligations, upon completion of an environmental assessment, to consult with other public agencies having jurisdiction by law with respect to the proposed activity or which exercise authority over resources that may be affected by the proposed activity.
- Add a regulation to address how an environmental assessment will be made available for public review, clarify the requirement to prepare written responses to comments, and address how the written responses to comments will be made available prior to the Commission's consideration of a proposed activity.
- Add a regulation to: (1) address the Commission's consideration and approval of an environmental assessment; (2) identify the documents that comprise the final environmental assessment; (3) address the findings to be made by the Commission if an environmental assessment identifies one or more significant environmental effects of a proposed activity; and (4) provide for adoption of a program for monitoring or reporting on revisions the Commission has required in a project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.
- Add a regulation to restate the requirements, which are currently set forth in the Commission's permitting and planning regulations, to file of a notice of decision on a proposed activity with the Secretary of the Resources Agency.

- Clarify the two possible arrangements for retaining a consultant, when necessary and as selected by the Executive Director, to prepare an environmental assessment; delete the existing requirement that a consultant establish a fixed cost for preparation of an environmental assessment; and clarify that, notwithstanding the fees and costs estimated by the selected consultant, the applicant shall be responsible for all consultant fees and costs to prepare the environmental assessment.
- Confirm that before using an environmental assessment prepared by a consultant, the Commission shall subject the environmental assessment to the agency's own independent review and analysis.
- Eliminate existing provisions that establish nominal fees that are intended, but are insufficient, to cover the Commission's costs to prepare an environmental assessment, and instead authorize the Commission to assess fees sufficient to recover its full costs to prepare an environmental assessment. Provide for monthly billing of costs incurred by the Commission and staff for preparation of an environmental assessment and require the applicant to pay such bills within 30 days of receipt.

In summary, the proposed amendments to the regulations governing when the Commission is a CEQA responsible agency would:

- Acknowledge the duty of the Commission to respond to any request for consultation by the lead agency to ensure that the lead agency prepares an environmental document that meets the informational needs of the Commission.
- Delete as unnecessary and burdensome, to the applicant and staff, the existing requirement that an applicant prepare a written summary of any environmental document prepared by the lead agency.
- Delete as unnecessary and burdensome, to the Commission and staff, the existing requirement that the Executive Director include any final environmental document that is less than 10 pages in length, or a summary thereof if the document is longer than 10 pages in length, with the staff summary of the permit application. Instead, consistent with current practice, require that the Executive Director (through staff) consider the environmental effects of the proposed activity as described in any environmental document prepared by the lead agency and summarize the environmental information contained therein as relevant to the Commission's statutory responsibilities in the application summary and/or staff recommendation on the permit application or in the staff planning report on a planning matter.
- Add provisions to: (1) address the findings to be made by the Commission if the lead agency's environmental document identifies one or more significant environmental effects of a proposed activity; and (2) provide for adoption of a program for monitoring or reporting on revisions the Commission has required in a project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.

Objectives and Anticipated Benefits of the Proposed Amendments

The objectives of the proposed amendments are to improve the clarity of the Commission's regulations for implementing CEQA and to update the regulations to incorporate statutory changes that have been made to CEQA since the Commission's regulations were last amended. The proposed amendments will also clarify that the Commission is authorized to recover its full costs to prepare an environmental assessment when it is the CEQA lead agency.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Commission's regulations are the only state regulations for implementation of CEQA in connection with the Commission's consideration of applications for permits or for amendments to Commission plan documents under the MPA or SMPA. 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 consideration of applications for Commission permits or for amendments to Commission 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 will not impose any direct or indirect costs on any state agency. The proposed amendments will authorize the Commission to recover its full costs to prepare an environmental assessment. The dollar value of this benefit to the state, in terms of recovered costs for staff time to prepare an environmental assessment, is estimated to range from approximately \$15,000 to \$40,000 per project, depending on the complexity of the project and its potential environmental impacts, and would average approximately \$25,000 per project.

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. With one exception, the proposed amendments will not impose any direct or indirect costs on any businesses. The exception is that the proposed amendments will authorize the Commission to recover its full costs to prepare an environmental assessment in connection with an application by a business for an amendment to a Commission plan document or for a permit where the local agency granting

the local discretionary approval has not previously acted as lead agency and prepared a CEQA environmental review document. The estimated costs of Commission staff time to prepare an environmental assessment, which the Commission would be authorized to recover from applicants under the proposed amendments, would range from approximately \$15,000 to \$40,000 per project, depending on the complexity of the project and its potential environmental impacts, and would average approximately \$25,000 per project.

Results of the Economic Impact Assessment:

The proposed amendments to the Commission's regulations for implementing CEQA 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. With one exception, the proposed amendments will not impose any direct or indirect costs on individuals, businesses, local government agencies, or state agencies. The exception is that the proposed amendments will eliminate existing provisions that establish nominal fees that are intended, but are insufficient, to recover the Commission's costs to prepare an environmental assessment when it is acting as the CEQA lead agency and instead add a provision to authorize the Commission to assess fees sufficient to recover its full costs to prepare an environmental assessment.

The proposed amendments authorizing the Commission to assess fees to recover its full costs to prepare an environmental assessment will not result in substantial costs to businesses or local government agencies and are not expected to result in any costs to individuals, small businesses, or state agencies. The proposed amendments will not result in substantial costs to business or local governments, in part, because the Commission's planning regulations (specifically 14 C.C.R. § 11008(a)) currently authorize the Commission to recover its full costs of processing a plan amendment (except for a plan amendment to eliminate a park priority use designation) or other plan document, including the costs to prepare an environmental assessment associated with the plan amendment. The proposed amendments also will not result in substantial costs to businesses or local governments because the Commission rarely (*i.e.*, less frequently than once every 10 years) acts as the CEQA lead agency (which would require it to prepare an environmental assessment) in considering a permit application.

Based on available information and estimates, the costs of Commission staff time to prepare an environmental assessment, which the Commission would be authorized to recover from applicants under the proposed amendments, would range from approximately \$15,000 to \$40,000 per project, depending on the complexity of the project and its potential environmental impacts, and would average approximately \$25,000 per project.

The benefits of the proposed amendments are primarily non-monetary. The benefits will include improved clarity and consistency in the Commission's regulations for implementing CEQA, including improved consistency in the procedures followed by the Commission when it is acting as the lead agency either for an amendment to a plan document or for a permit application. In addition, the proposed amendments will update the Commission's regulations to incorporate certain statutory changes that have been made to CEQA since the Commission's regulations were last amended, including referencing the findings to made by the Commission in adopting an environmental assessment or approving a project. The proposed amendments

will not affect and are not anticipated to benefit the general health and welfare of California residents or worker safety.

As discussed above, the proposed amendments will authorize the Commission to recover its full costs to prepare an environmental assessment. The dollar value of this benefit to the state, in terms of recovered costs for staff time to prepare an environmental assessment, is estimated to range from approximately \$15,000 to \$40,000 per project, depending on the complexity of the project and its potential environmental impacts, and would average approximately \$25,000 per project.

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 will not affect small business. The Commission's records reflect that a small business has never applied to the Commission for a permit or plan amendment for which the Commission has acted as the CEQA lead agency, requiring the Commission to prepare an environmental assessment, and this is not anticipated to occur in the future.

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:

Greg Scharff, Chief Counsel
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105
Telephone: (415) 352-3655
Email: greg.scharff@bcdca.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@bccdc.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 for Implementation of the California Environmental Quality Act; Recommendation to Commence the Rulemaking Process to Adopt the Proposed Amendments (March 19, 2021);
- (6) Minutes of April 1, 2021 Virtual Commission Meeting, at 1, 18-27 (agenda item 9).

Copies of these documents may be obtained from the Commission's website at www.bccdc.ca.gov under the link to [Latest News](#). Copies may also be obtained by contacting Greg Scharff 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 Greg Scharff 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 Greg Scharff 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.