

San Francisco Bay Conservation and Development Commission

Proposed Amendments to Commission Regulations, Title 14, Division 5, Chapter 15

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

Additions to Existing Text Shown in Underscore: Example

Chapter 15. Implementation of the California Environmental Quality Act

Subchapter 1. When the Commission is the Lead Agency

1. Amend Section 11501 to read:

11501. Categorical Exemptions.

When the Commission is the lead agency and the Executive Director has determined that the proposed activity is not statutorily exempt under California Public Resources Code Section 21080(b):

(a) Prior to filing an application for a Commission permit or to preparing the staff planning report on a planning matter, the Executive Director shall determine if the proposed activity is categorically exempt under California Public Resources Code Section 21084 and 14 California Code of Regulations Sections 15300 through 15333 from the necessity of preparing any environmental documentation.

(b) Projects for which the Commission issues administrative permits pursuant to Section 10601(a)(1), (3), (4), (5), (6), (7) or (8), or Sections 10601(b), (c), (d)(1), (d)(2) or (f) are usually categorically exempt under subdivision (a) of this section, provided that such projects will not be considered categorically exempt when they either (1) may have an adverse impact on an environmental resource or involve a hazard of critical concern or (2) may have a cumulatively adverse impact when considered with successively similar projects.

(c) If the Executive Director determines that the proposed activity is categorically exempt, he or she shall place a written statement of that determination and the basis for it in the appropriate file and shall include the fact of that determination and the basis for it in the application summary, in the staff planning report ~~on the amendment~~, or in the notice of hearing for the planning study, if one has been scheduled.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21000, 21080.5, 21084 and 21166, Public Resources Code.

2. Amend Section 11510 to read:

11510. Executive Director to Prepare Initial Environmental Assessment Information.

(a) When the Commission is the lead agency and the Executive Director determines that proposed activity is neither statutorily exempt nor categorically exempt, the Executive Director shall decide what information will be necessary to evaluate the possible environmental impacts of the proposed activity and to prepare an environmental assessment if necessary, the level of expertise required to prepare the assessment and to what extent the staff may need the assistance of a consultant either to prepare the entire assessment or to provide specific or technical reports to prepare or to help prepare part of the assessment.

(b) The proponent shall provide such information as requested by the Executive Director in time to allow the Commission staff to determine if the proposed activity may have a significant adverse environmental impact and, if the staff so decides, to prepare an environmental assessment before the Commission staff files the permit application, publishes the staff planning report ~~for the plan amendment~~, or publishes a notice for the other planning activity.

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

3. Amend Section 11511 to read:

11511. Determination of Significant Adverse Environmental Impacts and Preparation of an Environmental Assessment.

(a) When the Commission is lead agency and the Executive Director has determined that a proposed activity is not statutorily exempt and is not categorically exempt, he or she shall next determine if the proposed activity may have any individually or cumulatively substantial adverse impact on the physical environment.

(b) If the Commission is the lead agency and the Executive Director determines that a proposed activity is not statutorily ~~exempt, is not or~~ categorically exempt, ~~and but~~ will not have any significant adverse impact on the physical environment either individually or cumulatively, he or she shall place a written statement of that determination and the basis for it in the appropriate file and shall include the fact of that determination and the basis for it in the application summary, in the staff planning report ~~on the amendment~~, or in the notice of hearing for the planning study, if one has been scheduled.

(c) If the Commission is the lead agency and the Executive Director determines that the proposed activity is not statutorily exempt, is not categorically exempt, and may have a significant adverse impact on the physical environment either individually or cumulatively, the Commission shall prepare an environmental assessment that complies with Section 11521 and shall

include the assessment in the application summary, the staff planning report, or combined staff planning report and recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

4. Amend Section 11520 to read:

11520. Use of a Federal Environmental Assessment or Environmental Impact Statement as an Environmental Assessment.

(a) When a federal environmental assessment or environmental impact statement or its equivalent has been or will be prepared in time for the Commission to use it as an environmental assessment, the Commission may use it as an environmental assessment if it contains all the information needed in an assessment or if the Commission can supplement it so it will contain all the information needed in an assessment.

(b) If the Commission uses a federal environmental assessment or environmental impact statement or its equivalent as its environmental assessment, it should add or supplement a discussion of mitigation, growth-inducing impact, and energy conservation if the federal environmental assessment or environmental impact statement does not include an adequate discussion of these elements.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

5. Amend Section 11521 to read:

11521. Contents of an Environmental Assessment.

An assessment of the substantial adverse impacts of a proposed activity shall contain a summary of the following:

- (a) A brief description of the proposed activity;
- (b) all substantial, adverse environmental impacts that the proposed activity may cause;
- (c) all irreversible environmental impacts that the proposed activity may cause;
- (d) any feasible mitigation measures that would reduce such substantial adverse environmental impacts;
- (e) any feasible alternatives, including design alternatives, to the proposed project that would reduce such substantial adverse environmental impacts; and
- (f) such other information that the Executive Director believes appropriate.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

6. Add Section 11522 to read:

11522. Consultation.

(a) Upon completion of an environmental assessment, the Commission shall 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.

(b) Upon completion of an environmental assessment prepared in connection with a permit application, the Commission shall consult with such public agencies by distributing a copy of the environmental assessment with the application summary, distributed in accordance with subsection 10381(b) of these regulations, to all agencies listed in section 10360, all affected cities or counties, and any other responsible agencies identified by the Executive Director.

(c) Upon completion of an environmental assessment prepared in connection with a plan, plan amendment, or planning study, the Commission shall consult with such public agencies by distributing a staff planning report including the environmental assessment in accordance with subsection 11003(a) of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Sections 21080.5 and 21104, Public Resources Code.

7. Add Section 11523 to read:

11523. Notice of Availability of Environmental Assessment; Public Comments; Response to Comments.

(a) Upon completion of an environmental assessment prepared in connection with a permit application:

(1) The Executive Director shall post on the Commission's website a notice of availability of the environmental assessment and shall provide a copy of such notice by first class mail or email to any persons who have previously requested such notices in writing. The notice shall disclose: (i) a brief description of the proposed activity that is the subject of the permit application and its location; (ii) the starting and ending dates of the review period, which shall be for a period of not less than 30 days, during which the Commission will receive comments on the environmental assessment; and (iii) the date, time, and location of any public hearing to be held by the Commission or Executive Director on the environmental assessment and on the permit application if scheduled at the time of the notice. Any public hearing on the environmental assessment shall be held on or before the last day of the review period.

(2) The Executive Director shall prepare written responses to the significant environmental issues raised in any comments received during the review period including written comments and oral comments received at any public hearing. The Executive Director shall make copies of the written responses to comments available for review on the Commission's website at least 10 days prior to the Commission's consideration of the permit application that is the subject of the environmental assessment. In addition, the Executive Director shall make the written responses to comments available at the Commission meeting at which the Commission will consider the permit application that is the subject of the environmental assessment in accordance with subsection 10500(c) of these regulations.

(b) Upon completion of an environmental assessment prepared in connection with a plan, plan amendment, or planning study:

(1) The Executive Director shall make the environmental assessment available for review by distributing the staff planning report including the environmental assessment in accordance with subsection 11003(a) of these regulations. The Commission shall hold a public hearing on the proposed plan, plan amendment, or planning study not less than 30 days after distribution of the staff planning report in accordance with subsections 11003(a) and 11004(a) of these regulations.

(2) The Executive Director shall prepare and include in the staff planning recommendation written responses to all comments received on the proposed plan, plan amendment, or planning study, including comments on the environmental assessment, in accordance with subsection 11005(b)(1) of these regulations. The Executive Director shall distribute the staff planning recommendation, including the responses to comments on the environmental assessment, to all agencies, organizations, and persons who received the staff planning report and to anyone else who requested in writing to receive a copy of the staff planning recommendation in accordance with subsection 11005(c) of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Sections 21080.5, 21091, 21092, and 21092.2, Public Resources Code.

8. Add Section 11524 to read:

11524. Consideration of Environmental Assessment; Final Environmental Assessment; Commission Findings.

(a) When the Commission is the lead agency, prior to acting on a permit application, plan, plan amendment, or planning study, the Commission shall consider the materials generated pursuant to section 11520, if applicable, section 11521, and subsections 11523(a)(2) or 11523(b)(2), as applicable. The Commission shall approve the environmental assessment prior to or at the same time as it acts on the permit application, plan, plan amendment, or planning study. Upon adoption of the resolution approving the permit application, plan,

plan amendment, or planning study, the environmental assessment shall become final.

(b) The final environmental assessment shall include:

(1) The materials described in section 11520, if applicable, and section 11521;

(2) Comments on the environmental assessment and the written responses to comments prepared pursuant to subsections 11523(a)(2) or 11523(b)(2), as applicable;

(3) The Commission resolution approving the permit application, plan, plan amendment, or planning study;

(4) Any other documentation as the Commission may prescribe.

(c) If the environmental assessment prepared by the Commission identifies one or more significant environmental effects of the proposed activity, the Commission shall make any findings required by Public Resources Code section 21081 and Title 14 of the California Code of Regulations sections 15091(a) and 15093(b).

(d) If the Commission makes any finding as described in Public Resources Code section 21081(a)(1) and Title 14 of the California Code of Regulations section 15091(a)(1), it shall adopt a program for monitoring or reporting on the revisions it has required in the project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Sections 21080.5, 21081, and 21081.6 Public Resources Code.

9. Amend Section 11525 to read:

11525. Notice of Decision.

(a) The Executive Director shall file with the Secretary of the Resources Agency notice of the issuance of a permit for which the Commission has prepared an environmental assessment and acted as lead agency, in accordance with section 10524 of these regulations.

(b) The Executive Director shall file with the Secretary of the Resources Agency notice of the adoption of a plan or plan amendment for which the Commission has prepared an environmental assessment and acted as lead agency in accordance with subsection 11007(a) of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 21080.5, 29202, and 29520(a), Public Resources Code.

10. Amend Section 11531 to read:

11531. Selection and Retention of a Consultant.

~~(a)~~ In order to select a consultant to prepare or to help prepare an environmental assessment, the Executive Director shall:

~~(a)~~ ~~(1)~~ select three ~~(3)~~ consultants known to have the necessary expertise and obtain from each consultant an estimate of the ~~maximum~~ fees and costs that would be charged for the preparation of the assessment;

~~(b)~~ ~~(2)~~ after consulting with the applicant, and based on the estimates and previously submitted information about the consultant, choose a consultant ~~who will establish a fixed cost to be incurred in the preparation of~~ to prepare the assessment; and

~~(c)~~ ~~(3)~~ notify the applicant of the consultant selected and the amount of the estimated fees and costs;

~~(b)~~ The Executive Director may choose one of the following arrangements to retain a consultant to prepare or help to prepare an environmental assessment:

~~(1)~~ enter into an agreement with the selected consultant on behalf of the Commission; or

~~(2)~~ execute an agreement or memorandum of understanding with the applicant to govern retention and payment of the consultant, provided that the agreement or memorandum of understanding specifies that Commission staff shall manage the consultant, including communications between the applicant and the consultant.

~~(d)~~ ~~(c)~~ Notwithstanding the estimated fees and costs provided by the selected consultant, the applicant shall be responsible for the payment of all consultant fees and costs to prepare or help to prepare the environmental assessment.

~~(d)~~ If the Executive Director enters into an agreement with the consultant on behalf of the Commission, within 10 days of receiving notice of execution of the agreement, the applicant shall deposit the amount of the fees and costs estimated by the consultant ~~environmental assessment fees submitted by the applicant~~ in an account that the Commission maintains for such purposes;

~~(e)~~ enter into an agreement for preparation of the assessment or part of the assessment; and

~~(f)~~ pay The Executive Director shall authorize payment of the consultant from this account according to a mutually agreed on schedule of payments as set forth in the agreement, usually in installments of twenty-five percent (25%) of the total fee, with twenty-five percent (25%) withheld until the Commission has taken final action on the assessment. After completion of the environmental assessment, the Executive Director shall refund to the applicant any part of the estimated consultant fees and costs not actually charged by the consultant. If the estimated fees and costs are exceeded prior to completion of the environmental assessment, the consultant shall submit monthly billing

statements to the Executive Director and the applicant for additional fees and costs as incurred, and the applicant shall pay each bill within 30 days of receipt.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21080.5, 21082.1, and 21089, Public Resources Code.

11. Amend Section 11532 to read:

11532. Consultant Fees or Costs in Excess of Estimates.

The Commission will not be responsible under any circumstances for consultant fees or costs that exceed the previously-determined ceiling fees and costs estimated by the selected consultant. The consultant should consider this fact when he or she estimates the fees and costs involved, and every contract for consultant assistance into which the Commission enters shall include a provision to this effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 21080.5, 21082.1, and 21089, Public Resources Code; and Section 66632(a), Government Code.

12. Amend Section 11533 to read:

11533 Relationship of Commission and Consultant.

Before using an environmental assessment prepared by a consultant, the Commission shall subject the environmental assessment to the agency's own review and analysis. The Commission through the Executive Director shall have final responsibility for the contents of any environmental assessment that is prepared with the assistance of a consultant. The Executive Director may modify, delete, or change any portion of any material prepared by a consultant, and every contract for consultant assistance into which the Commission enters shall include a provision to this effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 21080.5 and 21082.1, Public Resources Code.

13. Amend Section 11540 to read:

11540. Basic Commission Fees to Prepare an Environmental Assessment.

[a] In addition to any other fees, an applicant for a permit shall pay a basic fee of three hundred dollars (\$300.00) when the Commission prepares an environmental assessment to cover the costs of analyzing, processing, and mailing the assessment for the permit applicant. When the Commission is the lead agency and the Executive Director determines that an environmental assessment must be prepared, an applicant for a permit, plan, or plan amendment shall be responsible for paying, in addition to any consultant fees

and costs, the Commission's full costs of preparing, processing, and distributing the environmental assessment.

[b] After the Executive Director determines that an environmental assessment must be prepared, the Commission shall submit to the applicant a monthly bill for the actual costs, including overhead, incurred by the Commission and Commission staff during the preceding month for preparation of the environmental assessment.

(c) The applicant shall pay the bill submitted pursuant to subsection 11540(b) 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 environmental assessment until complete payment has been made.

(d) The Commission shall bill the applicant for all unpaid costs actually incurred in preparing, processing, or distributing the environmental assessment within 30 days after either: (1) the Commission and staff complete all work on, including Commission consideration of, the application; (2) the applicant formally withdraws the pending application, or (3) the applicant abandons the application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21089 and 29520(b), Public Resources Code.

14. Repeal Section 11541:

11541.—Preparation Fee.

~~In addition to any other applicable fees, an applicant for a permit shall pay a fee of five hundred dollars (\$500.00) to cover the costs to the Commission of preparing any environmental assessment for which the Commission needs no consultant assistance.~~

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

15. Repeal Section 11542:

11542.—Consultant Fees.

~~In addition to all other applicable fees, the Commission shall charge to the applicant a fee equal to the ceiling fee for the consultant that the Executive Director determined after consultation with the applicant based on the consultant's estimate provided, however, that the Executive Director shall refund to the applicant after completion of the preparation of the assessment any part of the consultant fee not actually charged by the consultant.~~

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

16. Repeal Section 11543:

~~11543.—Exception.~~

~~Whenever the Executive Director believes that the basic fee or the preparation fee does not reflect the actual cost to the Commission of analyzing or preparing required environmental documents, the Executive Director may reduce or increase the basic fee or the preparation fee by an amount not exceeding fifty percent (50%) of the normally required amount.~~

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

17. Repeal Section 11544:

~~11544.—When Environmental Fees Must Be Paid.~~

~~All applicable environmental fees must be paid by the applicant prior to the commencement of work on an environmental assessment by the Commission.~~

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

Subchapter 2. When the Commission is a Responsible Agency

18. Amend Section 11560 to read:

11560. Review and Comment on and Consideration of Environmental Documents.

(a) When the Commission is not the lead agency on any proposed activity, the Executive Director shall:

(1) respond to any request for consultation by the lead agency to assist the lead agency in preparing adequate environmental documents for the proposed activity;

~~(1)-(2) review any initial study, environmental assessment, negative declaration, environmental working papers environmental impact report, or environmental impact statement sent to him or her for consultation from the lead agency or the State Clearinghouse, determine what comments should be made on behalf of the Commission, and forward such comments to the lead agency and to the appropriate state agency for coordinating state comments;~~

~~(2) require an applicant to file prior to filing the BCDC application a single-spaced, typewritten summary of any environmental documentation already prepared by the lead agency on paper 8 1/2 x 11 inches pages in size. The summary shall indicate significant environmental issues raised during the~~

~~review period or at the public hearing and the disposition of such issues, including any revision to the proposed project to mitigate its impacts or any objections, and a detailed explanation of why the applicant believes the Commission should approve the project when any objection remains unresolved or any recommendation has not been adopted. The summary shall also include the name, address, and telephone number of the governmental agency preparing or certifying the document, the date of certification, and the name, address, and telephone number of all persons who reviewed the document, and any criticism and any recommended changes they made; and~~

~~(3) include consider the environmental effects of the proposed activity as described in any certified environmental impact report, adopted negative declaration, environmental assessment, or environmental impact statement, or certified negative declaration that is less than ten (10) pages in length, or summary thereof if the EIR, EIS, or negative declaration is longer than ten (10) pages in length, prepared or provided by the lead agency and summarize the environmental information contained therein as relevant to Commission's statutory responsibilities with in the staff application summary of and/or staff recommendation on the permit application or in the staff planning report on a planning matter; and~~

~~(4) include the executive summary, if any, of any certified environmental impact report, adopted negative declaration, environmental assessment, or environmental impact statement prepared or provided by the lead agency with the application summary on the permit application or with the staff planning report on a planning matter.~~

(b) The Commission may in its discretion hold a public hearing on any environmental document submitted to it and may direct the staff to make whatever comments or to obtain whatever additional information the Commission deems appropriate.

(c) If a lead agency has certified an environmental impact report for a proposed activity that identifies one or more significant environmental effects and the Commission approves an application for the proposed activity, the Commission shall make any findings required by Public Resources Code section 21081 and Title 14 of the California Code of Regulations sections 15091(a) and 15093(b).

(d) If the Commission makes any finding as described in Public Resources Code section 21081(a)(1) and Title 14 of the California Code of Regulations section 15091(a)(1), it shall adopt a program for monitoring or reporting on the revisions it has required in the project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.

NOTE: Authority cited: Section 66632(f), Government Code; and Sections 21082 and 29201(e), Public Resources Code. Reference: Sections 21080.4, 21080.5, 21081, 21081.6, 21104, 21153, Public Resources Code.