

§ 753.5. Collection of Filing Fees.

(a) Fee Schedule (also see subsection 753.5(g) of these regulations).

(1) Statutorily Exempt Projects: All projects statutorily exempt from the provisions of the California Environmental Quality Act shall incur no fee. (See sections 15260-15285, title 14, CCR.)

(2) Categorically Exempt Projects: All projects categorically exempt by regulations of the Secretary for Resources from the provisions of the California Environmental Quality Act shall incur no fee. (See sections 15300-15333, title 14, CCR.)

(3) No Effect Projects: All projects found by the department to have no effect on fish and wildlife resources shall incur no fee. (See subsections 753.5(c) and (d) of these regulations.)

(4) Negative Declaration Projects: All projects for which a negative declaration has been prepared pursuant to section 21080(c) of the Public Resources Code shall incur a fee of \$1800, as adjusted annually pursuant to section 711.4 of the Fish and Game Code. Current fees are available on the department website and may be obtained by contacting the department.

(5) Environmental Impact Report Projects: All projects for which an Environmental Impact Report (EIR) has been prepared pursuant to section 21151 of the Public Resources Code shall incur a fee of \$2500, as adjusted annually pursuant to section 711.4 of the Fish and Game Code. Current fees are available on the department website and may be obtained by contacting the department.

(6) Certified Regulatory Programs: All projects subject to a certified regulatory program pursuant to section 21080.5 of the Public Resources Code shall incur a fee of \$850, as adjusted annually pursuant to section 711.4 of the Fish and Game Code. Current fees are available on the department website and may be obtained by contacting the department.

(7) Notwithstanding sections 21080.5 and 21081 of the Public Resources Code, a project shall not be operative, vested, or final, and local government permits for the project shall not be valid, until the filing fees pursuant to this section are paid (See section 711.4(c)(3) of the Fish and Game Code.)

(b) Parties Responsible for Payment of Fees.

Pursuant to subdivision 711.4(c) of the Fish and Game Code, all project applicants subject to the California Environmental Quality Act shall pay a filing fee for each project for which an EIR or negative declaration has been approved, and for projects subject to a certified regulatory program pursuant to section 21080.5 of the Public Resources Code. The following regulations apply to parties responsible for payment and collection of fees:

(1) Public Agencies Undertaking a Project: When a local, state, or regional public agency acts in its own proprietary capacity in undertaking a project, the local, state, or regional public agency shall be considered to be the applicant (section 15351, title 14, CCR) and be required to remit the fee.

(2) Private Entities or Special Districts Proposing Projects Subject to Environmental Review and Discretionary Approval by State or Local Government: When a state or local land use authority is granting a license, permit, or entitlement to a project applicant, the private entity or special district shall be considered to be the applicant and be required to remit the fee.

(3) A state agency collecting the filing fee shall remit the appropriate fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to section 21108 of the Public Resources Code.

(4) A local agency collecting the filing fee shall remit the appropriate fee to the county clerk at the time of filing a notice of determination pursuant to section 21152 of the Public Resources Code.

(5) Project applicants subject to a certified regulatory program pursuant to section 21080.5 of the Public Resources Code shall remit the appropriate fee to the department before the filing of the notice of determination or equivalent final approval.

(c) Fee Exemption for No Effect Projects.

Notwithstanding subsections 753.5(a)(4), (5), and (6) of these regulations, if the department finds that a project has no effect on fish and wildlife, then upon department issuance of a no effect determination no filing fee shall be paid for that project.

(1) Department Determination of No Effect:

(A) The lead agency or project applicant should pre-screen their project using the factors in subsection 753.5(d) of these regulations prior to submitting a no effect determination request for purpose of receiving an exemption from filing fees. If a lead agency or applicant anticipates their project will have no effect on fish and wildlife, the appropriate department regional office shall be contacted, and the corresponding CEQA document shall be provided along with a written request containing a site description, project description, description of the project location, aerial and/or topographic map of the project site, State Clearinghouse number or county filing number if applicable, and applicant contact information. Documents submitted in digital format are preferred (e.g. compact disk). The written request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. No effect determination requests submitted to the department should include sufficient documentation to support a no effect determination. If insufficient documentation is submitted to the department for the proposed project, a no effect determination will not be issued. The no effect determination in this section is solely for the purpose of determining filing fees.

(B) For projects the department determines will have an effect on fish and wildlife, no additional actions are required by the department and filing fees shall be due and payable at the time the notice of determination is filed for EIRs and negative declarations, or filing fees shall be due and payable before the filing of a notice of determination or other final approval for a project subject to a certified regulatory program.

(C) If the department determines a project will have no effect on fish and wildlife, the department shall provide a written no effect determination to the applicant. The applicant shall retain the no effect determination and file it in lieu of the fee at the time the notice of determination is filed, or before equivalent final approval is filed for projects subject to a certified regulatory program.

(2) Upon receipt of the no effect determination for a specified project, the lead agency shall retain the original no effect determination as part of the environmental record and file two copies of the no effect determination with the county clerk along with the notice of determination as provided in section 21152 of the Public Resources Code pertaining to local agencies, or with the Office of Planning and Research as provided in section 21108

of the Public Resources Code, pertaining to state agencies.

(d) Projects Eligible for a No Effect Determination.

For the purpose of assessment of CEQA filing fees, any project that causes a physical disturbance to habitat is not eligible for a no effect determination regardless of the magnitude of effect or the size of project. A filing fee is required regardless of whether the effect to habitat is considered positive or negative. The department may determine that a project would have no effect on fish and wildlife if all of the following apply:

(1) The project would not result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.

(2) The project would not result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.

(3) The project would not result in or have the potential to result in the removal of vegetation with potential to support wildlife.

(4) The project would not result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.

(5) The project would not result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

(e) Collection Procedures for County Clerks.

(1) Applicants for projects with a local or regional lead agency shall remit to the county clerk on or before the filing of a notice of determination (see Public Resources Code, section 21152) either a department- issued no effect determination or the appropriate fee required under Fish and Game Code section 711.4(d) as adjusted annually. Without the appropriate fee or no effect determination, the notice of determination shall not be accepted by the county clerk and shall be returned to the lead agency with notification of fee requirement and a statement that, pursuant to section 21089(b) of the Public Resources Code, the project "is not operative, vested, or final until the filing fees ... are paid."

(2) In the event of nonpayment of the documentary handling fee authorized under Fish and Game Code, section 711.4(e), the county clerk shall have the discretion to not accept a filing until the handling fee is paid. Upon rejection of any filing under this subsection, the clerk may return the notice of determination to the lead agency with notification of fee requirement.

(3) Only one fee shall be paid per project unless the project is tiered or phased, or separate environmental documents are required (Fish and Game Code section 711.4(g)). Separate environmental documents include EIRs, negative declarations, subsequent EIRs and negative declarations, and supplements to EIRs. Only one fee is required when an existing certified EIR is used for multiple project approvals that would result in no additional effect to fish and wildlife. An additional filing fee is required if approval of any separate environmental document would result in an effect on fish and wildlife not previously addressed in a certified EIR, Master EIR, Program EIR, Staged EIR, or General Plan EIR.

(4) In the event a project requires multiple notices of determination by lead and/or responsible agencies, the fee shall be paid at or before the time the lead agency files the first notice of determination. Upon payment, the applicant shall retain the receipt for

presentation to any additional agencies whose approval may be required. A copy of that receipt shall be attached to any additional notices of determination that may be required for the same project. The copy shall suffice as documentation that the fee was paid.

(5) All checks shall be payable to the county where the filing is made. The county in turn will deposit the checks into its treasury and remit the fees collected to the State Treasurer on a monthly basis.

(6) To maintain accountability and to track all project applications, the department has developed press numbered and fill and print Environmental Filing Fee Cash Receipts (Form FG 753.5a - 07/08). These cash receipts, or a department approved alternative cash receipt, shall be used in conjunction with county clerk collection procedures. The original receipt shall be issued to a project applicant when payment is made in conjunction with filing a notice of determination (Public Resources Code, section 21152). The first copy shall be submitted to the department on a monthly basis. Remaining copies shall be retained by the county (one for the lead agency and one for the county clerk).

(7) Alternative receipts must provide the same information as Form DFG 753.5a, contain four copies for distribution, and be submitted to the department for approval prior to use. The department shall issue a letter of approval to the requesting county if the alternative receipt contains all required information.

(8) For projects that are statutorily or categorically exempt (sections 15260-15285, or 15300-15333, title 14, CCR) and are filed with the county clerk, the Environmental Filing Fee Cash Receipt shall be completed and attached to the notice of exemption in order to ensure accountability in section 753.5(e)(6) above. The cash receipt shall indicate "project that is exempt from fees." If a documentary handling fee of \$50.00 is charged by the county clerk, the receipt shall so indicate.

(9) For projects that the department has found to have no effect on fish and wildlife, it is mandatory that a copy of the no effect determination, signed by an authorized representative of the department, be attached to the notice of determination.

(10) Within 30 days after the end of each month in which the filing fees are collected, each county shall summarize and record the amount collected on the monthly State of California Form No. CA 25 (TC 31) report (available from State Controller's office) and remit the amount collected to the State Treasurer. **IDENTIFY THE REMITTANCE ON THE STATE OF CALIFORNIA FORM NO. CA 25 (TC 31) AS "ENVIRONMENTAL DOCUMENT FILING FEES" PER FISH AND GAME CODE, SECTION 711.4. DO NOT COMBINE THE ENVIRONMENTAL FEES WITH THE STATE SHARE OF FISH AND GAME FINES.** The following documents shall be mailed by the county clerk to the Department of Fish and Game, Accounting Services Branch, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, on a monthly basis:

(A) A photocopy of the monthly State of California Form No. CA 25 (TC 31);

(B) Department copies of all cash receipts (including all voided receipts);

(C) A copy of all no effect determinations;

(D) A copy of all notices of determination filed with the county during the preceding month; and

(E) The name, address and telephone number of all project applicants for which a notice of determination has been filed. The address provided must correspond with a physical location locatable by the post office and county assessor's office. If this information is

contained on the cash receipt filed with the department under section 753.5(e)(6) above, no additional information is required.

(f) Retention of Records.

In order to ensure that records are available for department audit and accountability purposes, the documents required by these regulations (section 753.5(e)(10)(A) through (E)) shall be retained for a period of 12 months. The county clerk shall make available to the department and its representatives, for purposes of inspection and review, any and all of its books, papers, documents and other records. The aforesaid records shall be available for inspection and review during regular business hours.

(g) Cost Recovery by County Clerks.

(1) The county clerk is authorized pursuant to Fish and Game Code section 711.4(e) to charge a documentary handling fee for each environmental document received by the clerk pursuant to Public Resources Code section 21152.

(2) If the county is acting in its capacity as a "lead agency" and the cost of complying with these filings and remittance activities exceeds \$50.00 per document, the county clerk is authorized under Public Resources Code section 21089(a) to charge and recover the estimated costs incurred by the clerk at the time the lead agency files the notice of determination or exemption as required under Public Resources Code, section 21152. If collected at the same time as environmental filing fees, these costs may be identified on the cash receipt filed with the department under section 753.5(e)(6).

(h) Collection Procedures - Statutory Assessment.

(1) Unpaid Fee Defined - An unpaid fee shall for the purposes of this regulation be defined as failure to remit the fees due under Fish and Game Code section 711.4(d) to the county clerk at the time of filing a notice of determination pursuant to Public Resources Code section 21152; failure to remit the fees due under Fish and Game Code section 711.4(d) to the Office of Planning and Research at the time of filing a notice of determination pursuant to Public Resources Code section 21108; or failure to remit the fees due under Fish and Game Code section 711.4(d) to the department for a certified regulatory program before the time of filing a notice of determination or other final approval pursuant to Public Resources Code section 21080.5.

(2) If the county clerk or Office of Planning and Research accepts a notice of determination without the required filing fee or no effect determination, the unpaid fee is a statutory assessment and such assessment is final pursuant to Revenue and Taxation Code section 6757(b)(4) upon the date the county clerk or the Office of Planning and Research accepts the notice of determination or approval.

(3) The department may actively audit counties and bill applicants directly for unpaid fees.

(4) Enforceable Lien - Upon non-payment of the Environmental Filing Fee as required under Fish and Game Code section 711.4(d) by any person as defined under Revenue and Taxation Code, section 6005, the amount of the liability including penalties, interest, and any costs shall thereupon be a perfected and enforceable statutory lien subject to Chapter 14 commencing with section 7150 of the Government Code.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Sections 702 and 711.4, Fish and Game Code. Reference: Sections 702, 710.5 and 711.4, Fish and Game Code.

HISTORY

1. New section filed 1-22-91 as an emergency, operative 1-22-91 (Register 91, No. 10). A Certificate of Compliance must be transmitted to OAL by 5- 27-91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-22-91 order with amendments transmitted to OAL 6-20-91 and filed 6-20-91 (Register 91, No. 42).
3. Amendment of section and repealer of forms DFG 753.5 and DFG 753.5a filed 6-16-2009; operative 7-16-2009 (Register 2009, No. 25).