

## California Department of Fish and Game Process for No Effect Determinations

### INTRODUCTION

The California Department of Fish and Game (Department) imposes a filing fee on projects subject to the California Environmental Quality Act (CEQA) (Fish and Game Code section 711.4). Filing fees are collected to defray the costs of managing and protecting California's wildlife<sup>1</sup> resources. The Department is responsible for administering the filing fee program pursuant to Fish and Game Code section 711.4 and California Code of Regulations, title 14, section 753.5.

On September 29, 2006, Senate Bill 1535 was signed into law increasing filing fees collected by the Department, and requiring the Department to adjust the fees annually pursuant to Fish and Game Code section 713. The annual fee adjustments are based on changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce. Senate Bill 1535 also eliminated the former fee exemption for projects with a "de minimis" effect on fish and wildlife and replaced it with a fee exemption for projects that have "no effect" on fish and wildlife. These changes became effective on January 1, 2007.

The CEQA filing fee will be waived if a project will have no effect on fish and wildlife (Fish & G. Code § 711.4, subd. (c)(2)(A)). This document summarizes the revised regulations promulgated by the Department (Cal. Code Regs., tit. 14, § 753.5 et seq.) and outlines the process the Department uses in making a no effect determination pursuant to those sections. Projects that are statutorily or categorically exempt from CEQA are not subject to the filing fee, and do not require a no effect determination (Cal Code Regs., tit. 14, §§ 15260 -15333; Fish & G. Code § 711.4, subd. (d)(1)). Regional Department environmental review and permitting staff are responsible for determining whether a project within their region will qualify for a no effect determination and if the CEQA filing fee will be waived.

The no effect determination is made solely for the purpose of determining filing fees, and is not part of the assessment a lead agency makes under CEQA (Cal. Code Regs., tit. 14, § 753.5, subd. (c)(1)(A)). Lead agencies continue to be responsible for determining whether projects will have potentially significant environmental effects, including potentially significant effects on biological resources.

### NO EFFECT DETERMINATIONS

For the assessment of CEQA filing fees, a project that causes *any* disturbance to the habitat on which fish and wildlife may depend, or causes direct harm to fish and wildlife is considered to have an effect on fish and wildlife. A filing fee is required regardless of project size, magnitude of the effect, or whether the effect on the environment is considered positive or negative (Cal. Code Regs., tit. 14, § 753.5, subd. (d)).

The Department may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

- The project would not result in or have the potential to result in harm, harassment, or take<sup>2</sup> of any fish and/or wildlife species.

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

(Cal. Code Regs., tit. 14, § 753.5, subd. (d).)

If the Department determines that a project meets all of the above conditions, it may qualify for a no effect determination.

### **PAST NO EFFECT PROJECT EXAMPLES**

The Department estimates that only a small fraction of all projects with a Negative Declaration (ND), Mitigated Negative Declaration (MND), or Environmental Impact Report (EIR) would qualify for a no effect determination. The Department makes each no effect determination on a case-by-case basis. The Department has previously found the following types of projects to have no effect on fish and wildlife:

- Development and redevelopment in highly urbanized or industrialized settings, typically within existing footprints, and demolition and rebuilding at sites where the project did not affect nearby animals, bat roosts, nesting birds, and other resources.
- Minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment.
- Minor modifications to existing structures including addition of a second story to single or multi-family residences.
- Approval of administrative regulations, school or special district redistricting, and air quality improvement plans subject to CEQA that did not authorize activities that could cause effects on fish and wildlife, or physical alterations to the environment.

A proposed project's similarity with the example projects above should not be used as justification for a no effect determination.

### **DEPARTMENT DETERMINATION**

As stated in the revised regulations, the lead agency or project applicant should pre-screen their project for the above considerations prior to submitting a no effect determination request (Cal. Code Regs., tit. 14, § 753.5, subd. (c)(1)(A)). If a lead agency or applicant anticipates their project will have no effect on fish and wildlife, the appropriate Department regional office should be contacted. The corresponding CEQA document must be provided to the appropriate Department regional office along with either: 1) a No Effect Determination Request Form (Attachment A); or 2) a written request containing equivalent information. (Cal. Code Regs., tit. 14, § 753.5, subd. (c)(1)(A).) The 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. Documentation should include 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, and applicant contact information. Documents submitted in digital format are preferred (e.g. compact disk). If insufficient documentation is submitted to the Department for the proposed project, a no effect determination will not be issued.

### ***Effect***

If the Department determines a project has the potential to affect fish, wildlife, or habitat, the lead agency and/or project applicant will be notified that a no effect determination will not be issued. For local lead agencies, a CEQA filing fee for the project will be due and payable to the county clerk when the Notice of Determination (NOD) is filed.

### ***No Effect***

If after reviewing the CEQA document and written no effect determination request the Department determines a project will not have a potential effect on fish, wildlife, or habitat, then the Department will provide the project applicant a written no effect determination. The lead agency or applicant shall retain the written determination and file copies with the county clerk. For local lead agencies, the no effect determination may be used in lieu of a CEQA filing fee when the NOD is filed with the county clerk. Only a Department-issued no effect determination may be accepted in lieu of the CEQA filing fee. For all projects, a no effect determination, receipt of previous payment for the same document, or the appropriate filing fee is required at or before the time the NOD is filed by the lead agency.

## **STATE LEAD AGENCIES AND CERTIFIED REGULATORY PROGRAMS**

Instead of submitting filing fees to the county clerk, projects with state lead agencies or projects subject to certified regulatory programs are required to submit filing fees to the Office of Planning and Research or the Department, respectively. State lead agencies collecting filing fees are required to submit a Department-issued no effect determination or the appropriate filing fee to the Office of Planning and Research at the time the NOD is filed (Fish & G. Code § 711.4, subds. (d)(2) & (3)). Lead agencies for projects subject to a certified regulatory program are required to submit a Department-issued no effect determination or the appropriate filing fee to the Department before the time the NOD or equivalent approval is filed (Fish & G. Code § 711.4, subd. (d)(4)).

## **ADDITIONS AND CHANGES TO A PREVIOUSLY APPROVED PROJECT**

Only one filing fee shall be paid for each project unless the project is tiered or phased, or separate environmental documents are required (Fish & G. Code § 711.4, subd. (g)). For the purpose of assessing filing fees, separate environmental documents may include EIRs, NDs, subsequent EIR and NDs (Pub. Resources Code § 15162), and supplements to EIRs (Pub. Resources Code § 15163). Addenda are not considered to be separate environmental documents when assessing filing fees, and therefore fees will not be collected if an NOD is filed for an addendum. (Cal. Code Regs., tit. 14, § 735.5, subd (e)(3).) A 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. (Id.) CEQA filing fees must be paid at the time of filing if: 1) changes have been made to a previously approved project that would result in an effect on fish and wildlife or changes to the character or degree of effects on fish and wildlife; 2) the project is tiered, phased, or a separate environmental document has been prepared; or 3) a NOD is being filed. (Fish & G. Code § 711.4, subd. (g); Cal. Code Regs., tit. 14, section 753.5, subd. (e) (3) & (4).) If changes have been made to a previously approved project that would not result in an effect to fish and wildlife or a change to the character or degree of effect to fish and wildlife, a Department-issued no effect determination is necessary at the time of NOD filing.

### **CEQA FILING FEES**

Current CEQA filing fees become effective on January 1 of each year. Annual filing fee adjustments are made available on the following Department website prior to November 1 of the year before they become effective ([http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html)).

### **FOOTNOTES**

<sup>1</sup> “‘wildlife’ means and includes all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability...” (Fish & G. Code § 711.2.)

<sup>2</sup> “‘take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code § 86.)