Attachment A
Discussion

Direction Related to Land Use Fees
REF130022

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ATTACHMENT A
DISCUSSION

The County Resource Management Agency (RMA)-Planning and some of the land use departments are currently taking a comprehensive look at some of the land use permit application fees. Through actions taken by the Board of Supervisors on May 7, 2013, a few fee changes were adopted for Fiscal Year 2013-14. In this hearing, staff is seeking direction on several topics as part of a more comprehensive review for Fiscal Year 2014-15.

As a guiding rule for this discussion, fees to process applications for land use entitlements cannot exceed the estimated reasonable cost of providing the service. (Cal. Const. Art. XIII.C, §1(e); Government Code §66014.) If the fees meet certain standards, the fees are not a "tax" and are exempt from voter approval under section 1(e) of Article XIII.C of the California Constitution. The purpose of the land use permit application fees is to cover the staff cost of processing applications for land use permits and entitlements. The fees must not exceed the reasonable costs to the County of processing land use applications and associated permitting and monitoring activities. These fees may be imposed for a specific government service provided directly to the applicant that is not provided to those not charged provided the fees do not exceed the reasonable costs to the County of providing these services may be imposed for the reasonable regulatory costs to the County for issuing and administratively enforcing permits, and may be imposed as a condition of property development. .

Staff is seeking direction to return to the Board of Supervisors to present an analysis on the following topics:

- Establishing hourly rates
- Modifying the zoning and subdivision ordinances to eliminate *de novo* appeals to the extent legally permissible.
- Presenting a certain, more concise, list of individuals and organizations, or types of matters, that will qualify for fee waivers.
- Eliminating fee waivers for building permits.
- Establishing a separate fee for condition compliance, thereby reducing up front application fees.
- Restructuring the application request process.
- Considering options for recovering costs for preparing Community Plans and other planning documents and ordinances.

Hourly Rate

This section will introduce some options for establishing the hourly rate for permit fees and also seek direction related to separating out the condition compliance process as a separate step and fee.

The hourly rate for permit fees for RMA-Planning was established in 2008 and has been adjusted for inflation annually through July 1, 2012 per Board authorization (Resolution No. 132). The hourly rate is based on a fully-loaded formula that assumes a base planner rate and adds on related charges associated with support functions, management oversight, services and supplies, and infrastructure and facilities. However, in the past few years, many changes have occurred related to direct and indirect costs to the department. Four significant changes stand out:

- A substantial reduction in staff and related costs occurred between 2008 and 2011 due to the downturn in the economy.
- An increasing upturn in permit activity has occurred over the last two years.
- The creation of the Resource Management Agency has shifted some costs and staff that were previously within the Planning Department to the RMA.
- Substantial general liability costs have shifted to RMA-Planning.

These changes and an apparent floor to the economic downturn, and subsequent recovery, suggest that now is a good time to reassess county costs for permit processing. One of the significant factors in establishing the estimated costs for processing permits is the hourly rate.

A new hourly rate structure is proposed to be established, with separate hourly rates for two levels of staff: Planners and Land Use Technicians. This will create the potential to separate out Planning Department fees for condition compliance from upfront application fees and to reduce fees for design approvals and building permit review, which are a significant part of the workload of the Land Use Technicians.

Part of the comprehensive look at fees could include separating out condition compliance as a separate fee charged if a project is approved. This would reduce the upfront application costs for an applicant. A large amount of work related to condition compliance is being handled by Land Use Technicians, so two tier rate structure, reflecting the reduced hourly rate for Land Use Technicians, would lower the cost to applicants.

Options for the hourly rate:

- Establish a two-tier hourly rate structure with a Planner rate and a Land Use Technician rate.
- Retain the current single departmental hourly rate.

Options for Condition Compliance:

- Retain the current system where the cost of the application fee is calculated on assumptions for an average application, and which includes a component for condition compliance.[1]
- Separate out the fee for condition compliance. This is similar to what we already implement for mitigation monitoring. This option would include calculating a reduction in up front fees for the application process. Options to be researched for fees for condition compliance include the following:
    - Full cost recovery for complex projects (subdivisions, commercial, and industrial); flat fee for simple projects such as single family dwellings
    - Flat fee for all categories, but with a different fee for different classes of projects
    - Full cost recovery for all projects

[1] It should be noted that applications, except those that require a deposit, are generally subsidized. Application fee categories are based on a reasonable cost for the average application in that category. Some applications require more processing time and some less. Due to the overall subsidy for development applications, even the few projects that are denied are charged a reasonable fee for the amount of staff work completed, even without the condition compliance tasks being performed.

Recommendation:
Provide direction to staff to return with a two-tiered calculated hourly rate for RMA-Planning as part of the FY15 review, including the following approaches:

- If the Planner hourly rate is determined to be lower than the current calculated rate of $161.40, return to the Board as part of the normal budget process to reduce all permit fees to reflect the reduced hourly rate. This would reduce revenue for RMA-Planning.
- If the Planner hourly rate is calculated to be higher than the current rate of $161.40, retain the current rate. This would not affect revenue for RMA-Planning. Alternatively, the Board could direct staff to adjust all the fees to reflect the higher rate.
- As part of the analysis for FY15, RMA-Planning would undertake a comprehensive analysis of the number of hours needed by permit type.
- Direct staff to return with an analysis relating to separating out the Condition Compliance (post approval) process as a separate fee.

Appeals

The discussion below seeks direction on pursuing possible zoning ordinance changes related to the appeal process.

Appeal Process
The current zoning and subdivision ordinances require that appeals be heard as *de novo* hearings. That means that new information can be presented for the appeal. This ability means that staff must not only respond to the appeal points that may have been discussed at the hearing before the original decision-making body, but also must prepare responses to any new information presented since that hearing. Recent discussions at the Board of Supervisors have occurred relating to the potential elimination of the *de novo* appeal process. However, eliminating *de novo* hearings has significant pros and cons that need to be discussed.

Pro	Con
Less staff time and cost for appeal hearing	Inability for County to provide more evidence for the record
Clearer appeal packet for the public to understand	Reduced flexibility for appeal body to modify project
No changes to project design to increase time and costs	Appeals could turn into procedural disagreements, rather than a discussion on the project itself.
	Potentially add staff time (and cost) for County Counsel and management review on all public hearing items heard by all other land use hearing bodies

CEQA requirements must also be taken into account in any revision to County's appeal process. The County must allow for an appeal to the Board of Supervisors on all CEQA determinations, and CEQA determinations must be based on the Board's independent judgment and analysis. Therefore, any restriction on the *de novo* hearing process must still allow the Board to exercise its independent judgment based on substantial evidence. Since many land use permit appeals involve a CEQA determination, eliminating *de novo* review could be procedurally complex.

If the recommendation is to pursue looking at eliminating *de novo* hearings, staff will provide a more detailed analysis of the pros and cons. Options should be considered related to *de novo* hearings:

- Eliminate *de novo* hearings and limit appeals to only the information considered by the original hearing body (with the exception of appeals of CEQA determinations, which may require introduction of new evidence).
- Keep the ordinance as is, allowing all appeal hearings to be *de novo*.
- Create a two-tier system, where the appellant or applicant would have the option to pay the full costs for a *de novo* hearing.
- Retain *de novo* hearing but restrict the appeal to the project as proposed and heard by the original hearing body. If the applicant desired to submit a redesign of the project to address the issues raised by an appeal, the Board could dispense with the appeal and require that the applicant pay a new fee (for amended application) and return to the original decision-making body to consider the amended project.

Eliminating *de novo* hearings would mean that staff would assemble the information provided to the original hearing body and deliver that information, along with the written appeal and responses to the appeal and a draft resolution, to the Appeal Authority (generally the Board of Supervisors). Staff costs for the appeal should be lower, as the appeal is on the record that was before the original decision-making body, but staff work would still be substantial related to preparing the resolution responding to the appeal, as discussed below. This option would lead to less flexibility for the Appeal Authority to modify a project or add important information to the findings and evidence. Some jurisdictions that have this process require that the appellant submit a transcript of the original hearing with the filing of the appeal, or pay the County to have the transcript prepared. Preparation of the transcript is itself a cost that would have to be borne by either applicant or appellant and would add time to the process.

Maintaining *de novo* hearings would mean that staff would assemble a new hearing packet, including much of what was considered by the original decision-making body, but not including transcripts of the hearing(s), as is done today. This option allows staff to provide a new or expanded analysis of the project, including the appeal allegations, if necessary. This option allows more flexibility in that the Appeal Authority can consider modifications to the project from what was considered by the original decision-making body; however, another option, as outlined above, is to retain the *de novo* standard of review, but require applicant to amend its application and return to the original hearing body if the applicant redesigns is project between the time of the original hearing body decision and the hearing on appeal.

For either procedure, staff would prepare a resolution, which would respond to the appeal, for the Board's consideration. Preparation of these resolutions takes the bulk of staff time to prepare. Eliminating the *de novo* hearing would eliminate the preparation of a new detailed Staff Report and the attachments. Instead, the Appeal Authority would receive the appeal, original report packet, transcript of the original decision-making body's hearing, and a new draft resolution. As stated above, if the Board wants us to pursue this as an option, we will provide detailed information on the pros and cons.

See, also, correspondence from Jane Haines (Attachment D) relating to the appeal fee and the appeal process.

Recommendation
Staff is seeking direction from the Board of Supervisors. A change in the process would require preparation of an ordinance amending Titles 20 and 21 and hearings at the Planning Commission and Board of Supervisors on the draft ordinance. The goal would be to have a new ordinance in place, should that be the direction, in time for FY15. Staff would return with a discussion on the options described above, if so directed by the Board of Supervisors.

Fee Waivers

The Board adopted Resolution Nos. 2000-342 and 2012-227 (Attachments B-1 and B-2), which established a list of qualifying categories of individuals or groups for which fees for building permits, discretionary permits, and land use appeals can be waived by the Director of Planning or Chief Building Official. The Board-adopted fee waiver resolution authorizes the Director of Planning or Chief Building Official to waive the fee if the person/entity requesting the waiver of fees meets at least one of enumerated criteria. Under the policy, requests not meeting the criteria are to be heard by the Planning Commission. The Board of Supervisors added a new category to the list last year—a fee waiver for individuals unable to afford the appeal fee due to financial condition. The Board also clarified that appeals from the Director's/Chief Building Official's decision on any fee waiver request would be considered by the Appropriate Authority considering the appeal. From research staff has done in discussions with other county Planning Directors, Monterey County seems to have one of the more generous fee waiver policies in the state, although this conclusion is based on information provided by only a few counties.

Some practical difficulties arise from the currently adopted procedure. The first is that taking a fee waiver request to the Planning Commission is very inefficient, as even more staff time is spent on an application that may have all its fees waived, resulting in even higher costs for an application where a fee waiver is requested. The consequence is an even higher County general fund subsidy for such permits. The second issue is that applicants have to pay the fee with an application (development or appeal) until the fee waiver request is acted on. For those that can't afford the fee, applying becomes impractical, and additional staff time is required to process refunds or address situations where the applicant/appellant resists paying the fee upfront. Third, the Board policy does not set criteria to guide the determination of the Planning Commission (or other Appropriate Authority hearing an appeal of a fee waiver determination) as to whether a fee waiver is appropriate. They tend to look at whether the circumstances of that case enhance services to the public, outweighing the loss of revenue, which is then subsidized by the public through the fee waiver.

The total amount of fees which were waived per year (calendar) for planning permits is as follows:

		Number of Waivers
2010	$145,452.65	19
2011	$227,337.96	22
2012	$208,218.24	24

Building Permit fee waivers over that same three-year period totaled $46,417.58. This amount does not include subsidies adopted in their fee resolution, such as for solar energy systems.

Relating to Building Permit waivers, anyone constructing a project, including government agencies, has a significant budget for construction. Building Permit fees are established relative to the cost of the project, so a low cost project would not have significant fees. Any individual or group able to afford to construct facilities typically includes permit costs as part of the cost of constructing the project.

The current fee waiver policy, authorizing waivers for a widespread disaster, would have a devastating impact on the County General Fund when a widespread disaster occurs. Fee waivers for natural disasters can be considered on an ad hoc basis, as we did for the Basin Complex Fire.

In most jurisdictions, the body that oversees the budget, the Board of Supervisors, considers fee waiver requests individually and weighs the costs; however, that means that a large amount of work could potentially be set before the Board of Supervisors. A short defined list of qualifying projects could eliminate the need to set a fee waiver for a hearing, which would reduce fairly significant staff costs associated with preparing a report and attending a hearing.

Some counties separately fund fee waivers. The amount is backfilled to the departments losing the fee, from the General Fund, not absorbed by the individual department budget. The reason for this is that the department still needs the staff to do the work, so the revenue is needed to fund staff costs. The loss of revenue from Planning permits fee waivers alone is equal to more than two FTE professional staff members in the land use departments.

Recommendation
Direct staff to return to the Board of Supervisors with a more precise and concise list of categories for which fees are determined waived by the Director of Planning or Building Official. This process would eliminate fee waivers not meeting the criteria. Fee waivers would thus not be heard by either the Planning Commission or the Board of Supervisors, except by way of an appeal process. Also, staff is recommending that fee waivers for building permits be eliminated from the fee waiver resolution. In addition, with the reduction in the appeal fee, staff recommends that fee waivers for appeals also be eliminated. This would increase cost recovery for the land use departments.

An option would be to have all fee waiver requests heard by the Board of Supervisors. In jurisdictions where this occurs, those Planning Directors have stated that they do not have a large number of requests, especially where the Board has generally not granted fee waivers. This approach would increase costs for RMA-Planning and County Counsel for the staff time to prepare the analysis and resulting staff reports and would take up a certain amount of Board meeting time. Staff recommends the approach of the Director of Planning making the determination based on a concise and precise list because it would be more efficient than having all fee waivers heard by the Board.

As for funding the fee waivers, staff recommends that the amount not collected as a result of fee waivers be separately funded each year. That can be by separate allocation of funds to each of the departments or some other process that can be worked out with the County Administrative

Office. This would mean that fee waivers would not result in a reduction of operating funds for the land use departments, allowing them to have sufficient funding to provide the appropriate number of staff, but would have no effect on overall County revenue.

Permit Fees

Potential New Fees

Application Requests

Prior to applying for a Planning Permit, an applicant can take one of two paths: Application Request or Pre-Application Conference. For the vast majority of projects, an Application Request form and fee are submitted. A planner is assigned to review the conceptual plan submitted, analyze it against policies and the zoning or subdivision ordinance, and hand out an application checklist. The fee is currently $484.19 and is credited toward the application fee as long as an application is submitted within six months.

This process is fairly unique, especially in this area of the state; we know of no other county jurisdiction that has this type of process. The intent, when it was started approximately 20 years ago, was to ensure more "complete" submittals of applications. Although that is the result, a large number of applications are still deemed "incomplete" after submittal, as none of the land use departments other than Planning are involved with this pre-submittal process. The number of "complete" applications would increase if other departments are involved early in the process, but initial costs could be higher. These costs would then be credited toward the application.

Recommendation

Staff is currently working with the Permit Streamlining Task Force, which consists of professionals associated with the construction industry, to discuss possible options related to this process. Direct staff to return to the Board of Supervisors with options after those discussions, and discussions with other stakeholders, are complete. Each option would be explained in more detail with associated costs and expectations for changes in service.

This would not affect revenue for RMA-Planning for FY 13-14.

Long Range Planning and General Plan Implementation

We currently have several sources of revenue we use to fund staff and consultant costs for long range planning. The County has a surcharge (3% of permit fees) to help defray costs. We also try to identify other potential funding sources to help fund the work, such as obtaining grants or using County general fund to fund staff and consultant costs to prepare the plan and associated environmental documents. Funding sources are sometimes fully or partially obtained from the community (e.g., Moss Landing) or property owners where plan revisions are connected to a particular permit application (e.g., Pebble Beach Concept Plan). With these types of documents, the Board may choose to fund the cost through the grants, property owner contributions, through an increase in our existing surcharge, and/or the County General Fund and not fully recover costs of the plan preparation. As each plan is prepared, we will present options to either acknowledge that the plan was paid for through general fund revenue or grants, or apply a surcharge to permits within the plan area to pay for that planning effort.

The General Plan policies adopted in 2010 establish guidance and requirements for many new or modified programs, plans, and regulations in the non-coastal area of the County. County staff, in many departments, are working on these policy implementing programs, many of which set up procedures that require minimal to substantial staff work. As part of the presentation to the Board of Supervisors for adoption of each of these tasks, staff would recommend options for recovering the costs related to those tasks. In addition to General Plan implementation work, County staff has begun updates of the Local Coastal Program.

Some implementation or update work will result in an ordinance that may require a permit process. In those cases, staff will recommend an associated fee with any permits required by the ordinance. Other tasks outlined in General Plan policies require monitoring programs. As part of that work, staff will provide options to the Board of Supervisors to determine how these programs will be funded.

Recommendation
Provide overall direction to staff to either limit funding for these tasks to 1) using the existing surcharge (or modifying the surcharge), identifying grants, and using general fund revenue, 2) direct staff to provide recommended fees to the Board of Supervisors with the associated ordinances, plans, or programs as they are adopted, or 3) a combination. The effect on the budget for RMA-Planning and other land use departments would depend on the direction provided for cost recovery.

This would not affect revenue for RMA-Planning for FY 13-14.