

ATTACHMENT A DISCUSSION

This report addresses recommendations for a few changes and clarifications to fees for applications for land use permits and entitlements and associated planning, monitoring, and enforcement activities for FY 2013-14. A companion Board Report will be presented later this month to obtain direction from the Board of Supervisors for consideration of fees and related ordinances for next year (FY 2014-15) following a more comprehensive review of land use permit fees.

These fees are not a “tax” and are exempt from voter approval under section 1(e) of Article XIII.C. The land use fees cover a portion of the staff cost of processing applications for land use permits and entitlements, and the fees do not exceed the reasonable or actual costs of processing land use applications and associated permitting, monitoring, and enforcement activities. As explained in more detail below, these fees: are imposed for a specific government service provided directly to the applicant that is not provided to those not charged; are imposed for the reasonable regulatory costs to the County for issuing permits for property development and the administrative enforcement thereof; and do not exceed the reasonable costs to the County of providing these services.

A compilation of all the current fees is included as Attachment B. That attachment describes the fees in 2012 dollars and does not reflect a Consumer Price Index adjustment for next year.

Short Term (in effect for FY14)

Staff is presenting some clean up items for adoption by the Board of Supervisors and is seeking direction on other issues. The items for this year relate to considering the following: 1) a reduction in the appeal fee, 2) extending an automatic adjustment tied to inflation, 3) adjusting and clarifying fees for mitigation monitoring, research, parcel legality fee credits, clarifying when coastal zone appeal fees are charged, and defining applicable areas for well construction, reconstruction, and destruction fees (in Water Resources Agency report), and 4) establishing new fees for restoration, a reduced tenant improvement fee, a reduced fee for tract home production, charging for consultant time for oil and gas well applications, credit for pre-application meeting fees, an extension of a fee to maintain the Permit Tracking system, a fee for providing clearance for a change of commercial or industrial tenant, and fees applicable to construction of a new domestic or high capacity well. As indicated in the proposed revisions to the Articles of the County Master Fee Resolution, each department’s Article is proposed to be revised, but not all adjustments are proposed for every department, as the adjustments depend on whether particular permit category requires staff time.

Appeals

Appeal Fee

Almost all counties in the state subsidize the appeal cost, including Monterey County. Counties that require full cost recovery on land use permits generally require the appellant to pay a nominal appeal fee and charge the project applicant the remaining staff costs. Of those counties that subsidize the fee, Monterey County appears to have one of the highest fees in the state; however, it does not cover county staff costs in responding to appeals. An analysis by Monterey County land use departments in 2011 demonstrated that the cost of staff time for appeals is

approximately \$8602.78, but the fee (at that time) was set at \$4866.33. The County does not currently charge an appeal fee in the coastal zone (however, see separate discussion, below, on this topic).

The Board of Supervisors has received requests to lower the fee to provide more accessibility for the public to the appeal process and, therefore, the judicial process (see Attachment C, Correspondence from Jane Haines). Part of the argument made by the public for reducing the appeal fee is that the high fee is a barrier to judicial relief because anyone wishing to seek court relief on a decision must first bring an administrative appeal to exhaust administrative remedies. Some of the requests for a reduced appeal fee were made as a result of the Fort Ord Reuse Authority (FORA) linking its appeal fee to the County's fee. Since this issue first arose at the Board of Supervisors, FORA has disengaged their fee from ours, so the FORA fee is no longer a factor.

For the last three years, the County has averaged approximately 11 appeals per year, with an average of two being charged the appeal fee. Those that were not charged the fee either qualified for a fee waiver or were appeals of projects within the Coastal Zone. The average annual cost of appeals during those three years was approximately \$95,000 per year, with revenue of approximately \$10,000 per year, resulting in a County subsidy of approximately \$85,000 per year.

Options for Board consideration include the following:

- Require appellant to pay the entire cost of an appeal. The average cost of staff time for an appeal was calculated at \$8602.78. This option results in a loss of revenue of approximately \$78,000 per year, compared to the current loss of \$85,000 per year*, based on appeals for calendar years 2010-2012. This would increase revenue for RMA-Planning compared to the current situation, but can be expected to lead to increased expressions of concern from the public.
- Leave the fee as it is. This is the current situation and is legally permissible because the fee does not exceed the cost of the service being provided, but could continue to draw protests and requests for fee waivers, which themselves take up staff and decision-maker time. This option results in a loss of revenue of approximately \$85,000 per year*, the current situation, based on appeals for calendar years 2010-2012. This would not affect revenue for RMA-Planning.
- Reduce the appeal fee to an amount based on a reduced number of hours of staff time being compensated by the appellant. This results in a loss of revenue in proportion to the amount of hours set for the fee.

Staff will present other process options as part of the Companion Board item set for later this month.

- * This loss of revenue needs to be compared to the current loss of approximately \$85,000 per year. The subsidy could be reduced by changes in how coastal zone appeal fees are treated (see below) and by adjustments to the appeal process. Approximately one fee waiver for an appeal per year occurred over this period.

Recommendation

We do not recommend having an applicant pay the full cost of staff time for an appeal, with a nominal fee charged to an appellant, as neighbors can deliberately drive up the applicant’s permit costs and delay the project just by filing an appeal for a potentially nominal fee. We recommend that the Board of Supervisors reduce the fee to the “hard costs” related to filing an appeal, such as noticing, copying of staff reports, holding hearings, etc. and include a nominal number of staff hours charged to provide some cost reimbursement for the departments providing the work. County Counsel already had a low fee that did not cover its costs, and each of the other County land use departments has proposed reducing their fee. As indicated in a separate report on today’s Agenda for the Monterey County Water Resources Agency, the Water Resources Agency has not reduced its fee as the Agency does not receive any general fund revenue to subsidize applications or appeals. The fee charged would equal \$1557.84 (plus any applicable surcharge), as compared to the current appeal fee of \$5,146.81.

RMA-Planning	807.00	Environmental Health	130.00
RMA-Public Works	108.68	Water Resources Agency	365.83
County Counsel	146.33		

This results in a loss of revenue of approximately \$92,000 per year, compared to the current loss of \$85,000 per year*, based on appeals for calendar years 2010-2012. However, that loss can be partially offset by authorizing County staff to collect fees for coastal zone appeals that are not appealable to the Coastal Commission. Based on the same years of data, the loss of revenue would be approximately \$85,000 per year, resulting in no change in revenue than the current situation.

Appeals in the Coastal Zone

The County has traditionally not charged a fee for appeals of land use permit decisions in the Coastal Zone. Based on our research, staff is recommending that the County charge an appeal fee for those appeals involving coastal permits that are not appealable to the California Coastal Commission (CCC).

An appeal fee has consequences under the Coastal Act. For permits that are appealable to the Coastal Commission, if the County were to charge a fee for an appeal, the appellant would not be required to bring an appeal to the Board of Supervisors to exhaust administrative remedies and could instead file his/her appeal directly to the Coastal Commission, which cannot charge for an appeal.

Pursuant to Section 13111 of Title 14 of the California Code of Regulations (CCR) an appeal to the CCC of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two members of the Commission.

Section 13573 (Exhaustion of Local Appeals) provides, in relevant part:

“an appellant shall be deemed to have exhausted local appeals for purposes of Section 13111 and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the local appellate body (bodies) as required by the local government appeal

procedures; except that exhaustion of all local appeals shall not be required if any of the following occur:

[...]

(4) The local government jurisdiction charges an appeal fee for the filing or processing of appeals.” (California Code of Regulations, Title 14, Section 13573(a)(4))

Per these regulations, if the County were to charge an appeal fee for appeals of decisions on applications that are appealable to the Coastal Commission, appellants would not have to file an appeal with the County before filing an appeal to the Coastal Commission, thus potentially resulting in a loss of County control over those permits. However, not all land use entitlements in the Coastal Zone are appealable to the Coastal Commission. Section 20.86.080.A of the Monterey County Code cites the types and locations of development that are appealable to the CCC. Coastal Administrative Permits, Design Approvals, Variances and Tree Removal Permits -- except for project applications proposing development in certain locations --- are not appealable to the Coastal Commission. Therefore, appeals of Coastal Administrative Permits, Design Approvals, Variances, and Tree Removal Permits (except in certain locations where an appeal to the CCC is allowed) should be charged an appeal fee. This recommendation is consistent with Monterey County Code (MCC) section 20.86.030.D which states that no appeal fee shall be charged for Coastal Development Permits that are appealable to the California Coastal Commission.

Recommendation

Clarify in the fee schedule that an appeal fee is charged in the Coastal Zone for any appeal related to an application that is not appealable to the Coastal Commission. The result would be that an appeal fee would be applicable to appeals on most Administrative Permits, Variances, Design Approvals, and other minor permits unless the site is located within an appeal area. Over the last three years, an additional approximately \$35,000 would have been collected for appeals. The County Code already reflects this process; no code amendments are needed. This change in practice would increase revenue for the land use departments.

Annual Adjustments

For the last five years, pursuant to Board authorization in 2008, land use fees were adjusted each July 1 based on the Consumer Price Index (CPI) (US Department of Labor, Consumer Price Indexes, All Item Indexes, All Urban Consumers for the San Francisco-Oakland San Jose area) (Board of Supervisors Resolution 08-132). Inflation has been low over that period, which kept the adjustments from rising rapidly; the fees have gone up 7.6% over those five years. Departmental costs in Salaries and Benefits have increased by 10% over the same period.

FY10	0.8%	FY11	1.7%	FY12	2.8%	FY13	2.1%
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The automatic adjustment expires at the end of FY13 (June 30, 2013). Three options are presented for consideration:

- Initiate another period of automatic adjustments tied to the CPI.
- Keep the fees at the current level

- Do a comprehensive analysis of fees on a routine basis (e.g., biannually)

Keeping the fees at the current level would mean that revenue would lose ground to expenses over time, requiring further subsidy of permit processing costs. For RMA-Planning, the current revenue to cost ratio for permit processing is approximately 0.65:1. To calculate this ratio, we have subtracted out the other core services conducted by RMA-Planning and focused on just the time calculated for the Permit Processing Core Service.

To reassess the amount of fees each year, or biannually, would be an extensive process for the land use departments, and may require additional staff. In trying to keep costs as low as possible, we do not recommend such an undertaking be done so frequently as such work would add additional costs to the land use departments' staff costs.

Recommendation

Continue the current practice of a cost of living increase to all permit fees for three years. This would maintain current levels of revenue (in real dollars) for the land use departments. Alternatively, a one-year extension could be granted pending the comprehensive look at fees for next fiscal year. The annual adjustment does not result in fees exceeding the cost of providing the service as explained above.

Permit Fees

Staff is recommending some minor adjustments to fees for the current year to provide clarity on some application types, reduce some fees, ensure proper credit for subsequent applications, and recover all or a portion of permit related costs. The following fees are being recommended by staff for some or all of the constituent land use departments and are included in the department fee articles as applicable, as indicated in the proposed resolution (Attachment D):

Adjustments and Clarifications

Mitigation Monitoring

Mitigation monitoring varies greatly in the number of hours spent by staff. Some projects require monitoring for a short period, while some monitoring may occur over many years. Our current fee schedule charges a flat fee, except for projects with over 100 mitigation measures. In our experience, this fee system either requires significant overpayment or underpayment, depending on the project.

Recommendation

Staff is recommending that charges be based on actual time spent on mitigation monitoring. We are recommending that a tiered deposit schedule be adopted, based on the number of mitigation measures to monitor. This would be memorialized in the required Mitigation Monitoring Agreement, which would require collection of the initial deposit. However, the existing fee schedule allows that the deposit fee can be substantially reduced for staff to monitor the impact for a project with little impact on the environment or where the monitoring is simple and direct. This would likely increase long-term revenue for the land use departments and, most importantly, allows the dollars to be realized into the department budget for the year in which the staff work is done.

Research

When research questions by the public require more than approximately an hour of work, an hourly research fee is charged. The current fee schedule is not clear that the fee amount is a deposit and that the charge is per hour beyond the two hour deposit. Research can take a few minutes or many hours. As this category covers such a wide range of activities, no set fee can be established based on historical data.

Recommendation

Clarify that the research fee is a deposit and that an hourly fee will be charged for actual time worked. We do not charge a fee for research that takes less than one hour. This would not affect revenue for RMA-Planning.

Parcel Legality

Parcel Legality requests are sometimes converted to a Certificate of Compliance. The same type of staff work is done in either case, but the resulting documents are different. Certificates of Compliance cost more to process. The work done to determine parcel legality is a component of the work needed to determine whether a Certificate of Compliance can be issued. If an application for Parcel Legality is converted to an application for a Certificate of Compliance, the applicants' fee for a Parcel Legality determination should be credited toward the Certificate of Compliance fee.

Recommendation

Clarify the fee schedule to credit the Parcel Legality fee toward Certificates of Compliance if so desired by the applicant. This would decrease revenue (very slightly) for RMA-Planning and County Counsel.

Corner Record

Fees for Corner Record review is governed by Section 8773.2(e) of the Professional Land Surveyor's Act – charges for examining, indexing, and filing are not to exceed the amount required for recording a deed. Corner records consist of one 8 ½" x 11" sheet, front and back, for a total of two sheets.

Recommendation

Staff proposes the fee for Corner Record review shall be equal to Recorder's fee (\$15 for the 1st page + \$3 for each additional page) for a total of \$18.00.

New Fees

Subdivision Improvement Agreement Extension

Currently, no specific fee exists for processing extensions to approved Subdivision Improvement Agreements. These agreements establish the terms and timing for construction and completion of improvements. With the current economic conditions, applicants often need additional time to commence and complete construction, and Public Works has seen an increase in requests for extensions of these agreements. Agreement extensions require amendments to the subdivision improvement agreements and action by the Board of

Supervisors, and staff work involves preparing documents to present to the Board. Estimated staff effort for this work is eight hours.

Recommendation:

Staff proposes a fee of \$868.30, based on eight hours of staff effort at the current hourly rate for Public Works staff at \$106.68

Restoration Plan Review

Planning and Building Staff review several restoration plans per year. They are typically related to code enforcement cases. The County Zoning Ordinance first seeks restoration of a site when vegetation removal or grading has occurred. As an incentive toward restoration, staff does not apply a “double fee” (code enforcement fee) to restoration plan review, but does apply a double fee for subsequent permits when restoration is not pursued, where allowed by the Zoning Ordinance. The current fee resolution does not identify a separate fee category for restoration plans, so a deposit is gathered and a final bill sent after staff work is completed. A fee line in the resolution will help staff and the public understand the fee, as well as identify that this category, when associated with a violation, would not require a “double fee.” An analysis of restoration plans for the last two years shows that application processing takes from five (5) hours to over 80 hours. The amount of issues and complexity can vary greatly depending on slope, biological resources, or erosion issues.

Recommendation

Staff recommends that the fee for restoration plan review be established on a time and materials basis with an initial deposit fee set at 12 hours for RMA-Planning staff. No other land use departments propose to charge a fee for restoration plans.

Alternatively, we could set up a two tiered restoration plan fee. Over the last couple years, half of the plan reviews took less than 20 hours of staff time, while the rest were generally substantially higher. This would not affect revenue for RMA-Planning.

Tenant Improvement—Interior Changes only

Currently, no specific fee exists for RMA-Planning for review of what is called a Tenant Improvement (TI), which generally is considered to be an interior remodel of a commercial or industrial tenant space. Oftentimes, no exterior work is needed, so RMA-Planning staff time is minimal, generally related to checking any land use resolution applicable to the property and ensuring that no change in use or exterior work is being proposed. With no specific fee identified, staff has been inconsistent about how this staff work is charged, and the public cannot estimate the cost without applying for a permit. With no tracking of this category of projects in the past, staff has been surveyed to determine the appropriate level of fee. The current estimated charge is typically one hour.

Recommendation

Staff is proposing a fee of ½ hour, reducing the fee from the current \$161.40 to \$80.70. This fee would be for the applications that take minimal work. Some require substantial effort to determine, especially when related to a change of use. In that case, we are proposing another process, outlined below (Change of Commercial or Industrial Tenant). This would decrease revenue for RMA-Planning.

Tract Home Plot Plan Review

Currently, no specific fee exists for RMA-Planning for reviewing tract home plot plans after model home plans have already been approved for a larger project, such as we see in our Specific Plan areas. Substantial RMA-Planning staff work is done for condition compliance and in checking the model home plans, but the sign off of the production (tract) homes does not require significant staff effort. With no tracking of this category of projects in the past, staff has been surveyed to determine the appropriate level of fee. The current estimated charge is based on an assumption of five hours of review.

Recommendation

Staff is proposing a fee of one hour, reducing the fee from the current \$806.98 to \$161.40. This could decrease revenue for RMA-Planning.

Change of Commercial or Industrial Tenant

Changes of commercial or industrial tenants within existing buildings require a discretionary permit unless the change is similar in nature or intensity to the old use (unless a General Development Plan or earlier discretionary permit authorized the new use). This is an area where the County Zoning Ordinance is significantly different than found in cities, where changes of use are not even considered if they move into an existing legal structure. The reason that County Ordinances require discretionary permit review, in general, is the lack of infrastructure in the unincorporated area. Most commercial or industrial areas are served by septic systems, with many served by wells rather than water systems. Certain assumptions related to traffic were also in place when the original use was established. Because the unincorporated area does not have the infrastructure typically found in cities, the Zoning Ordinances set up a system requiring a new discretionary permit for a new use that intensifies the land use.

Two significant issues related to change of use need to be resolved. The first is that oftentimes the burden for changing tenants is too large on the business if they need to obtain a discretionary permit. A commercial tenant going into a shopping center might need an Administrative Permit or Use Permit to move into an existing commercial space. These permits cost thousands of dollars and require substantial time processing. The second issue is that when a tenant does move into an existing space, whether because they are not intensifying use or because they did not check with the County, oftentimes they are moving into a space that does not meet building code or fire code standards for their type of occupancy.

The lack of a business license process increases the issues identified above. Business licenses would help to establish review by the County for a change of tenant to ensure that the use is proper for the zoning district and that the tenant space is classified correctly for the type of tenant. Staff is not recommending a business license program; however, a potential solution is to create a fee for staff review of a change of commercial or industrial tenant. It is intended that such a fee be fairly nominal, and that the clearance review be an over the counter type approach. Land Use Departments that would be involved would likely be Building Services, RMA-Planning, Environmental Health, and local fire district. The clearance review would provide information that the site is appropriate for the new use and assure that no additional permits or permit amendments would be required. This would allow the review to occur at a fixed known (and lower) fee rather than the research fee that can currently be charged.

Recommendation

Staff recommends that a fee be adopted for the clearance review of a change of commercial or industrial use. This fee would only be charged when no building permit is being sought for the change of use. When a building permit is applied for, staff would do this work as part of that review. The fee charged would equal \$210.70 (plus any applicable surcharge):

RMA-Planning	80.70	Environmental Health	130.00
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This would increase revenue for the above land use departments, as there is no current formal process, but would subsidize the actual cost to conduct the review, on average. Staff expects that the time required for Building Services review would be similar to a counter visit by the public, which does not require a fee.

To be clear, this process would not be applicable to uses that are not similar in nature or intensity to the legal use of the site. It would be a one-time review process to ensure that the use is proper for the structure, infrastructure, and zoning.

Pre-Application Meeting Fee Credit

An alternative method to initiate a Planning Permit process is a Pre-Application Meeting request, which is typically used for large or complex projects. The applicant submits a conceptual development plan approximately 4 weeks prior to a meeting being held between the applicant and the applicable land use departments. At times, non-County departments and agencies are also invited to, and attend, these meetings. The applicant pays fees only for the County departments for this process. The applicant receives a written memorandum from each department on potential issues, possible conditions of approval, and what will be needed for an application. The current fee is a per hour charge and is charged for a three hour estimate of staff time for each department. This amounts to a deposit of \$1604.28. Historically, the Pre-Application Meeting charge has not been credited toward the project application fee. However, substantial work is done at this stage by the departments, and some credit should be allowed. What is difficult to determine is the amount of the fee, as sometimes the projects will be redesigned based on this initial meeting. If that occurs, the land use departments may have just as much work as if they had not reviewed it through a pre-application process. In addition, many of the large projects are deposit projects. For those, actual time would be paid, minus the Pre-Application fee, so no loss in fees would occur. This would decrease revenue for the land use departments.

Recommendation

Allow a full credit of the pre-application meeting fee if, in the determination of the Director of Planning, the application is substantially the same application as submitted for that meeting. The credit would apply if an application is made within six months of the pre-application meeting.

Maintenance of Permit Tracking System

The Accela Permit Tracking system was purchased in 2008. In 2008, the Board of Supervisors established a five-year fee as a surcharge on planning permits and building permits for the system, which is an integral system in distributing, tracking and storing information and the project files related to planning and building permits. The capital costs

amounted to \$300,000 per year and were paid for by RMA-Planning and RMA-Building Services. The fee was set at 6%, based on a higher level of permit activity (approximately \$5,000,000 per year), when the original purchase contracts were entered into, to assist in funding the system. Due to the subsequent downturn in the economy and the resulting decrease in permit revenue, the 6% fee only recovered a portion of the cost (generated just over \$200,000 in each of the last two years). However, both the RMA-Planning and RMA-Building Services budgets were able to cover the costs not covered by the reduced fee revenue. The fee sunsets on June 30, 2013.

After the initial purchase costs, the County now has additional annual costs related to licensing and maintenance. Maintenance of the system is part of County's reasonable regulatory costs for issuing and enforcing land use permits. As stated earlier, the Accela system is the system utilized by the County to assist in processing permits. Files are initialized in the system, the public is able to track the status of projects, permit files and related documents reside in the system, and most of the staff work is coordinated and distributed through Accela. Maintenance includes hosting of the server by the company, system improvements, software updates as they become available, licenses for users, troubleshooting, and assisting with reports requested and developed by County staff. If the County hosted the server, costs would be higher. The annual fee (approximate) for maintenance is as follows:

- FY14 \$194,000
- FY15 \$201,000
- FY16 \$208,000

Recommendation

Adopt a surcharge that remains at 6% for a period of three years until the ongoing costs can be incorporated into departmental budgets. This fee would be in line with the reduced annual maintenance costs. The net effect would be improved over the current surcharge since full cost recovery is not occurring.

Oil and Gas Permitting

Currently, applications for oil and gas test wells and production wells are reviewed by staff. With the highly technical extraction techniques used, including relating to the possibility of hydraulic fracturing ("fracking") these wells, staff is concerned with the level of review that can be done by in-house staff. This is a highly technical field requiring review by licensed geologists and/or by petroleum specialists and specialists in hazardous waste. Because of the unknown risks associated with extraction techniques, including fracking, and the potential effects on earthquake faults, water quality, and surface disposal, technical environmental assessments, including potentially Environmental Impact Reports, may be required for such projects. This determination is also based on research and discussions staff had with other counties on the Central Coast, discussions with staff of the California Division of Oil, Gas and Geothermal Resources, the United States Environmental Protection Agency (Region IX), California Regional Water Quality Control Board, and the Monterey County Water Resources Agency.

Recommendation

Require time and material (deposit) applications for any oil or gas well applications. This recommendation includes that the applicant would fund outside consultant staff support for permit processing and for environmental review to ensure that the review has the proper technical expertise. This may not affect revenue for land use departments, but would ensure cost recovery where all costs are not currently covered.

Miscellaneous

The Articles provide some clerical clean up that is not addressed in detail above. These were discovered between the adoption of the fees in 2008 and the present work. In addition, fees for Senior Citizen Unit permits are being deleted because, per changes in state law, County no longer uses the category of “senior citizen unit.”