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DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

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SACRAMENTO, CA

ADMINISTRATION
ROOM 300
95814-2987
916-449-5571

ECONOMIC DEVELOPMENT
ROOM 300
95814-2987
916-449-1223

NUISANCE ABATEMENT
ROOM 301
95814-3982
916-449-5948

February 5, 1991

Joint Budget and Finance /
Transportation and Community Development Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: FISH AND GAME FEES.
COLLECTION OF FEES FOR PROJECTS WHICH MAY HAVE AN
ADVERSE IMPACT ON WILDLIFE.**

LOCATION: Applicable to projects City-wide.

SUMMARY

Recently enacted legislation (AB 3158, effective January 1, 1991) requires the State Department of Fish and Game to impose and collect filing fees to defray the cost of managing and protecting fish and wildlife trust resources. The fees are to be collected during the local environmental review process and paid to the County Clerk's office at the time that the local agency files a Notice of Determination after approval of the project. The law provides for exemptions from the fee for certain types of projects. Local agencies are required to make the determination on whether the fee applies to each project. The fees are \$1250 for projects requiring a Negative Declaration and \$850 for projects requiring an EIR.

BACKGROUND

This legislation is intended to apply a user fee structure to development which may result in the loss of fish and wildlife habitat through development. The legislature recognized that urbanization has an impact on these resources and at the same time recognized that there is a declining level of revenue from user fees such as hunting and fishing licensing. Therefore, this fee structure was enacted to provide an additional user fee for those that consumed wildlife resources through the urbanization of wildlife habitat.

The fees are to be collected by the lead agency preparing an environmental review and are to be paid to the County Clerk's office at the end of the planning review process. The County is to ensure the collection of fees from local agencies by not allowing the filing of a Notice of Determination unless it is accompanied by the fee or by documentation showing that the project is exempt from the fee. The law allows the County to charge a \$25 handling fee along with the filing. Sacramento County is requiring this handling fee.

Some fee exemptions are permitted by the legislation. Any project that is exempt from the requirements of CEQA is considered exempt from the fees. In addition, the lead agency may determine, through findings made at the time of project approval, that a project will have no potential for an adverse impact on wildlife resources. This requires specific statements of findings in any resolution adopted at the time a project is approved.

The first written communication with project applicants following receipt of development applications will include notification that the environmental review process will include a determination of whether the Fish and Game fee will apply. The fee will apply to those projects which require formal review by the State Department of Fish and Game. When the Environmental Services Division files a Notice of Determination for a project, funds deposited previously by the applicant will be forwarded to the County. In the event the fee is not required, a notice certifying that the project is exempt from the fee will be included with the Notice of Determination. The Notice of Determination is an official notice informing the public of the environmental determination the City has made for the project. Once this notice is filed, the project action is considered final and a 30 day period begins during which a legal challenge to the project may be filed.

VOTE OF THE PLANNING COMMISSION

Not applicable. An informational report will be provided to the Planning Commission for their February 21st agenda.

FINANCIAL DATA

This law will require the City to collect some fees which will be forwarded to Sacramento County. Checks will be made payable directly to Sacramento County. The City will be required to pay the fee for any City projects which are determined to be subject to the fee requirement. The funds to pay these fees would come from the budget for each specific project. The greatest likely impact of this new fee structure would be in projects carried out by the City's Public Works and Parks departments, since projects such as park improvements or infrastructure facilities may affect open space areas with some potential for wildlife habitat impacts.

POLICY CONSIDERATION

The determination of a fee exemption for projects with no potential for any adverse impact on wildlife resources will require findings to that effect during the project review. This determination will be made based on the findings of the initial study for the project. It is anticipated that most projects will be exempt from the fee since most projects in the City do not occur in locations that impact wildlife habitat. The wording of the implementation instructions issued by the Department of Fish and Game (attached) indicate that this finding is appropriate where there is no potential for any adverse impact, while CEQA centers on the determination of any significant adverse environmental impacts. It is anticipated that projects with no significant plant or animal impacts will generally also be those with no potential for adverse wildlife impacts. Implementing the provisions of AB 3158 can be accomplished by requiring the filing fee for projects that have been referred to the State Clearinghouse and forwarded to Fish and Game for management and protection of wildlife resources per Section 711.4 of the Fish and Game Code.

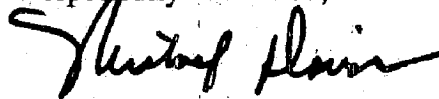
MBE/WBE EFFORTS

Not applicable.

RECOMMENDATION

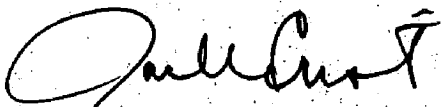
The Environmental Services Division recommends that the Joint Budget and Finance/Transportation and Community Development Committee approve and forward the attached resolution regarding the implementation of AB 3158 to the City Council.

Respectfully submitted,



MICHAEL M. DAVIS
Director of Planning and Development

RECOMMENDATION APPROVED:



JACK CRIST
DEPUTY CITY MANAGER

Joint Budget and Finance / Transportation & Community Development Committee
AB 3158, Department of Fish and Game: Funding
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MMD:CB:DP:FB
AB 3158,FISH AND GAME-FEES
attachments

February 5, 1991
ALL DISTRICTS

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DEPARTMENT OF FISH AND GAME

P.O. BOX 944209
SACRAMENTO, CALIFORNIA 94244-2090

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December 13, 1990

County Boards of Supervisors
County Planning Departments
County Auditor-Controllers
County Clerks
County Counsels
Non-State Public Agencies and Special Districts

**Instructions to Local and Non-State Public Agencies:
Implementation of AB 3158**

Recently enacted legislation (AB 3158, Chapter 1706, Statutes of 1990, effective January 1, 1991) requires that the Department of Fish and Game (Department) impose and collect filing fees as specified to defray the cost of managing and protecting fish and wildlife trust resources. These filing fees are collected during the environmental review process and are intended to be paid at the time lead agencies file a "Notice of Approval or Determination" with the county clerk of the county or counties in which the project is located. This procedure is required pursuant to Section 21152 of the Public Resources Code.

The legislative intent of this enactment is to extend the current user fee structure now imposed on hunters and fisherman to all agencies whose activities have the potential to result in the loss of fish, wildlife, or their habitat through urbanization and land-use conversion. To increase administrative efficiency, the statute has delegated the collection of filing fees to the local county clerk and provided the county authority to collect a \$25.00 documentary handling fee. No change in current substantive procedures is proposed and all local and non-State public agencies will continue to file Notices of Approval or Determination with the county clerk. Fees will be collected as described in the attached. Checks are to be made payable to the county.

The legislation is intended to provide a fee exemption for those projects where no adverse environmental impact exists to fish and wildlife resources. To this end, those projects exempt from California Environmental Quality Act (CEQA) by statute and exempt

from individual CEQA requirements by regulation of the Secretary for Resources, or exempt from fee requirements. In addition, for projects determined not to have an adverse impact on fish and wildlife are also exempt from the fee. See the attached instructions regarding making such a determination.

As a word of caution, project applicants and local government agencies should be aware of new Section 21089(b) of the Public Resources Code, which now provides that any project approved under the CEQA is not operative, vested or final until the filing fees required under Section 711.4 of the Fish and Game Code are paid. It was the intention of this legislation to provide a cost-effective, self-executing enforcement mechanism. It is our hope that project applicants will understand that a condition precedent to their project's approval is the payment of these fees. This enforcement approach will achieve a significantly higher level of compliance if applicants understand its effect. We ask your assistance in educating project applicants about the need to pay fees in a timely manner.

We would encourage your input and ideas for increasing the effective implementation of this program. Thank you very much for your interest in this matter.

Sincerely,

Pete Bontadelli
Pete Bontadelli
Director

Attachments

LOCAL AND NON-STATE PUBLIC AGENCIES
AB 3158 Implementation Instructions
(Chapter 1706, Statutes of 1990)

1. Local Government Approved Projects Fee Schedule

All projects shall pay a fee in the following amounts:

- a) All projects statutorily exempt¹ from the California Environmental Quality Act (CEQA) shall pay no fee.
- b) All projects categorically exempt² by regulations of the Secretary of Resources from the requirement to prepare an environmental document shall pay no fee.
- c) All projects found by the lead agency to be de minimis in their effect on the environment pursuant to these guidelines shall pay no fee.
- d) All projects for which a Negative Declaration has been prepared pursuant to Section 21080(c) of the Public Resources Code shall pay a fee of \$1,250.00.
- e) All projects for which an Environmental Impact Report has been prepared pursuant to Section 21151 of the Public Resources Code shall pay a fee of \$850.00.

2. Responsible Parties

New Section 711.4(c) of the Fish and Game Code provides that all project applicants and public agencies subject to the CEQA shall pay a filing fee for each proposed project. In the case of local government projects there are two classes of potential project applicants:

- a) Local or non-state public agencies acting in their own statutory or proprietary capacity which are undertaking a project. In this case the local agency shall originate the fee as the project proponent.
- b) Private entities or special districts which are proposing projects subject to environmental review and approval by local government. When local land use authorities are granting a license, permit, or entitlement to project applicants, the private or special district proponent shall originate the fee.

¹ See Guidelines 14 CCR, 15260, et seq.

² See Guidelines 14 CCR, 15300, et seq.

In the case where multiple Notices of Approval or Determination (NOD) are filed by a lead agency and one or more responsible agencies, only the lead agency would pay the fee at the time it files its NOD.

3. Fee Exemption - De Minimis Impact Finding

- a) If the lead agency finds that, as a result of its initial study, a project involves no potential for any adverse effect, either individually or cumulatively on wildlife resources, no fee shall be paid.

Wildlife shall be defined, for the purpose of this process, as "all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability". (Section 711.2, Fish and Game Code)

- b) The agency's findings of fact shall include the following:
1. A brief description of the project and its location, including county;
 2. A statement that an initial study has been conducted by the lead agency so as to evaluate the potential for adverse environmental impact; and
 3. A declaration that there is no evidence before the agency that the proposed project will have any potential for adverse effect on wildlife resources.
- c) At the time a local agency approves or determines to carry out a project subject to CEQA it shall complete a "Certificate of Fee Exemption" including the finding specified above.
- d) Upon certification, in a form specified by the Department (Attachment 1), the lead agency shall retain the certificate as part of the environmental record and file two copies of the certificate with the county clerk along with the NOD as provided in Section 21152 of the Public Resources Code pertaining to local agencies, or with the Office of Planning and Research (OPR) as provided in Section 21108 of the Public Resources Code, pertaining to state agencies.

- e) The county clerk and the OPR shall retain one copy of the "Certificate of Fee Exemption". The second copy shall be forwarded to the Department, consistent with paragraph 4(e).

4. Collection Procedures for Local Governments

- a) For a project subject to the fee requirement, the local lead agency shall pay the appropriate fee to the county clerk at the same time the NOD is filed under current law. Local or non-state public agencies should not change or alter their substantive environmental review process under this program.
- b) It is not the legal responsibility of the county clerk to collect environmental document fees; however, the county clerk and local governmental agencies should notify applicants of the fee requirement and inform them as to the conditional nature of any project approval issued in the absence of fee compliance.
- c) All checks are to 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.
- d) In order to maintain accountability and to track project applications, the Department has developed press numbered "Environmental Document Application/Filing Fee Cash Receipts" (Attachment 2). The original receipt is to be issued either to a local government project applicant or a private project proponent when payment is made in conjunction with filing a NOD (Public Resources Code, Section 21152). The second copy is to be submitted to the Department on a monthly basis. The remaining copies will be retained by the county (one by the lead agency and one by the county clerk).
- e) An "Environmental Document Application/Filing Fee Cash Receipt" must also be completed for projects that are exempt from the filing fee. The cash receipt will indicate "Filing Fee Exempt". If a documentary handling fee, of \$25.00 maximum, is charged by the county clerk, the receipt should so indicate. For projects that do not require filing fees, it is mandatory that a copy of the "Certificate of Fee Exemption", signed by an official of the county planning department be attached to the NOD.

- f) In the event an applicant does not remit the proper fee, local governments are encouraged to inform applicants that project approval may be invalid by law [see PRC 21089(b)]. Because a NOD must be filed even for projects that do not include the applicable fees, the cash receipt should indicate "Fees Required, Not Paid" (a copy of the NOD should be attached to the Department copy of the cash receipt). These incidents should be reported to the Department's Compliance and External Audits Branch for follow-up.
- g) Within 30 days after the end of each month in which the filing fees are collected, each county will summarize and record the amount collected on the monthly CA 25/TC 31 report and remit the amount collected to the State Treasurer. **PLEASE IDENTIFY THE REMITTANCE ON THE 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.**
- h) The following documents are to be mailed to: Department of Fish and Game, Fiscal and Administrative Services Branch, 1416 Ninth Street, Sacramento, CA 95814, on a monthly basis.
1. A photocopy of the monthly CA 25/TC 31 (remittance advice).
 2. Department copies of all cash receipts (including all voided receipts).
 3. A copy of all "Certificates of Fee Exemption".
 4. A copy of all NOD's filed with the county during the preceding month.
- The Department has been provided the authority to assess a ten percent (10%) penalty for failure to remit the fees to the Department in a timely manner.
- i) Cash receipts are controlled by the Department's Compliance and External Audits Branch, 1416 Ninth Street, Sacramento, CA 95814. Local agencies may reorder receipt books by calling (916) 739-4694 or by requesting receipts in writing.

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**A RESOLUTION IMPLEMENTING PROVISIONS OF AB 3158
AMENDMENTS TO THE CALIFORNIA FISH AND GAME CODE**

WHEREAS, the City Council on _____, held a public hearing to review the above described changes to the State Fish and Game Code;

WHEREAS, Section 711.4 has been added to the Fish and Game Code requiring the State Department of Fish and Game to collect fees to defray the costs of managing and protecting fish and wildlife trust resources;

WHEREAS, pursuant to Section 711.4, the City must collect and transmit these fees to Sacramento County at the time of filing a Notice of Determination after approval of development projects;

WHEREAS, the City Council has considered the effect of this legislation on the environmental review process in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

1. The following types of projects are determined to be exempt from the payment of fees required by Section 711.4 of the Fish and Game Code:
 - a. Projects which are categorically or statutorily exempt from the provisions of CEQA;
 - b. Projects which are found by the City to be "de minimis" in their impact on fish and wildlife resources.
2. For projects which are referred to the State Department of Fish and Game during the environmental review process, either through the State Clearinghouse or directly by the Environmental Services Division, the Fish and Game fees shall be collected by the City prior to approval of the project.

3. Fees shall be as established by Section 711.4 of the Fish and Game Code, and shall include a handling fee as required by Sacramento County. Fees are established as follows:
 - a. For projects for which a Negative Declaration is prepared the fee is \$1275;
 - b. For projects for which an EIR is prepared the fee is \$875.
4. The City shall transmit these fees to the Sacramento County Clerk's office at the time a Notice of Determination is filed.

MAYOR

ATTEST:

CITY CLERK

RES3158