

# San Francisco Bay Conservation and Development Commission

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**TO:** Bay Fill Policies Working Group Members

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**SUBJECT: April 16, 2015 Commission Fill Policies Working Group Meeting Summary**

**ATTENDEES:** Commissioners: Barry Nelson, Chair, Jason Brush, Jane Hicks, Jim McGrath, and Sean Randolph. Public attendees included John Coleman from the Bay Planning Coalition and Will Travis.

1. **Roll Call, Introductions and Approval of Agenda.** Chair, Barry Nelson, called the meeting to order at approximately 11:00 am.
2. **Comments on the February 19, 2015 Meeting Summary.** The summary was approved.
3. **Summary of Commission Practice Implementing Bay Fill Policies.** Joe LaClair and Brad McCrea of BCDC provided a summary of the Commission's decisions on Bay fill projects, past fill policy changes, and the Commission's program objectives. The selected fill projects varied in project size and area of jurisdiction.
  - a. **San Francisco Waterfront: Mills Piers 27-31 (Early 2000's).** A large mixed-use project proposal on Piers 27-31 in San Francisco, included fill for public trust relying on the 2000 amendments to the San Francisco Waterfront Special Area Plan, which were based on the public health, safety and welfare prong of the Commission's authority. No permit was issued, and the request was withdrawn, due to issues unrelated to the Commission. Pier development will need to be viewed with a different lens due to sea level rise. Protecting the downtown San Francisco shoreline may require approval of new large fill projects, perhaps with mixed uses to support construction of shoreline protection.

**Piers 30-32.** A partial reconfiguration and structural upgrade of Piers 30-32 to accommodate a cruise terminal, office space for maritime and other uses, as well as retail and entertainment space.
  - b. **Salt Pond Fill Projects**

**West Point Marina – Redwood City (2004).** Creation of a 26.6-acre new water basin, marina and upland uses (office, hotel, retail, and others).

**Bayfront Park – Menlo Park (1970-80).** Authorized expansion of landfill in a salt pond, required it be capped and a park created on top. Mitigation: wetland creation and funding for mitigation land acquisition. Discussion points:

- The Commission retained its salt pond jurisdiction despite the fill. How should the Commission consider a fill proposal on a previously filled area? Would the Commission still need to go through the same policy analysis? Standard permit conditions state that the Commission retains its jurisdiction over the filled areas, e.g., Salt ponds jurisdiction in the dry areas, Bay in the diked areas.
- The Commission sees very few development proposals within its salt pond jurisdiction, and given current ownership patterns, expects this to continue.
- What is the value of the mitigation in relation to the amount of fill approved in the permit?
- Previously, the commission did not have mitigation policies, but did require mitigation ad hoc.
- In the 1960's, salt production areas were considered to also provide a large environmental benefit, resulting in BCDC policies supporting continuation of salt production in diked baylands.

c. **Fill for Public Access**

**Airport Boulevard - Burlingame (1987).** A leachate barrier with public access atop, widening Airport Boulevard to four lanes. There was no room for public access, so fill was approved to modify the shoreline edge for public access mitigated by shellfish habitat creation.

**Brooklyn Basin (2007).** A total of 3 acres of fill to create dwelling units, public access, shoreline protection, and seismic retrofits of existing structures. Some controversial fill was included for a plaza/entry point.

**USS Hornet - Alameda (2004).** Fill for a museum ship, which the Commission considered public access. Historically, much less fill was approved for historic ships. No mitigation was required.

d. **Beneficial Reuse of Dredge Material**

**Montezuma Wetlands (2004).** A project to create 1,600 acres of marsh, within the primary management area, and a small portion within the secondary management area.

**Middle Harbor Enhancement (2000).** A 180-acre subtidal habitat restoration project at the western end of the Oakland Harbor Channel. The project required a Bay Plan amendment for approval and left outstanding issues around project completion.

**Sonoma Creek San Pablo National Wildlife Refuge.** A project to enhance tidal circulation and drainage for a 284-acre section of marsh. The material would then be placed along the levee face to create a transitional slope to assist in the migration of marshlands as sea levels rise. Discussion Points:

- i. BCDC beneficial reuse policies do not distinguish placement of fill using dredge material from dredging navigation channels versus fill from dredging on a restoration site.
- ii. Has there ever been any discussion between staff or with the Commission regarding what is considered good fill or bad fill?
  - (a) If the fill meets the Commission's policies, staff considers it to be good fill. Opinions vary on what fill should be approved. The Commission has the authority to identify new water-oriented uses for Bay fill.
- iii. Legislation gives broad discretion to the Commission.
  - (a) The public trust is the underpinning of the McAteer-Petris Act. When the Commission makes a decision, it is an exercise under the trust.
  - (b) If the group believe the MP act provides enough flexibility, then the group can explore whether the Bay plan provides enough flexibility.
  - (c) If the Commission already has jurisdiction over an area, there is a different approach as opposed to creating an area that will expand BCDC's jurisdiction.
  - (d) In the face of rising sea level, the Commission will need some capacity and flexibility to approve more fill.
  - (e) The Commission has precedents that guide staff in negotiating projects.
  - (f) The Commission determines what is minor fill, and sometimes stretches that determination depending on what the uses or benefits of fill are.
- iv. Mitigation
  - (a) Some communities can afford mitigation measures, while others might not.
  - (b) Foster City was able to reshape its shoreline, to limit the amount of fill so that mitigation was not required.
- v. The Commission hasn't recently used the health, safety and welfare policy to approve projects (66632.4 – used in approval of SFSAP)
- vi. Previously, flooding wasn't thought of as a health and safety issue.
  - (a) We need to build a policy around this issue as a whole instead of approaching each project one at a time
  - (b) The entire Bay must benefit from projects authorized pursuant to health, safety and welfare.

- vii. Some communities will have self-mitigating projects, and some communities and regions will have difficulty to fund potential mitigation.
  - (a) Best solution is to recommend a regional strategy.
  - (b) Make mitigation regional, but Bay Area-wide, and understood.
  - (c) Regional consensus that the big issues are – flood control, wastewater, rail lines , etc.

4. **Policies for a Rising Bay Project Update** . Sarah Richmond of BCDC provided a brief progress report on the NOAA-funded *Policies for a Rising Bay Project*, including a recap of the March 15, 2015 Steering Committee Meeting.

a. **Meeting Objectives**

- i. Confirm project goals, approach, and BCDC staff and Steering Committee roles and responsibilities.
- ii. Understand Steering Committee members’ experience addressing sea level rise and perspectives on BCDC policies.
  - i. Project Goal
    - (a) Collaboratively evaluate BCDC’s fill policies in light of sea level rise and develop guidance for the Commission, staff and project proponents to promote shoreline resilience.

b. **Approach**

- i. **Project Scope.** Steering Committee is formed and shares perspectives with staff.
- ii. **Policy Analysis.** Identify the “Opportunities and Constraints” in the McAteer-Petris Act and the Bay Plan.
- iii. **Case Studies.** Develop, analyze, and refine hypothetical adaptation project proposals to investigate policy issues identified during the policy analysis.
- iv. **Solution Analysis.** Develop best practices with existing policies and explore the policy alternatives and their impacts.

c. **Key Questions**

- i. What is the nexus between the Steering Committee and the Bay Fill Policies Working Group?
  - (a) the Steering Committee will develop a guidance document for the Working Group, based on their case study and policy analysis.

- ii. How are we protecting people where sea level rise may cause groundwater intrusion into brownfields.

- (a) The environmental justice groups require a proactive, coherent communication strategy to inform the communities about issues the regulatory agencies are already addressing (i.e. risk communication).

**d. Context: Policies in Practice**

- i. All proposed fills for shoreline protection/habitat have been approved.
- ii. Fill in the Bay is more restrictive than fill within salt ponds and shoreline band.
- iii. Several questions need to be answered to understand appropriate fill for habitat features.

**e. Perspectives**

- i. Health and safety as a possible mechanism to avoid having to change legislation (McAteer-Petris Act, Section 66632).
- ii. While BCDC's mission to protect the Bay will remain the same, the approach will need to change as sea levels rise.
  - (a) Is there a minimum amount of fill to needed to create a transition zone slope?
  - (b) Is there a policy basis for "beneficial" fill?
- iii. There are limitations to a project-by-project approach. Regional resilience strategies and solutions need to be considered.
- iv. The Bay Area is currently in the last stable 20-year period before sea level rise and its impacts begin to accelerate. This period of time needs to be used productively and efficiently to address the risks we face.

**f. Next steps**

- i. May 5th, 2015 Technical Workshop
  - (a) Case study selection based on landscape conditions and environmental, economic, and equity tradeoffs.
  - (b) Explore implications of policies that encourage innovative and nonstructural adaptation actions "wherever feasible and appropriate".
  - (c) Ongoing policy analysis to identify issues.
  - (d) July 24<sup>th</sup>, 2015 Steering Committee Meeting to confirm priority policy issues and to discuss case study analysis based on technical input and policy issues.

5. **Selection of a new name for the working group.** The Working Group agreed to postpone selecting a new name until the next Working Group Meeting.

6. **Adjournment.** The meeting was adjourned at approximately 12:30 p.m.