

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Public Hearing and Vote to Initiate a Possible Amendment of the *San Francisco Bay Plan to Address Social Equity and Environmental Justice*
(For Commission consideration on July 20, 2017)

Staff Recommendation

The staff recommends that the Commission: (1) adopt the attached Descriptive Notice to initiate the process of considering a possible amendment to the *San Francisco Bay Plan* (Bay Plan) that would address social equity and environmental justice¹ by updating the findings and policies in several sections of the Bay Plan, including public access, mitigation, and shoreline protection, and by adding a new environmental justice section with new findings and policies; (2) direct staff to explore whether to pursue an amendment to the McAteer-Petris Act or other statute that would provide the Commission with explicit authority to consider environmental justice in its decision-making process; and (3) schedule a public hearing in the future to consider the staff's findings and recommendations regarding social equity and environmental justice.

Staff Report

In 2014, the Commission received a grant from NOAA to examine whether and how its laws and policies should be amended to better address adaption to climate change, with specific attention to rising sea level. The *Policies for a Rising Bay* project evaluated the Commission's laws and policies to determine if changes are needed to help facilitate appropriate resilience and adaptation actions in the region. To ensure a broad and collaborative review of the Commission's laws and policies, the Commission staff organized a steering committee composed of over 30 stakeholders representing public, private, and non-governmental organizations. Working with steering committee members and other interested parties, the Commission staff analyzed existing laws and policies through one-on-one interviews, case studies, and a series of working meetings.

¹ Environmental justice is defined by California state law as, "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." California Government Code Section 65040.12(e).

This process resulted in the identification of four overarching policy issues:

1. Fill for Resilience and Adaptation – Habitat Restoration and Protection;
2. Fill for Resilience and Adaptation – Innovative Shoreline Solutions;
3. Environmental Justice and Social Equity; and
4. Adaptive Management.

During this period, the Commission’s Bay Fill Policies Working Group reviewed the Commission’s laws and policies related to Bay fill that may be needed to adapt the shoreline, habitat projects, and infrastructure to rising waters. The Bay Fill Policies Working Group’s efforts culminated in three public workshops from April through June 2017. The goal of these workshops was to explore possible changes to the Commission’s laws, policies, and regulations to more fully consider the local and regional impacts of rising sea levels in permitting and decision-making processes. This process identified five priority topic areas to be initiated within the next two to five years:

1. Fill for Habitat Projects;
2. Fill for Flood Protection;
3. Beneficial Reuse of Dredged Sediment;
4. Mitigation in the Face of Rising Seas; and
5. Environmental Justice and Social Equity.

Both the Policies for a Rising Bay Project and the Bay Fill Working Group Workshops identified developing social equity and environmental justice policies and the potential need to amend the McAteer Petris Act as high priorities. Addressing environmental justice involves both preventing discrimination and ensuring meaningful participation in environmental policymaking. Environmental justice is defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies” (Cal Gov’t Code §65040.12(e)).

According to evaluations completed through the Adapting to Rising Tides Program (ART), shoreline flooding due to climate change and rising sea level will affect communities differently depending on their locations and resources, and disadvantaged communities likely will have more difficulties adapting to the impacts of flooding and rising sea level. Such communities may also be at risk of exposure to toxic substances and other hazards mobilized by flooding given their proximity to brownfields. The ART initial vulnerability assessment shows many disadvantaged communities² around the Bay are at risk of flooding if they face an additional 12 inches of water, which is similar to a storm with a probability of occurring every year. While rising sea level will

² In the BCDC and ABAG “Stronger Housing, Safer Communities” project, ten indicators were developed as a regional screening tool to help identify community vulnerability. The ten indicators are: race and ethnicity; income; age; transportation cost burden; limited English speaking households; housing tenure; education; housing cost burden; and access to a vehicle. The initial sea level rise vulnerability analysis identifies block groups which contain 5 or more of the 10 characteristics. For more information on this methodology, please follow [this link](#).

affect all shoreline communities, disadvantaged communities may not have the resources necessary to adapt, or may face flooding problems exacerbated by shoreline protection erected by more affluent neighbors.

The Commission acts under three legal authorities. Its federal authority resides in the Coastal Zone Management Act of 1972, as amended. Under this Act the Commission is responsible for administering the Coastal Zone Management Program for the Bay. Its state authority resides in the McAteer Petris Act and the Suisun Bay Preservation Act, giving it planning and permitting authority for the Bay and specifically Suisun Marsh.

Presidential Executive Order 12898 (1994) entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” directs federal agencies to make environmental justice part of their mission, and describes existing federal laws that can be used to further environment justice. At the state level, SB155 (Solis, 1999) codified environmental justice in state law and charged the Governor’s Office of Planning and Research and the California Environmental Protection Agency with its implementation. The Natural Resources Agency, under which the Commission is organized, has adopted the following Environmental Justice Policy, which includes eight implementation measures:

“It is the policy of the Resources Agency that the fair treatment of people of all races, cultures and income shall be fully considered during the planning, decision-making, development and implementation of all Resources Agency programs, policies and activities. The intent of this policy is to ensure that the public, including minority and low-income populations, are informed of opportunities to participate in the development and implementation of all Resources Agency programs, policies and activities, and that they are not discriminated against, treated unfairly, or caused to experience disproportionately high and adverse human health or environmental effects from environmental decisions.”

The Commission is required to implement its laws and policies in ways that are consistent with state and federal laws and policies that prevent discrimination, promote equal access to the Commission’s programs, and support fair treatment as the Commission develops, adopts, and implements its laws, regulations and policies. Indeed, the Commission was created to expand, and has administered its authorities in accordance with, social equity and environmental justice principles. For example, when the McAteer-Petris Act was enacted in 1965, only four miles of the Bay shoreline were open to the public. Today, well over 300 miles of San Francisco Bay shoreline are open to everyone without regard to race, creed, or socio-economic status.

While the Commission ultimately sets the parameters for how projects are evaluated and approved, the Bay Plan does not include policies on social equity and environmental justice issues that should be considered in some consistent manner in permit application processes or in planning projects and efforts. Therefore, one of the recommendations developed through the Commission’s Policies for a Rising Bay project, and affirmed through the Commission’s Rising Sea Level (RSL) Workshops, is to initiate a Bay Plan amendment process to include findings and policies on social equity and environmental justice. In addition, workshop members also recommended that the

Commission explore the potential to amend the McAteer-Petris Act or use another enabling legislative process to include environmental justice and social equity in the Commission's law. Workshop attendees, many of whom also participated in the Policies for a Rising Bay Project, recognize that BCDC's ability to advance social equity and environmental justice may be limited by the McAteer-Petris Act and that without explicit legislative authority, Bay Plan amendments on this topic may not result in significant changes for disadvantaged communities threatened by climate change impacts, including sea level rise.

Examples of ways state and regional agencies are addressing environmental justice include an array of different strategies. The Bay Area Air Quality Management District (BAAQMD) has addressed disproportionate exposure to air pollutants by adopting its "Guiding Principles of Environmental Justice" and implementing initiatives across their programs. The State Water Resources Control Board and individual Regional Water Quality Control Boards have implemented environmental justice programs to include equity considerations in the process of developing, implementing, and enforcing Board policies. Additionally, the State Water Board provides technical assistance and financial support to communities through a newly created Office of Sustainable Solutions. In instances where a community has raised environmental justice concerns, state and federal agencies have responded in a variety of ways, including by: developing an environmental justice policy; creating a staff position to address environmental justice agency-wide; developing data analysis tools; implementing a public participation plan; and, forming stakeholder committees. Considering the Commission's jurisdiction and authority, amending the Bay Plan may be an effective way to include equity considerations in the Commission's decision-making process and would be consistent with the California Natural Resources Agency's environmental justice policy.

Recently the Coastal Act was amended (AB 2616, Burke, 2016) to require that one of the Governor's appointees on the Coastal Commission "shall reside in, and work directly with, communities in the state that are disproportionately burdened by, and vulnerable to, high levels of pollution and issues of environmental justice, including, but not limited to, communities with diverse racial and ethnic populations and communities with low-income populations." Additionally, the Coastal Commission or acting local government can now consider environmental justice in their permitting actions, as the amended Coastal Act now states "[W]hen acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state."

The Commission can consider many different ways to include social equity and environmental justice in its laws, policies, regulations and practices. The participants of the workshop believe that entering into a Bay Plan amendment process to thoroughly examine the best method to address community concerns, while considering legislative action, will have significant merit and will assist the region in addressing rising seas in an equitable manner.

Based on the findings and efforts described above, an update of the Bay Plan regarding social equity and environmental justice is recommended to: (1) add an environmental justice section to the Bay Plan that includes findings and policies that address social equity and environmental justice to address the impacts of sea level rise; and (2) include social equity and environmental justice findings and policies in several sections of the Bay Plan, including public access, mitigation, and shoreline protection.

The initiation of the proposed amendment would carry out one of the strategies in the Commission's adopted 2016-2020 San Francisco Bay Coastal Management Program Assessment and Strategy and would accomplish two of the Commission's 2017-2020 strategic plan objectives contained in Goal 2 - Increase the Bay's natural and built communities' resilience to rising sea level.

Commission Procedure

Circulating a descriptive notice is the first step in the process of amending the Bay Plan. A notice of the proposed amendment is required by the McAteer-Petris Act (Government Code Section 66652) and Section 11000 of the Commission's regulations (California Administrative Code, Title 14, Division 5). If the attached proposed descriptive notice is approved by the Commission on July 20, 2017, at least one public hearing will be held to discuss the scope and contents of the potential amendment. The staff will distribute a report on its preliminary recommendation for specific changes to the Bay Plan to all Commissioners, Alternates, and interested parties and hold at least one public workshop on the proposal at least 30 days prior to that initial public hearing, which is required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11001). The Commission can vote upon proposed plan changes after concluding the public hearing(s) and after the Executive Director submits his final recommendation. The descriptive notice detailing the proposed plan changes must be mailed at least 30 days prior to a public hearing on those changes and the vote cannot take place earlier than 90 days from mailing the descriptive notice (Government Code Section 66652).

Descriptive Notice

July 20, 2017

**Proposed San Francisco Bay Plan Amendment No. 2-17
Concerning Amendment of Various Sections of the Bay Plan to
Address Social Equity and Environmental Justice and to Add An
Environmental Justice Section with New Findings and Policies**

Notice is hereby given that the San Francisco Bay Conservation and Development Commission will consider an amendment to the *San Francisco Bay Plan*. The proposed amendment would address social equity and environmental justice by updating several sections of the Bay Plan, including Public Access, Shoreline Protection, and Mitigation, and by adding a new environmental justice section with new findings and policies.

A Public Workshop will be held to discuss staff findings and the proposed amendment prior to the Commission's public hearing. At least thirty days prior to the initial public hearing, the staff will prepare and mail a staff report and preliminary recommendation on the proposed amendment. Interested persons may request the staff report and present written comments. Oral comments may be presented at the Commission meeting or thereafter as directed by the Commission.

This **Notice** is prepared in conformance with Section 66652 of the California Government Code, Section 11001 of Title 14, Division 5 of the California Code of Regulations, and Section 312 of the federal Coastal Zone Management Act of 1980. If, after the hearing, the Commission adopts an amendment to the *San Francisco Bay Plan* described in this notice and subsequent staff report, such amendment will be processed as a routine program change of the Commission's federally-approved coastal management program for San Francisco Bay. Any federal agency interested, therefore, should provide comment to the Commission.

Whether the Bay Plan should be amended as described above, and in what manner, will be the subject of the public hearing and Commission deliberations.

Further information concerning the proposed amendment can be obtained by contacting Miriam Torres, Coastal Planner, at the Commission's office, 455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102, by telephone at (415) 352-3631, or by e-mail at miriam.torres@bcdc.ca.gov.