

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

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SUBJECT: Staff Report and Preliminary Recommendation for Proposed Bay Plan Amendment No. 2-17 Concerning Social Equity and Environmental Justice
(For Commission Consideration on July 18, 2019)

Preliminary Staff Recommendation

In order to incorporate principles of environmental justice and social equity into the planning, design, and permitting of shoreline projects in and along the San Francisco Bay, the staff preliminarily recommends that the Commission:

1. Adopt a Resolution to uphold BCDC's Environmental Justice and Social Equity Guiding Principles
2. Add a new Environmental Justice and Social Equity findings and policies section to the Bay Plan (pages 8-18);
3. Amend the Bay Plan Public Access findings and policies (pages 18-29);
4. Amend the Bay Plan Shoreline Protection findings and policies (pages 29-35); and
5. Amend the Bay Plan Mitigation findings and policies (pages 35-41).

Background

When the San Francisco Bay Conservation and Development Commission ("BCDC" or "the Commission") amended the *San Francisco Bay Plan* ("Bay Plan") in 2011 to add policies related to climate change, BCDC acknowledged that shoreline flooding will affect communities differently depending on their location, resources, and adaptive capacity. In particular, low-income communities and those underrepresented or marginalized may have more difficulty preparing for, responding to, or recovering from a flood. Additionally, BCDC's *Policies for a*

Rising Bay Report noted in 2016 that many of these communities are disproportionately exposed to hazardous or toxic substances, which may be exacerbated if contaminants are mobilized by flood waters.¹

The development of environmental justice and social equity policies for the Bay Plan was identified as a high priority both in the *Policies for a Rising Bay* Report and as part of the Commission's public workshops on rising sea level (2016-2017).

Governments, at all levels, have played a role in creating a society where environmental injustice and social inequity have persisted and continue to exist today. Discriminatory and unfair policies implemented at all levels of government intentionally and unintentionally caused generations of communities of color to face persistent poverty; poor public health; inadequate public services and infrastructure; disproportionate exposure to polluted air, water, and soil; and underrepresentation in policy-making.^{2 3} Zoning, in particular, played a significant role in creating environmental injustices around the U.S. For example, in some cases, industrial land uses, including facilities that emit toxic substances, were zoned and sited in or near neighborhoods of color to avoid impacts to white neighborhoods which had the effect of preserving residential racial segregation. In other cases, industrial land uses were already in existence when people of color moved in, as they had limited housing options due to low wages, discriminatory lending practices, and restrictive zoning.⁴ The co-location of incompatible land uses, aggregation of industrial development, limited enforcement over polluting land uses, and prioritization of business interests over public health, culminated in disproportionate environmental burdens and adverse health issues for many low-income, communities of color.⁵ The San Francisco Bay Area is no exception to these development patterns as many industrial land uses are co-located with low-income communities of color. Examples include the Port of Oakland and the West Oakland community, the Hunter's Point shipyard and the Bayview-Hunters Point community, Chevron Refinery and the North Richmond community, the former Treasure Island Naval Station and the Treasure Island community, among others.

In the 1990s, the U.S. government took the first steps in developing federal environmental justice policy, defining environmental justice 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."⁶ According to the U.S. Environmental Protection Agency (EPA), fair treatment means "no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."

¹ Torres, M. (2016). *Policies for a Rising Bay Project Final Report* (BCDC Rep.). Retrieved <http://www.bcdc.ca.gov/prb/Policies-for-a-Rising-Bay.pdf>

² *Guide to Equitable, Community-Driven Climate Preparedness Planning* (pp. 1-67, Rep.). (2017, May). Retrieved https://www.usdn.org/uploads/cms/documents/usdn_guide_to_equitable_community-driven_climate_preparedness_high_res.pdf

³ *SB1000 Implementation Toolkit: Planning for Healthy Communities* (pp. 1-157, Rep.). (2017, October). Retrieved <https://caleja.org/2017/09/sb-1000-toolkit-release/>

⁴ Rothstein, R. (2017). *The Color of Law*. New York City, NY: Liveright Publishing Company.

⁵ *SB1000 Implementation Toolkit: Planning for Healthy Communities* (pp. 1-157, Rep.). (2017, October). Retrieved <https://caleja.org/2017/09/sb-1000-toolkit-release/>

⁶ Learn About Environmental Justice. (2018, November 7). Retrieved from <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

Meaningful involvement means “(1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected.”⁷

Following the federal government’s lead in recognizing the importance of environmental justice, California enacted Senate Bill (SB) 115 (Solis, 1999) in 1999, signifying the state’s commitment to environmental justice.⁸ This legislation defined environmental justice 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” (Government Code §65040.12(e)),⁹ which was adapted from the federal definition listed above. SB 115 (Solis, 1999) proposed a procedural framework for the California Environmental Protection Agency (CalEPA) to design programs on environmental justice under the coordination of the Governor’s Office of Planning and Research (OPR). Three additional bills enacted in 2000 addressed environmental justice, one of which, SB 89 (Escutia, 2000), called for CalEPA to develop operational strategies to accomplish environmental justice goals. These strategies were meant to serve as examples for other state agencies attempting to address environmental injustices.¹⁰ The California Natural Resources Agency, the umbrella agency of BCDC, developed an environmental justice policy in the wake of SB 115 (Solis, 1999), stating “All Departments, Boards, Commissions, Conservancies, and Special Programs of the Resources Agency must consider environmental justice in their decision-making process if their actions have an impact on the environment, environmental laws, or policies.”¹¹ Addressing environmental justice involves both substantive rights, by preventing the disproportionate distribution of environmental burdens and benefits, and procedural rights, by ensuring meaningful participation in environmental and land use decision-making.¹²

BCDC’s mission is to protect and enhance San Francisco Bay and encourage the Bay's responsible and productive use for this and future generations. In many ways, the Commission has been remarkably successful in achieving its mission. Before 1965, when BCDC was established, an average of about 2,300 acres of the Bay were being filled each year. Now only a few acres are filled annually and projects placing fill must mitigate project impacts, typically by restoring additional baylands. As a result, the Bay is now larger than it was when BCDC was established. Likewise, when the Commission was established, only four miles of the Bay

⁷ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

⁸ U.S. Environmental Protection Agency. (2017, June 2). Environmental Justice Timeline. Retrieved from <https://www.epa.gov/environmentaljustice/environmental-justice-timeline>.

⁹ CA Senate Bill No. 115, 1999-2000 leg. (1999) (enacted).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000SB115

¹⁰ Peter, E. M. (2001). Implementing Environmental Justice: The New Agenda for California State Agencies. *Golden Gate University Law Review*, 31(4), 529-591.

¹¹ California Natural Resources Agency. (n.d.). *Environmental Justice Policy*. Retrieved from http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Environmental_Justice_Policy_-_California_Natural_Resources_Agency.sflb.ashx

¹² Bonorris, S. (Ed.). (2010, February 15). *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases, 4th Edition* (UC-Hastings College of Law Rep.). Retrieved <http://gov.uchastings.edu/public-law/docs/ejreport-fourthedition1.pdf>

shoreline were open to the public. Now over 350 miles of the Bay shoreline are open to the public as part of the San Francisco Bay Trail, much of which was required by BCDC as part of its permitting program. The Commission has also approved hundreds of projects that enliven, enhance and protect the shoreline, such as ports and marinas, residential and commercial development, parks and wetlands, bridges, and flood protection.

However, not all have benefitted from these developments. In some cases, these developments may have placed burdens upon certain communities, such as increased pollution or displacement of residents. In order for BCDC to ensure that its mission is applied equitably and fairly, it is necessary to examine how its policies and practices may be contributing to or exacerbating environmental injustice and social inequity and identify opportunities for changes. The Bay is a resource that is meant to be shared and enjoyed by all, not only by those who live adjacent to it or have the means to recreate near it. Historic inequalities, along with socio-economic forces, public policies and demographic changes, widen the disparity gap, impact development patterns and cause physical or cultural displacement. Rising sea levels caused by climate change will impact various areas differently, and adaptation to rising seas poses additional challenges to those with fewer financial, social, and political resources. BCDC views these issues, integral to fulfilling its mission, as ones of environmental justice and social equity.

The goal of this amendment is to amend the Bay Plan to incorporate principles of environmental justice and social equity into the planning, design, and permitting of shoreline projects in and along the San Francisco Bay. The scope of changes to address social equity and environmental justice cut across multiple policy sections of the Bay Plan. Currently, environmental justice is only mentioned explicitly in the Bay Plan Climate Change policies and related concepts are denoted in the Transportation and Recreation sections of the Bay Plan. Although environmental justice could be considered in nearly every policy section of the Bay Plan, this amendment focuses on Public Access, Shoreline Protection, and Mitigation, and creates a new Environmental Justice and Social Equity policy section.

Many of the instances where the Commission's work involves issues of environmental justice and social equity can be addressed in these sections. For public access, these include: inclusive and appropriate design, signage, physical access to public access, maintenance, and security. Intersections of environmental justice and social equity concerns and shoreline protection include: potential adjacent adverse impacts of shoreline protection such as increased erosion or flooding, contaminated lands and the potential mobilization of contaminants in future flood events, and meaningful community involvement in the planning of shoreline protection. For mitigation, these convergences include: discrepancies between what communities are impacted by project and what communities benefit from the mitigation, timing of mitigation measures, and meaningful community involvement in identifying and designing mitigation projects. Additional aspects of BCDC's work include community outreach and engagement broadly, addressing disproportionate impacts on communities, and improved public agency coordination, which are general themes proposed for the new Bay Plan section.

Environmental Justice and Social Equity Bay Plan Amendment Process

As mentioned above, it was through the *Policies for a Rising Bay* Report (2016) and the public workshops on rising sea level (2016-2017) that BCDC identified environmental justice and social equity as priorities in its work moving forward. On July 20, 2017, the Commission voted to begin the process of considering an amendment to the Bay Plan for social equity and environmental justice (BPA 2-17). A brief descriptive notice was published on July 21, 2017, which set a hearing date, originally proposed for May 3, 2018 and later amended twice to November 15, 2018 and July 18, 2019. Additionally, the July 20, 2017 staff recommendation for adoption of the descriptive notice directed staff to explore whether to pursue an amendment to the McAtteer-Petris Act or other statute that would provide the Commission with explicit authority to consider environmental justice in its decision-making process. The staff has subsequently determined that addressing environmental justice and social equity as recommended below is authorized by and consistent with the McAtteer-Petris Act. See the McAtteer-Petris Consistency Act section below for further information. However, legislation could strengthen the Commission's ability to address issues of environmental justice and social equity.

Throughout the preparation of this Bay Plan amendment, BCDC has worked closely with the Environmental Justice Review Team (EJRT), which received funding to participate in the amendment process from the Resources Legacy Fund. The EJRT's goal is to "develop robust community recommendations regarding environmental justice, social equity principles and practices for consideration in BCDC's staff planning report regarding the Environmental Justice Bay Plan amendment." The EJRT consists of Sheridan Noelani Enomoto of Greenaction for Health and Environmental Justice working in the Bayview-Hunters Point and Treasure Island areas of San Francisco, Terrie Green of Shore Up Marin working in Marin City, Carl Anthony and Paloma Pavel of Breakthrough Communities working primarily in Alameda County, Julia Garcia of Nuestra Casa working in East Palo Alto, and Nahal (Ghogaie) Ipakchi, formally of the Environmental Justice Coalition for Water working throughout California. The EJRT developed a set of recommendations for this Bay Plan amendment which can be found at the end of this report along with staff responses.

BCDC staff has been guided in this work by a Commissioner Working Group on Environmental Justice (EJCWG). The EJCWG meets monthly and has thus far met 14 times, with one meeting led by the EJRT. BCDC's Environmental Justice Commissioner Working Group consists of Commissioner Teresa Alvarado of SPUR-San Jose acting as chair, Commissioner Eddie Ahn of Brightline Defense, Commissioner Sheri Pemberton of the California State Lands Commission, Commissioner John Vasquez of the Solano County Board of Supervisors, and former Commissioner Pat Showalter of the City of Mountain View City Council.

Several phases of the project process for this Bay Plan amendment have been completed to date, including a scoping and organizing phase, a background research phase, and most recently, a phase to draft policy changes. In all phases, Commissioners and BCDC staff had considerable contact with other state agencies, regional agencies, local governments, environmental justice advocacy and community groups, and other non-profits, firms, and academia. Thus far, staff had 13 meetings or calls with local government agencies, 10 meetings

or calls with regional government agencies, and 16 meetings or calls with fellow state agencies. Staff met with, had calls with, or attended lectures of 43 environmental justice advocacy or community organizations based in the Bay Area or working throughout the state. To date, staff had nine meetings or calls with representatives from other non-profits, design firms, or academia. Throughout each project phase, staff attended trainings, workshops, lectures, panels, and other events related to environmental justice and social equity; and have thus far attended 17 such events. Additionally, staff conducted outreach on the Bay Plan amendment at 13 smaller events and have held two larger outreach events.

The first of these two larger events was held on the evening of June 19, 2018 at OakStop in Oakland at which BCDC hosted an environmental justice community roundtable with the California State Lands Commission and the California Coastal Commission. Roughly 50 people were in attendance, including several environmental justice organizations, community members, unions, and government representatives, among others. This event focused on identifying intersections of the three agencies' missions and programs with issues of environmental justice and social equity.

The second major outreach event was a public workshop on environmental justice held at the regularly scheduled Commission meeting on the afternoon of January 17, 2019 at the Bay Area Metro Center in San Francisco. This event focused on brainstorming potential policy solutions for BCDC to address environmental justice and social equity. Approximately 75 people were in attendance including environmental justice organizations and community members, BCDC commissioners, government agency representatives, and others. BCDC staff co-facilitated the workshop with staff from the Environmental Justice Coalition for Water. Additionally, representatives from environmental justice organizations around the region, including Breakthrough Communities (Alameda County), Greenaction for Health and Environmental Justice (Bayview-Hunters Point, Treasure Island), Nuestra Casa (East Palo Alto), and All Positives Possible (South Vallejo) presented at the workshop. Notes from this workshop can be found at www.bcdc.ca.gov/EJWorkshop.

Preliminary Staff Recommendation

Drawing on expertise of environmental justice and community-based organizations, BCDC staff has developed the following guiding principles in the process of this Bay Plan amendment. These guiding principles are intended to guide the Commissions' actions through a commitment to integrating environmental justice and social equity into its mission. Staff preliminarily recommends that the Commission adopt the following guiding principles below in a separate resolution along with adoption of the final policies.

BCDC's Environmental Justice and Social Equity Guiding Principles

The Commission will:

- Recognize and acknowledge the California Native American communities who first inhabited the Bay Area and their cultural connection to the natural resources of the region.

- Maintain its commitment to ensuring that the Bay remains a public resource, free and safe for all to access and use regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.
- Continuously strive to build trust and partnerships with underrepresented communities and community-based organizations.
- Endeavor to eliminate disproportionate adverse economic, environmental, and social project impacts caused by Commission actions and activities, particularly in disadvantaged and vulnerable communities.
- Ensure that the needs of vulnerable shoreline communities are addressed as the Commission assists all stakeholders plan for current and future climate hazards.
- Work collaboratively and coordinate with all stakeholders to address issues of environmental justice and social equity.
- Continually build accountability, transparency, and accessibility into its programs and processes.

Staff preliminarily recommends that the Commission amend the Bay Plan as follows:

1. Proposed Additions to Bay Plan Findings and Policies
 - a. Add a new Environmental Justice and Social Equity findings and policies section that addresses the following:
 - (1) History and context
 - (2) Definitions and guiding principles
 - (3) Meaningful community involvement
 - (4) Disproportionate burdens
 - (5) Collaboration and coordination
2. Proposed Changes to Existing Bay Plan Findings and Policies
 - a. Amend the Bay Plan Public Access findings and policies to address the following:
 - (1) Distribution and quality of public access
 - (2) Meaningful community involvement
 - (3) Public access barriers
 - (4) Public Access Design Guidelines
 - b. Amend the Bay Plan Shoreline Protection findings and policies to address the following:
 - (1) Adverse adjacent impacts
 - (2) Meaningful community involvement

- (3) Water access and shoreline protection
- (4) Contamination remediation
- c. Amend the Bay Plan Mitigation findings and policies to address the following:
 - (1) Meaningful community involvement
 - (2) Distribution of mitigation benefits

Proposed Additions and Deletions to Bay Plan Findings and Policies

The table below summarizes staff’s preliminary recommendations for amending the Bay Plan.

Proposed additions in language are shown as underlined, while proposed deletions are shown as ~~struck through~~. An analysis of reasons for the proposed changes and the location of further information contained in the background report, entitled *Toward Equitable Shorelines*, is also included.

Copies of staff’s preliminary recommendations are available on the Commission’s website at: www.bcdc.ca.gov **Environmental Justice Working Group**

Environmental Justice and Social Equity. Staff preliminarily recommends the Commission add the following findings and policies in a new section titled “Environmental Justice and Social Equity.” Draft language for this new section is shown below.

Environmental Justice and Social Equity	
Draft Findings Changes	Staff Analysis
<p><u>Finding a:</u></p> <p>a. <u>Throughout the 1990s, federal and state governments began including environmental justice in law and policy to ensure that people regardless of race, culture, and income were treated fairly. This came in response to the environmental justice movement that protested discriminatory and unfair policies implemented at all levels of government resulting in generations of communities of color facing: persistent poverty; poor public health; inadequate public services and infrastructure; disproportionate exposure to polluted air, water, and soil; and</u></p>	<p>This finding provides historical context on the environmental justice movement and subsequent polices in the U.S. It is included to frame this new Bay Plan section in the national narrative on environmental justice. Further information on the history of the environmental justice movement and institutionalization by the federal and state government can be found in Chapter 2 of the Background Report.</p>

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Draft Findings Changes	Staff Analysis
<p><u>underrepresentation in policy-making. The co-location of incompatible land uses, aggregation of industrial development, lack of enforcement over polluting land uses, and prioritization of business interests over public health have resulted in disproportionate environmental burdens and adverse health issues for many low-income communities of color. The San Francisco Bay Area is no exception to these development patterns as many land uses with noxious impacts are co-located with low-income communities of color.</u></p>	
<p><u>Finding b:</u></p> <p><u>The Commission, as one of the agencies involved in the entitlement process, has played a role in approving development and any consequential injustices. Many industrial land uses around the Bay were established prior to the Commission's existence. Although the Commission neither initiates projects nor has any authority over municipal zoning or siting authority, through its permitting authority, the Commission has approved additional development projects to existing ports, oil and gas operations, sewage and wastewater treatment plants, and heavy industry in or near low-income communities of color around the Bay Area. Moreover, the Commission's Priority Use Areas, intended to minimize the necessity for future Bay fill, has also facilitated the aggregation of pollution sources within areas designated for Port and Water-Related Industry Priority Use Areas.</u></p>	<p>This finding situates issues of environmental justice and social equity within BCDC's history and mandate. In order to address environmental justice and social equity, the Commission must begin with understanding and acknowledging the role it, along with all agencies involved in the entitlement process, has played in perpetuating such injustices and inequities. Further information on the Commission's history on issues related to environmental justice and social equity can be found in Chapter 3 of the Background Report.</p>

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Draft Findings Changes	Staff Analysis
<p><u>Part of the Commission’s founding mandate is to encourage the development of the Bay and its shoreline to their highest potential with a minimum of Bay fill, as expressed in the McAteer-Petris Act and San Francisco Bay Plan. Without explicitly addressing and accounting for potential negative impacts to low-income communities of color, the Commission’s encouragement of such development patterns may have inadvertently contributed to the physical and cultural displacement of these Bay Area communities.</u></p>	
<p><u>Finding c:</u></p> <p><u>The Commission recognizes that California Native American communities have also faced many environmental injustices and social inequities. However, the Commission has not dedicated institutional resources to tribal issues and cultivating relationships with California Native American communities. As a result, these issues have not been addressed in the Bay Plan. The Commission acknowledges the need to build these relationships and address tribal issues going forward.</u></p>	<p>Native American issues are related but distinct from environmental justice issues, given these communities’ cultural connections to the Bay’s natural resources. Thus, the Commission has decided not to explicitly include environmental justice issues affecting tribal entities in this amendment. Additionally, the Commission does not currently have relationships with any California Native American communities. As a result, the Commission has decided to address these issues in a separate project and policy amendment. For further information, see Chapter 2 of the Background Report.</p>
<p><u>Finding d:</u></p> <p><u>Under Title VI of the Civil Rights Act of 1964 and California Government Code §11135, the Commission’s actions when considering and acting on proposed projects and requiring public access to the Bay and its shoreline should be non-discriminatory for all people regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.</u></p>	<p>This finding explains federal and state civil rights standards that the Commission is held to in its regulatory work. It is important to include this statement as civil rights underpin the environmental justice movement.</p>

Environmental Justice and Social Equity	
Draft Findings Changes	Staff Analysis
<p><u>Finding e:</u></p> <p><u>The State of California defines <i>environmental justice</i> 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 §65040.12(e)).</u></p>	<p>This definition is included to provide clarity and context to the findings and policies which use this term. Given that BCDC is a state agency and in order to better coordinate with other state agencies, the definition of environmental justice included is the one included in the state government code. For further information on key concepts, see Chapter 2 of the Background Report.</p>
<p><u>Finding f:</u></p> <p><u>According to the U.S. Environmental Protection Agency “<i>fair treatment</i> means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.” (Guidance on Considering Environmental Justice During the Development of a Regulatory Action).</u></p>	<p>This definition is included to provide clarity and context to the concept of “fair treatment” included in the definition of environmental justice. For further information on key concepts, see Chapter 2 of the Background Report.</p>
<p><u>Finding g:</u></p> <p><u>Addressing social equity in policy is essential for the economy, health of a population, and community well-being. Additionally, addressing social equity in climate policies is vital to building resilience. In its 2017 General Plan Guidelines, the Governor’s Office of Planning and Research includes the following definition for <i>social equity</i>: “The fair, just, and equitable management of all institutions serving the public directly or by contract; the fair, just and equitable distribution of public services and implementation of public policy; and the commitment to promote fairness, justice,</u></p>	<p>This definition is included to provide clarity and context to the findings and policies which use this term. This definition of social equity was chosen to further increase collaboration and coordination between the Commission and local governments who utilize the OPR’s General Plan Guidelines to guide the creation of their general plans and zoning. Local government general plans and zoning are the primary land use planning tools in the state. For further information on key concepts, see Chapter 2 of the Background Report.</p>

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Draft Findings Changes	Staff Analysis
<p><u>and equity in the formation of public policy.” (Governor’s Office of Planning and Research 2017 General Plan Guidelines).</u></p>	
<p><u>Finding h:</u></p> <p><u>The Commission recognizes the importance of low-income communities of color as invaluable stakeholders and is committed to uplifting the voices of communities who have been historically excluded from decision-making processes. While there is no widespread agreement on terminology to describe communities with certain attributes, for the purposes of the Bay Plan, the following definitions are used:</u></p> <p><u>The State of California defines <i>disadvantaged communities</i> as including, but not limited to “[...] (a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation; and (b) Areas with concentrations of people that are of low-income, high unemployment, low levels of home ownership, high rent burden, sensitive populations, or low levels of educational attainment.” (California Health and Safety Code §39711)</u></p> <p><u>The Commission recognizes that due to historic and ongoing marginalization, social and economic structures influence a person or community’s ability to prepare for, respond to, or recover from a flood event. In the context of environmental justice, very low-income communities and/or communities of color are particularly important, as these demographic factors</u></p>	<p>These definitions are included to provide clarity and context to the findings and policies which use these terms. Several government agencies have created community screening and identification tools to alleviate the burden on communities to demonstrate cumulative burdens and social and economic impacts in order to receive additional funding or protection. The state health and safety code includes the term “disadvantaged communities” and requires CalEPA to identify such disadvantaged communities. In order to identify these communities, CalEPA created the screening tool, CalEnviroScreen. BCDC’s Adapting to Rising Tides (ART) Program has similarly created a screening tool to understand community vulnerability by assessing socioeconomic factors, contamination presence, and future flooding impacts. Finally, the term “underrepresented communities” is defined here to support policies and findings related to outreach and engagement. For further information on key concepts, see Chapter 2 of the Background Report. Additionally, see Appendix C for a detailed methodology of BCDC’s vulnerable community analysis.</p>

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Draft Findings Changes	Staff Analysis
<p><u>compound other relevant indicators. Through geographic analysis, areas with high concentrations of households exhibiting factors that can reduce access to or capacity for preparedness and recovery are considered <i>vulnerable</i>.</u></p> <p><u>Additionally, contamination indicators are included in measuring vulnerability. These indicators represent degradation or threats to communities and the natural environment from pollution. The presence of contaminated lands and water raises health and environmental justice concerns, which may worsen with flooding from storm surge and sea level rise, as well as associated groundwater level changes.</u></p> <p><u><i>Underrepresented community</i> is used to describe those who have been historically and are still systematically excluded from political and policy-making processes, which includes many disadvantaged and vulnerable communities.</u></p>	
<p><u>Finding i:</u></p> <p><u>Meaningfully involving impacted communities is essential to addressing environmental justice. According to the U.S. Environmental Protection Agency, <i>meaningful involvement</i> means “(1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected.” (Guidance on Considering Environmental Justice During the Development of a Regulatory Action).</u></p>	<p>This definition is included to provide clarity and context to the findings and policies which use this term. For further information on key concepts, see Chapter 2 of the Background Report.</p>

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Draft Findings Changes	Staff Analysis
<p><u>Finding j:</u></p> <p><u>Drawing on the expertise of environmental justice and community-based organizations, the Commission has committed to the following guiding principles to integrate environmental justice and social equity into its mission.</u></p> <p><u>The Commission will:</u></p> <ul style="list-style-type: none"> • <u>Recognize and acknowledge the California Native American communities who first inhabited the Bay Area and their cultural connection to the natural resources of the region.</u> • <u>Maintain its commitment to ensuring that the Bay remains a public resource, free and safe for all to access and use regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.</u> • <u>Continuously strive to build trust and partnerships with underrepresented communities and community-based organizations.</u> • <u>Endeavor to eliminate disproportionate adverse economic, environmental, and social project impacts caused by Commission actions and activities, particularly in disadvantaged and vulnerable communities.</u> 	<p>As a part of this amendment, the Commission has created guiding principles to help integrate environmental justice and social equity into all its actions and activities to better carry out its mission. Addressing environmental justice and social equity often entails a fundamental shift in how an organization operates. These principles are meant to guide the Commission in navigating such a shift. Rationale for each principle is included in Chapter 2 of the Background Report.</p>

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Draft Findings Changes	Staff Analysis
<ul style="list-style-type: none"> • <u>Ensure that the needs of vulnerable shoreline communities are addressed as the Commission assists all stakeholders plan for current and future climate hazards.</u> • <u>Work collaboratively and coordinate with all stakeholders to address issues of environmental justice and social equity.</u> • <u>Continually build accountability, transparency, and accessibility into its programs and processes.</u> 	
<p><u>Finding k:</u></p> <p><u>Equitable and culturally-relevant community outreach and engagement is at the heart of environmental justice and necessary for meaningful involvement. Many public processes are currently not accessible to all, as there are barriers to participation for low-income people, working people, parents and guardians, people of color, people that have limited English language skills, people with disabilities, people with limited transportation options, and others. Meaningfully involving underrepresented communities may require additional and more targeted efforts, such as equitable and culturally-relevant outreach and engagement. Consistent community outreach and engagement from the start of a project and throughout project design, permitting, and construction are necessary for addressing environmental justice and social equity. If outreach and engagement are indeed conducted from the onset of the project, much of this would, and should,</u></p>	<p>This finding is included to explain the need for outreach and engagement and enumerates various barriers that may exist. Further, this finding acknowledges that additional or more targeted outreach and engagement may be necessary to meaningfully involve all impacted communities, such as language-specific or culturally-specific outreach and engagement tactics. Lastly, this finding explains the need for such engagement to occur from the onset of the project. However, given that the Commission’s law requires that local discretionary approvals be obtained prior to a BCDC permit, and additional information is required by the BCDC permit application filing requirements, BCDC’s permitting process is often at the end of a project’s entitlement process. Specifically, the environmental review and documentation, the local government discretionary approval, the Regional Water Board’s Water Quality Certification/Waiver (if applicable), the</p>

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<p><u>occur during the local government’s discretionary approval process prior to the Commission’s involvement.</u></p>	<p>Department of Toxic Substances Control’s approval (if applicable), and the U.S Fish and Wildlife Service, the California Department of Fish and Wildlife, and the National Marine Fisheries Service’s Biological Opinion or Take Authorization (if applicable) are included in BCDC’s filing requirements to consider an application completed and filed. As a result, most outreach and engagement would and should take place prior to BCDC’s permitting process. Support for this finding can be found in Chapter 4 of the Background Report.</p>
<p><u>Finding l:</u></p> <p><u>Identifying whether a community would be disproportionately burdened by a project is an initial step in addressing environmental justice. Taking steps to reduce such disproportionality can help ensure people are being treated fairly regardless of race, culture, and income.</u></p>	<p>This finding describes that addressing environmental justice is a two-step process of first identifying potential disproportionate burdens and then taking steps to reduce them. Support for this finding can be found in Chapter 4 of the Background Report.</p>
<p><u>Finding m:</u></p> <p><u>As local governments retain most land use authority in California, collaborating and coordinating with local governments in the development of their general plans and zoning ordinances can aid in creating an environmentally just and socially equitable Bay Area. Many issues related to environmental justice and social equity may fall outside the Commission’s authority or jurisdiction but may be within the purview of another federal, state, or regional agency. Collaborating and working across sectors and authorities can help to address environmental justice and social equity.</u></p>	<p>This finding is included to provide a way for the Commission to address environmental justice and social equity concerns that may be partially outside of the Commission’s jurisdiction and/or authority. Support for this finding can be found in Chapter 4 of the Background Report.</p>

Environmental Justice and Social Equity	
Draft Policy Changes	Staff Analysis
<p><u>Policy 1:</u></p> <p><u>The Commission’s guiding principles on environmental justice and social equity should shape all of its actions and activities.</u></p>	<p>This policy is included to provide an overarching framework to guide the Commission in ensuring environmental justice and social equity are adequately addressed. This policy is supported by Finding j.</p>
<p><u>Policy 2:</u></p> <p><u>Since addressing issues of environmental justice and social equity should begin as early as possible in the project planning process, the Commission should support, encourage, and expect local governments to include environmental justice and social equity in their general plans, zoning ordinances, and in their discretionary approval processes. Additionally, the Commission should be a leader in collaborating transparently with other agencies on issues related to environmental justice and social equity that fall outside of the Commission’s authority or jurisdiction.</u></p>	<p>Often times, environmental justice and social equity concerns arise in land-use decisions, which are typically deliberated in the context of local government general plans, zoning, and/or discretionary approvals. In other cases, specific environmental justice and social equity issues may fall outside of the Commission’s jurisdiction and authority. This policy commits the Commission to addressing such issues through leadership and collaboration. This policy is supported by Finding m.</p>
<p><u>Policy 3:</u></p> <p><u>Local governments and project applicants should be encouraged and expected to conduct equitable, culturally-relevant community outreach and engagement to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in identified vulnerable or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. Evidence of how community concerns were addressed should be provided. If previous outreach and</u></p>	<p>Meaningful community involvement is a major tenet of environmental justice. Local governments and project applicants should undertake outreach and engagement as they are involved from the earliest stages of the project in certain circumstances. This requirement would apply for projects requiring a major permit and certain administrative (minor) projects at the Commission’s discretion in identified vulnerable or disadvantaged communities, as determined through CalEnviroScreen or BCDC’s vulnerable community mapping. To ensure that community involvement is meaningful,</p>

Environmental Justice and Social Equity	
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<u>engagement were insufficient, further outreach and engagement should be conducted prior to Commission action.</u>	evidence of how input was addressed should be provided to the Commission. If the Commission finds previous outreach and engagement to be insufficient, further outreach and engagement to ensure meaningful involvement will need to be conducted prior to Commission action on the project. This policy is supported by Finding k.
<p>Policy 4:</p> <p><u>If a project is proposed within an identified vulnerable or disadvantaged community, potential disproportionate burdens from projects should be identified with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to avoid, minimize, and/or compensate for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed.</u></p>	<p>First, this policy requires project applicants to identify disproportionate project impacts (with the involvement of the impacted community) if the project is in an identified vulnerable or disadvantaged community. This is the initial step in addressing environmental justice. Additionally, this policy requires local governments and the Commission to address disproportionate project outcomes through their permitting and environmental review processes, within the bounds of their respective authorities and jurisdictions. This policy is supported by Finding l.</p>

Public Access. Staff preliminarily recommends the Commission revise the findings and policies in the “Public Access” section as shown in the draft language below.

Public Access	
Draft Findings Changes	Staff Analysis
<p>Finding b:</p> <p>Access to the Bay allows the public to discover, experience and appreciate the Bay's natural resources and can foster public support for Bay resource protection, including habitat acquisition and restoration. Public access can provide for recreational activities, educational</p>	<p>This addition expands upon the benefits of public access to the San Francisco Bay. Subsistence fishing is common among some vulnerable and/or disadvantaged communities. It is important to recognize the role that public access plays in providing safe, convenient areas for these communities</p>

Public Access	
Draft Findings Changes	Staff Analysis
<p>and interpretive opportunities, <u>subsistence fishing</u>, and means for alternative transportation. <u>The Bay and its shoreline can also be refuges from heat and noise and can offer relief from crowded, often stressful, urban areas, thereby contributing to well-being.</u></p>	<p>to fish. As the population in the Bay Area increases, it is important to recognize the role the Bay can play in mitigating public health impacts related to crowded, hot urban areas. The idea reinforces sentiments echoed in the Appearance, Design, and Scenic Views section of the Bay Plan.</p>
<p>Finding c:</p> <p>Public access required by the Commission is an integral component of development and usually consists of pedestrian and other nonmotorized access to and along the shoreline of San Francisco Bay. <u>By its nature, public access is free and available to all users.</u> It may include certain improvements, such as paving, landscaping, street furniture, <u>restrooms, and drinking fountains</u>; and it may allow for additional uses, such as bicycling, fishing, picnicking, nature education, etc. Visual access to the Bay is a critical part of public access. <u>Public access spaces can promote local cultural identity through non-physical aspects of Bay access, such as educational, cultural, civic, and health and wellness, or other activities.</u> In projects that cannot provide on-site public access due to safety or use conflicts, including significant adverse effects on wildlife, in lieu public access may be appropriate.</p>	<p>This addition clearly reaffirms that public access is free and available to all. It also expounds upon the list of potential public access improvements that can help create more equitable public spaces. Lastly, this finding includes an addition to clarify the benefits of non-physical public access such as public programming. Specifically, these aspects of public access could serve as another mechanism to promote inclusivity. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding e:</p> <p>Although public access to the approximately 1,000-mile Bay shoreline has increased significantly since the adoption of the Bay Plan in 1968, demand for additional public access to the Bay continues due to a growing Bay Area population and the desirability of shoreline</p>	<p>This additional language explains the environmental justice considerations of how the full potential of public access at the Bay has not yet been achieved. Although the Commission has worked since its inception to improve the public's access to the San</p>

Public Access	
Draft Findings Changes	Staff Analysis
<p>access areas. Diverse public access experiences are in great demand, both along urban waterfronts and in more natural areas. The full potential for access to the Bay has by no means yet been reached. <u>Additionally, certain communities may be physically and/or culturally disconnected from public access areas due to land use patterns, poor public transit, lack of safe bicycle and walking paths, language barriers, economic barriers, and/or culturally inaccessible designs.</u></p>	<p>Francisco Bay and its shoreline, some communities have not received as many of these benefits, as they may be cut off physically from the Bay by busy roadways or industrial development. For these residents, accessing the shoreline may even be unsafe. Additionally, certain communities may be cut off figuratively from public access areas if way-finding and interpretative signage are not accessible or if activities at the public access areas require owning or renting various watersport equipment, which can be expensive. Further, not all public access designs may have included the recreational preferences of a diversity of people, which can create a cultural disconnect where certain communities do not feel welcome at public access areas. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding h:</p> <p><u>Public access is not equally or evenly distributed around the Bay, nor are all public access areas of the same quality, due to varying levels of resources for improvements, maintenance, and amenities. Often public access areas near identified vulnerable or disadvantaged communities are difficult to access, poorly maintained, and infrequently improved. This can perpetuate cycles of avoidance, underuse, neglect, and in extreme cases, loss of public access to the Bay. However, there remains a need to better understand where these gaps and</u></p>	<p>This finding explains the issue that public access is not equally distributed, maintained, or improved around the Bay. Through site visits and community involvement in the amendment process, the Commission has learned that public access areas near many disadvantaged or vulnerable communities are difficult to access, poorly maintained, and infrequently improved. Although this is known anecdotally, there is not region-wide comprehensive and comparative information on this topic and thus, there remains a need to better</p>

Public Access	
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<p><u>inconsistencies are located regionally in order to address them and provide more equitable and convenient public access.</u></p>	<p>understand this issue to provide more equitable and convenient public access. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding i:</p> <p><u>Designing and programming public access in a manner that is welcoming to all creates public spaces that are well-loved and cared for by their users and can help account for unintended consequences, such as low usage or a sense of exclusion by specific communities. Meaningful involvement of underrepresented communities in the project planning, design, and ongoing maintenance phases can help address this, as well as cultivate community empowerment, lifelong stewardship, a sense of ownership, and connections to public access areas and the Bay. The design and programming of public access can also engender a welcoming atmosphere for all by embracing the multicultural and indigenous histories and presence of the surrounding area.</u></p>	<p>This finding shows the importance of meaningfully involving underrepresented communities in the designing and programming of public access areas. In order for BCDC to reach its full potential in providing inclusive public access at the Bay, designs and programming should take equity into consideration to avoid excluding certain public access users. Another way to create welcoming spaces for all, especially those that may have been excluded from the shoreline, is to create public access spaces that embrace the project area’s multifaceted histories. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding h j:</p> <p>Although opportunities for views of the Bay from public access areas have increased since the Bay Plan was adopted in 1968, there are still a significant number of shoreline areas where there exists little or no visual access to the Bay.</p>	<p>The finding has been re-lettered from h to j.</p>
<p>Finding i k:</p> <p>Public access areas obtained through the permit process are most utilized if they provide physical access, provide connections to public rights-of-way, are related to adjacent uses, are designed,</p>	<p>The finding has been re-lettered from i to k.</p>

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<p>improved and maintained clearly to indicate their public character, and provide visual access to the Bay. Flooding from sea level rise and storm activity increases the difficulty of designing public access areas (e.g., connecting new public access that is set at a higher elevation or located farther inland than existing public access areas).</p>	
<p>Finding j]:</p> <p>In some cases, certain uses may unduly conflict with accompanying public access. For example, unmanaged or inappropriately located public access may adversely affect wildlife or some port or water-related industrial activities may pose a substantial hazard to public access users.</p>	<p>The finding has been re-lettered from j to l.</p>
<p>Finding k m:</p> <p>Insufficient knowledge on the specific type and severity of effects of human activities on wildlife creates a need for more scientific studies, both in the San Francisco Bay Area and elsewhere in similar habitats with similar human activities. More baseline data are needed for comparison purposes and to help isolate disturbance factors (e.g., disturbances caused by human activities versus other factors such as poor water quality or natural variability).</p>	<p>The finding has been re-lettered from k to m.</p>

Public Access	
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<p>Finding l n:</p> <p>Studies indicate that public access may have immediate effects on wildlife (including flushing, increased stress, interrupted foraging, or nest abandonment) and may result in adverse long-term population and species effects. Although some wildlife may adapt to human presence, not all species or individuals may adapt equally, and adaptation may leave some wildlife more vulnerable to harmful human interactions such as harassment or poaching. The type and severity of effects, if any, on wildlife depend on many factors, including physical site configuration, species present, and the nature of the human activity. Accurate characterization of current and future site, habitat and wildlife conditions, and of likely human activities, would provide information critical to understanding potential effects on wildlife.</p>	<p>The finding has been re-lettered from l to n.</p>
<p>Finding m o:</p> <p>Potential adverse effects on wildlife from public access may be avoided or minimized by siting, designing and managing public access to reduce or prevent adverse human and wildlife interactions. Managing human use of the area may include adequately maintaining improvements, periodic closure of access areas, pet restrictions such as leash requirements, and prohibition of public access in areas where other strategies are insufficient to avoid adverse effects. Properly sited and/or designed public access can avoid habitat fragmentation and limit predator access routes to wildlife areas. In some cases, public access adjacent to sensitive wildlife areas may be set back from the shoreline a greater distance because buffers may be needed to avoid or minimize human disturbance of wildlife. Appropriate siting, design and management strategies depend on the environmental characteristics of the site, the likely human uses of the site, and the potential impacts of future climate change.</p>	<p>The finding has been re-lettered from m to o.</p>

Public Access	
Draft Findings Changes	Staff Analysis
<p>Finding n p:</p> <p>Providing diverse and satisfying public access opportunities can reduce the creation of informal access routes to decrease interaction between humans and wildlife, habitat fragmentation, and vegetation trampling and erosion. Formal public access also provides for more predictable human actions, which may increase the ability of wildlife to adjust to human use.</p>	<p>The finding has been re-lettered from n to p.</p>

Public Access	
Draft Policy Changes	Staff Analysis
<p>Policy 2:</p> <p>In addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided. <u>If in lieu public access is required and cannot be provided near the project site, the required access should be located preferably near identified vulnerable or disadvantaged communities lacking well-maintained and convenient public access in order to foster more equitable public access around the Bay Area.</u></p>	<p>This policy would require project applicants to provide public access preferably near identified disadvantaged or vulnerable communities in applicable situations, as these communities are often near public access that is physically inaccessible, poorly maintained, or infrequently improved. This policy would only be used in instances where in lieu public access is required and it is not feasible near the project site. This policy is supported by Finding h.</p>

Public Access	
Draft Policy Changes	Staff Analysis
<p>Policy 5:</p> <p><u>Public access that substantially changes the use or character of the site should be sited, designed, and managed based on meaningful community involvement to create public access that is inclusive and welcoming to all and embraces local multicultural and indigenous history and presence. In particular, underrepresented communities should be involved. If previous outreach and engagement was insufficient, further outreach and engagement should be conducted prior to Commission action.</u></p>	<p>This policy requires meaningful community involvement and, in particular, of underrepresented communities. This may require a variety of language-specific or culturally-specific outreach and engagement tactics. Involving underrepresented communities in the design and programming of public access areas will create a more inclusive and equitable public access experience and can help celebrate the areas' multicultural and indigenous identities. If the Commission finds previous outreach and engagement to be insufficient, further outreach and engagement to ensure meaningful involvement will need to be conducted prior to Commission action on the project. This policy is supported by Finding i.</p>
<p>Policy 5 6:</p> <p>Public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.</p>	<p>The policy has been re-numbered from 5 to 6.</p>
<p>Policy 6 7:</p> <p>Whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed. This should be done wherever appropriate by requiring dedication of fee title or easements at no cost to the public, in the same manner that streets, park sites, and school sites are dedicated to the public as part of the subdivision process in cities and counties. Any public access provided as a condition of development should either be required to remain viable in the event of future sea level</p>	<p>The policy has been re-numbered from 6 to 7.</p>

Public Access	
Draft Policy Changes	Staff Analysis
rise or flooding, or equivalent access consistent with the project should be provided nearby.	
<p>Policy 7 8:</p> <p>Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities, <u>economic constraints, and/or cultural (including language) barriers</u> to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs, <u>including using appropriate languages or culturally-relevant icon-based signage.</u></p>	<p>The first addition to this policy explains the need to create barrier-free access, beyond physical access. While physical access for all is important, there are also a number of figurative barriers, such as economic and cultural barriers. The second addition to this policy is a requirement to post public access signs in the appropriate language and/or with culturally-relevant icons. These icons should be universally recognized and easy to understand. In order for public access to be inclusive of those who have limited English language skills or who cannot read, signs need to include appropriate languages for the surrounding communities and/or culturally-relevant icons. BCDC's <i>Shoreline Signs</i> guide should be updated to reflect this. These additions are supported by Finding e. This policy has been re-numbered from 7 to 8.</p>
<p>Policy 8 9:</p> <p>In some areas, a small amount of fill may be allowed if the fill is necessary and is the minimum absolutely required to develop the project in accordance with the Commission's public access requirements.</p>	<p>The policy has been re-numbered from 8 to 9.</p>
<p>Policy 9 10:</p> <p>Access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.</p>	<p>The policy has been re-numbered from 9 to 10.</p>

Public Access	
Draft Policy Changes	Staff Analysis
Diverse and interesting public access experiences should be provided which would encourage users to remain in the designated access areas to avoid or minimize potential adverse effects on wildlife and their habitat.	
<p>Policy 10 <u>11</u>:</p> <p>Roads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational traffic. The roadway and right-of-way design should maintain and enhance visual access for the traveler, discourage through traffic, and provide for safe, separated, and improved physical access to and along the shore. Public transit use and connections to the shoreline should be encouraged where appropriate.</p>	The policy has been re-numbered from 10 to 11.
<p><u>Policy 11 <u>12</u>:</u></p> <p>Federal, state, regional, and local jurisdictions, special districts, and the Commission should cooperate to provide appropriately sited, designed and managed public access, especially to link the entire series of shoreline parks, regional trail systems (such as the San Francisco Bay Trail) and existing public access areas to the extent feasible without additional Bay filling and without significant adverse effects on Bay natural resources. State, regional, and local agencies that approve projects should assure that provisions for public access to and along the shoreline are included as conditions of approval and that the access is consistent with the Commission's requirements and guidelines.</p>	The policy has been re-numbered from 11 to 12.

Public Access	
Draft Policy Changes	Staff Analysis
<p>Policy 12 13:</p> <p>The Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed. <u>The Design Review Board should encourage diverse public access to meet the needs of a growing and diversifying population. Public access should be well distributed around the Bay and designed or improved to accommodate a broad range of activities for people of all races, cultures, ages, income levels, and abilities.</u></p>	<p>Until the <i>Public Access Design Guidelines</i> can be updated to include principles of environmental justice and social equity, this sentence serves to ensure the Design Review Board takes inclusivity into consideration when reviewing public access designs. The policy has been re-numbered from 12 to 13.</p>
<p>Policy 13 14:</p> <p>Public access should be integrated early in the planning and design of Bay habitat restoration projects to maximize public access opportunities and to avoid significant adverse effects on wildlife.</p>	<p>The policy has been re-numbered from 13 to 14.</p>
<p>Policy 14 15:</p> <p>The Commission should continue to support and encourage expansion of scientific information on the effects of public access on wildlife and the potential of siting, design and management to avoid or minimize impacts. Furthermore, the Commission should, in cooperation with other appropriate agencies and organizations, determine the location of sensitive habitats in San Francisco Bay and use this information in the siting, design and management of public access along the shoreline of San Francisco Bay.</p>	<p>The policy has been re-numbered from 14 to 15.</p>

Shoreline Protection. Staff preliminarily recommends the Commission revise the findings and policies in the “Shoreline Protection” section as shown in the draft language below.

<u>Shoreline Protection</u>	
Draft Findings Changes	Staff Analysis
<p>Finding c:</p> <p>Most structural shoreline protection projects involve some fill, which can adversely affect natural resources, such as water surface area and volume, tidal circulation, and wildlife use. Structural shoreline protection can further cause erosion of tidal wetlands and tidal flats, prevent wetland migration to accommodate sea level rise, create a barrier to physical and visual public access to the Bay, create a false sense of security and may have cumulative impacts. Physical and visual public access can be provided on levees and other protection structures. As the rate of sea level rise accelerates and the potential for shoreline flooding increases, the demand for new shoreline protection projects will likely increase. Some projects may involve extensive amounts of fill. <u>Occasionally, riprap and other structural protection can reduce the public’s ability to safely access the waters of the Bay. In these cases, the shoreline protection structure can conflict with the Commission’s commitment to providing safe public water access.</u></p>	<p>This finding explains the importance of retaining safe and accessible water access when using riprap or other hardened structures as shoreline protection, especially in communities who lack access to the Bay’s waters. Riprap is an easy and low-cost shoreline protection method; however, it can reduce the public’s ability to safely and easily access the water, especially to swim, fish, or boat. The Commission should remain steadfast in its commitment to provide water access, especially in vulnerable or disadvantaged communities who may already have physical or cultural barriers to reaching the Bay. These communities need to be protected from current and future flooding but should not have to sacrifice access to the water for protection. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding g:</p> <p><u>Some hardened shoreline protection structures may intensify wave reflection and contribute to shoreline erosion and overtopping at adjacent or nearby vulnerable areas. At all sites, but particularly at sites in or adjacent to lower income communities that may lack resources to adequately protect their shoreline, it is important to design projects to minimize such impacts. Given the appropriate site conditions, natural and nature-based shoreline protection methods can dissipate wave energy more effectively than certain types of hardened shoreline protection structures, diminishing wave reflection impacts such as accelerated erosion and flooding in adjacent or nearby areas.</u></p>	<p>This finding explains the potential adverse impacts from shoreline protection structures, as well as the potential socio-economic impacts of protecting the shoreline. Certain shoreline protection structures, namely those that cause significant wave reflection, can have adverse impacts to adjacent or nearby areas. Because well-engineered and well-constructed shoreline protection can be costly, these adverse impacts can be an issue for communities that are unable to afford adequate protection structures. Further information on this finding can be found in Chapter 4 of the Background Report.</p>

<u>Shoreline Protection</u>	
Draft Findings Changes	Staff Analysis
<p>Finding g h:</p> <p>Loose dirt, concrete slabs, asphalt, bricks, scrap wood and other kinds of debris, are generally ineffective in halting shoreline erosion or preventing flooding and may lead to increased fill or release of pollutants. Although providing some short-term shoreline protection, protective structures constructed of such debris materials typically fail rapidly in storm conditions because the material slides bayward or is washed offshore. Repairing these ineffective structures requires additional material to be placed along the shoreline, leading to unnecessary fill and disturbance of natural resources.</p>	<p>The finding has been re-lettered from g to h.</p>
<p>Finding i:</p> <p><u>The impacts of historic and ongoing social and economic marginalization may compound risks posed by flooding to communities by reducing a community's or individual's ability to prepare for, respond to, or recover from a flood event. Meaningfully involving these vulnerable communities can help ensure successful shoreline protection structures, regional adaptation strategies, and resilience measures. Without including the needs of the region's most vulnerable and underrepresented communities, construction of shoreline protection could result in unintended consequences, such as exacerbating the vulnerability of these communities.</u></p>	<p>This finding demonstrates the importance of meaningfully involving vulnerable communities in shoreline protection project planning, and creating regional strategies and resilience measures. This finding echoes sentiments found throughout BCDC's work on climate change vulnerability and adaptation in BCDC's ART Program. Given certain communities' levels of vulnerability to flooding due to socioeconomic factors and contamination presence, it is important to adapt in an equitable manner. Further information on this finding can be found in Chapter 4 and Appendix C of the Background Report.</p>

Shoreline Protection	
Draft Findings Changes	Staff Analysis
<p>Finding j:</p> <p><u>There are many contaminated sites on San Francisco Bay’s shoreline and in adjacent subtidal areas. Current and future flooding of these sites could potentially mobilize contaminants into the environment of surrounding communities. These contaminants are associated with a number of adverse public health impacts. Many of these sites are located in or near low-income communities of color facing various other adverse environmental impacts, creating compound negative health impacts. These impacts can be minimized if measures are taken to remove contaminants (if deemed safe for human and environmental health) and if remediation projects are designed using the best available science on sea level rise, storm surge, and associated groundwater level changes to prevent contaminant mobilization.</u></p>	<p>This finding touches on the potential health consequences of contaminated site remediation projects that do not use the best available science on sea level rise, storm surge, and associated groundwater impacts in project design. Discriminatory planning practices, the co-location of incompatible land uses, aggregation of industrial development, inadequate enforcement of polluting land uses, and prioritization of business interests over public health has culminated in disproportionate environmental burdens and adverse health issues for many low-income, communities of color. This has left a legacy of contaminated lands around the Bay Area in or near low-income communities of color. If these communities face an extreme flooding event, they will have a more difficult time preparing for, responding to, and recovering from such an event due to their vulnerability. If contaminants are mobilized by flood waters, these already burdened communities could face more adverse health and environmental impacts. Further information on this finding can be found in Chapter 4 and Appendix C of the Background Report.</p>

Shoreline Protection	
Draft Policy Changes	Staff Analysis
<p>Policy 1:</p> <p>New shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protected, and the erosion and flooding conditions at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and constructed to prevent significant impediments to physical and visual public access; (e) the protection is integrated with current or planned adjacent shoreline protection measures; <u>and (f) adverse impacts to adjacent or nearby areas, such as increased flooding or accelerated erosion, are avoided or minimized. If such impacts cannot be avoided or minimized, measures to compensate should be required.</u> Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design.</p>	<p>This policy requires project applicants to evaluate and address adverse impacts caused by shoreline protection projects to adjacent or nearby areas. Ideally, adverse impacts will be avoided by using shoreline protection that dissipates wave energy. If the site does not allow for this type of protection, adjacent impacts should be mitigated. This policy is supported by Finding g.</p>
<p>Policy 2:</p> <p><u>Equitable and culturally-relevant community outreach and engagement should be conducted to meaningfully involve nearby</u></p>	<p>Communities should be meaningfully involved in certain shoreline protection planning projects in order to avoid unintended consequences.</p>

Shoreline Protection	
Draft Policy Changes	Staff Analysis
<p><u>communities for all shoreline protection project planning and design processes – other than maintenance and in-kind repairs to existing protection structures or small shoreline protection projects – in order to supplement technical analysis with local expertise and traditional knowledge and reduce unintended consequences. In particular, vulnerable and underrepresented communities should be involved. If previous outreach and engagement was insufficient, further outreach and engagement should be conducted prior to Commission action.</u></p>	<p>Underrepresented communities in particular need to be involved, which may require a variety of language-specific or culturally-specific outreach and engagement tactics. If the Commission finds previous outreach and engagement to be insufficient, further outreach and engagement will need to be conducted prior to Commission action on the project to ensure meaningful involvement. This policy is supported by Finding i.</p>
<p>Policy 2 3:</p> <p>Riprap revetments, the most common shoreline protective structure, should be constructed of properly sized and placed material that meet sound engineering criteria for durability, density, and porosity. Armor materials used in the revetment should be placed according to accepted engineering practice, and be free of extraneous material, such as debris and reinforcing steel. Generally, only engineered quarrystone or concrete pieces that have either been specially cast, are free of extraneous materials from demolition debris, and are carefully selected for size, density, and durability will meet these requirements. Riprap revetments constructed out of other debris materials should not be authorized. Riprap revetments, the most common shoreline protective structure, should be constructed of properly sized and placed material that meet sound engineering criteria for durability, density, and porosity. Armor materials used in the revetment should be placed according to accepted engineering practice, and be free of extraneous material,</p>	<p>The policy has been re-numbered from 2 to 3.</p>

Shoreline Protection	
Draft Policy Changes	Staff Analysis
<p>such as debris and reinforcing steel. Generally, only engineered quarrystone or concrete pieces that have either been specially cast, are free of extraneous materials from demolition debris, and are carefully selected for size, density, and durability will meet these requirements. Riprap revetments constructed out of other debris materials should not be authorized.</p>	
<p>Policy 3 4:</p> <p>Authorized protective projects should be regularly maintained according to a long-term maintenance program to assure that the shoreline will be protected from tidal erosion and flooding and that the effects of the shoreline protection project on natural resources during the life of the project will be the minimum necessary.</p>	<p>The policy has been re-numbered from 3 to 4.</p>
<p>Policy 4 5:</p> <p>Whenever feasible and appropriate, shoreline protection projects should include provisions for nonstructural methods such as marsh vegetation and integrate shoreline protection and Bay ecosystem enhancement, using adaptive management. Along shorelines that support marsh vegetation, or where marsh establishment has a reasonable chance of success, the Commission should require that the design of authorized protection projects include provisions for establishing marsh and transitional upland vegetation as part of the protective structure, wherever feasible.</p>	<p>The policy has been re-numbered from 4 to 5</p>
<p>Policy 5 6:</p> <p>Adverse impacts to natural resources and public access from new shoreline protection should be avoided. <u>When feasible, shoreline protection</u></p>	<p>This policy commits project applicants to ensuring safe and convenient water access within their shoreline protection projects whenever feasible, especially in</p>

Shoreline Protection	
Draft Policy Changes	Staff Analysis
<p><u>projects should include components to retain safe and convenient water access, for activities such as fishing, swimming, and boating, especially in communities lacking such access.</u> Where significant impacts cannot be avoided, mitigation or alternative public access should be provided.</p>	<p>communities who may be already lacking water access. This policy is supported by Finding c. The policy has been re-numbered from 5 to 6.</p>
<p>Policy 7:</p> <p><u>All contamination remediation projects in the Bay or along the Bay shoreline should integrate the best available science on sea level rise, storm surge, and associated groundwater level changes into the project design in order to protect human and ecological health by preventing the mobilization of contaminants into the environment and preventing harm to the surrounding communities.</u></p>	<p>This policy requires that contamination remediation projects use the best available science on sea level rise, storm surge, and associated groundwater impacts to prevent the mobilization of contaminants. This policy is supported by finding j.</p>

Mitigation. Staff preliminarily recommends the Commission revise the findings and policies in the “Mitigation” section as shown in the draft language below.

Mitigation	
Draft Findings Changes	Staff Analysis
<p>Finding f:</p> <p>Natural resource areas provide various benefits to human welfare, including climate regulation, flood protection, erosion control, and recreational and aesthetic benefits. Therefore, there may be social and economic effects on nearby communities as a result of impacts on existing resource areas and the siting and design of compensatory mitigation projects. <u>Further, these effects may not be evenly distributed among nearby communities.</u></p>	<p>This finding expands upon the economic and social effects of impacts to natural resources by adding in a geographic and distributional element. Further information on this finding can be found in Chapter 4 of the Background Report.</p>

Mitigation	
Draft Findings Changes	Staff Analysis
<p>Finding h:</p> <p><u>There are a multitude of benefits created by meaningfully involving underrepresented communities in mitigation projects including new approaches and perspectives, fostering new stewardship, community empowerment, and the creation of new cross-cultural partnerships.</u></p>	<p>This finding lists a few benefits of meaningfully involving underrepresented communities in mitigation projects. Further information on this finding can be found in Chapter 4 of the Background Report.</p>
<p>Finding h i:</p> <p>Mitigation banking involves restoring or creating natural resources to produce mitigation "credits" which can be used to offset unavoidable adverse impacts to existing resources. A mitigation bank is a site where resources are restored, created, or enhanced expressly for the purpose of providing compensatory mitigation in advance of impacts associated with authorized projects. Mitigation banks may be established by individuals who anticipate needing to mitigate for future impacts, or by third parties who develop banks as a commercial venture to sell credits to permittees needing to provide compensatory mitigation. Among other benefits, mitigation banks provide the unique opportunity to address the cumulative effects of small fill projects that are too small to be mitigated individually. Provided mechanisms are in place to assure success, mitigation banking can provide a timely, convenient, cost effective and ecologically successful mitigation option.</p>	<p>The finding has been re-lettered from h to i.</p>

Mitigation	
Draft Findings Changes	Staff Analysis
<p>Finding i j:</p> <p>Fee-based mitigation involves the submittal of a fee by the permittee in-lieu of requiring the permittee to undertake the creation, restoration, or enhancement of a specific mitigation site, or purchasing credits from a mitigation bank. The fee is generally submitted to a third party for implementation of an ongoing or future restoration-creation project. Provided mechanisms are in place to assure success, fee-based mitigation can also provide a timely, convenient, cost effective and ecologically successful mitigation option.</p>	<p>The finding has been re-lettered from i to j.</p>

Mitigation	
Draft Policy Changes	Staff Analysis
<p>Policy 3:</p> <p><u>For major projects that require mitigation and appropriate minor projects that require mitigation, nearby communities should be meaningfully involved in an equitable and culturally-relevant manner. In particular, underrepresented communities should be involved. This should include consultation with the community in the identification and prioritization of potential projects, and in the monitoring and programming of a mitigation site. If previous outreach and engagement was insufficient, further outreach and engagement should be conducted prior to Commission action.</u></p>	<p>This policy requires meaningful involvement of nearby communities in certain mitigation project processes. Underrepresented communities in particular need to be involved, which may require a variety of language-specific or culturally-specific outreach and engagement tactics. If the Commission finds previous outreach and engagement to be insufficient, further outreach and engagement to ensure meaningful involvement will need to be conducted prior to Commission action on the project. This policy is supported by Finding h.</p>

Mitigation	
Draft Policy Changes	Staff Analysis
<p>Policy 3 4:</p> <p>When determining the appropriate location and design of compensatory mitigation, the Commission should also consider potential effects on benefits provided to humans from Bay natural resources, including economic (e.g., flood protection, erosion control) and social (e.g., aesthetic benefits, recreational opportunities) <u>benefits and whether the distribution of such benefits is equitable.</u></p>	<p>This addition expands upon the requirement of considering additional benefits of mitigation beyond environmental benefits to include equity. This policy is supporting by Finding f. The policy has been re-numbered from 3 to 4.</p>
<p>Policy 4 5:</p> <p>The amount and type of compensatory mitigation should be determined for each mitigation project based on a clearly identified rationale that includes an analysis of: the probability of success of the mitigation project; the expected time delay between the impact and the functioning of the mitigation site; and the type and quality of the ecological functions of the proposed mitigation site as compared to the impacted site.</p>	<p>The policy has been re-numbered from 4 to 5.</p>
<p>Policy 5 6:</p> <p>To increase the potential for the ecological success and long-term sustainability of compensatory mitigation projects, resource restoration should be selected over creation where practicable, and transition zones and buffers should be included in mitigation projects where feasible and appropriate. In addition, mitigation site selection should consider site specific factors that will increase the likelihood of long-term ecological success, such as existing hydrological conditions, soil type, adjacent land uses, and connections to other habitats.</p>	<p>The policy has been re-numbered from 5 to 6.</p>

Mitigation	
Draft Policy Changes	Staff Analysis
<p>Policy 6 7:</p> <p>Mitigation should, to the extent practicable, be provided prior to, or concurrently with those parts of the project causing adverse impacts.</p>	<p>The policy has been re-numbered from 6 to 7.</p>
<p>Policy 7 8:</p> <p>When compensatory mitigation is necessary, a mitigation program should be reviewed and approved by or on behalf of the Commission as part of the project. Where appropriate, the mitigation program should describe the proposed design, construction and management of mitigation areas and include:</p> <ol style="list-style-type: none"> a. Clear mitigation project goals; b. Clear and measurable performance standards for evaluating the success of the mitigation project, based on measures of both composition and function, and including the use of reference sites; c. A monitoring plan designed to identify potential problems early and determine appropriate remedial actions. Monitoring and reporting should be of adequate frequency and duration to measure specific performance standards and to assure long-term success of the stated goals of the mitigation project; d. A contingency plan to ensure the success of the mitigation project, or provide means to ensure alternative appropriate measures are implemented if the identified mitigation cannot be modified to achieve success. The Commission may require financial assurances, such as performance bonds or letters of credit, to cover the cost of mitigation actions 	<p>The policy has been re-numbered from 7 to 8.</p>

Mitigation	
Draft Policy Changes	Staff Analysis
<p>based on the nature, extent and duration of the impact and/or the risk of the mitigation plan not achieving the mitigation goals; and</p> <p>Provisions for the long-term maintenance, management and protection of the mitigation site, such as a conservation easement, cash endowment, and transfer of title.</p>	
<p>Policy 8 <u>9</u>:</p> <p>Mitigation programs should be coordinated with all affected local, state, and federal agencies having jurisdiction or mitigation expertise to ensure, to the maximum practicable extent, a single mitigation program that satisfies the policies of all the affected agencies.</p>	<p>The policy has been re-numbered from 8 to 9.</p>
<p>Policy 9 <u>10</u>:</p> <p>If more than one mitigation program is proposed, the Commission should consider the cost of the alternatives in determining the appropriate program, <u>as well as equitably consider the priorities and concerns of surrounding communities.</u></p>	<p>This addition expands upon what the Commission should consider when weighing multiple mitigation alternatives, to include community priorities and concerns. This can help reduce any unintended consequences and potentially cultivate stewardship among the surrounding communities. This policy is supported by Finding h. The policy has been re-numbered from 9 to 10.</p>
<p>Policy 10 <u>11</u>:</p> <p>To encourage cost effective compensatory mitigation programs, especially to provide mitigation for small fill projects, the Commission may extend credit for certain fill removal and allow mitigation banking provided that any credit or resource bank is recognized pursuant to written agreement executed by the Commission. Mitigation bank agreements should include: (a) financial mechanisms to</p>	<p>The policy has been re-numbered from 10 to 11.</p>

Mitigation	
Draft Policy Changes	Staff Analysis
<p>ensure success of the bank; (b) assignment of responsibility for the ecological success of the bank; (c) scientifically defensible methods for determining the timing and amount of credit withdrawals; and (d) provisions for long-term maintenance, management and protection of the bank site. Mitigation banking should only be considered when no mitigation is practicable on or proximate to the project site.</p>	
<p>Policy 11 <u>12</u>:</p> <p>The Commission may allow fee-based mitigation when other compensatory mitigation measures are infeasible. Fee-based mitigation agreements should include: (a) identification of a specific project that the fees will be used for within a specified time frame; (b) provisions for accurate tracking of the use of funds; (c) assignment of responsibility for the ecological success of the mitigation project; (d) determination of fair and adequate fee rates that account for all financial aspects of the mitigation project, including costs of securing sites, construction costs, maintenance costs, and administrative costs; (e) compensation for time lags between the adverse impact and the mitigation; and (f) provisions for long-term maintenance, management and protection of the mitigation site.</p>	<p>The policy has been re-numbered from 11 to 12.</p>

McAteer-Petris Act Consistency

Section 66652 of the McAteer-Petris Act requires that amendments to the San Francisco Bay Plan be consistent with the findings and declarations of policy in the McAteer-Petris Act. The relevant sections of the McAteer-Petris Act setting forth applicable findings and declarations of policy are: Section 66600, declaring the public interest in the Bay; Section 66601 regarding the threats of uncoordinated, haphazard filling in the Bay; Section 66602 regarding the necessity for providing locations for both certain water-oriented land uses and increased public access to the shoreline and waters of the Bay; and Section 66605 regarding benefits, purposes, and manner of filling the Bay.

Section 66600 of the McAteer-Petris Act declares the public's interest in the San Francisco Bay includes, among other things, its beneficial use for a variety of purposes and that the public has an interest in the Bay as the most valuable single natural resource of the entire region. Section 66600 further declares that it is in the public interest to create a politically-responsible, democratic process for analyzing, planning for, and regulating the Bay as a unit.

This amendment will encourage and contribute to a more inclusive, democratic process for analyzing, planning for, and regulating the Bay by requiring meaningful community involvement of typically underrepresented communities, thereby increasing the diversity of voices participating in and contributing to BCDC's processes. Therefore, the recommended Bay Plan policies regarding meaningful community involvement are consistent with Section 66600 of the McAteer-Petris Act, and Section 66600 provides authority for adopting those policies.

Section 66601 of the McAteer-Petris Act declares that uncoordinated, haphazard filling of the Bay, among other things, threatens the Bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the Bay. Additionally, section 66601 declares that further piecemeal filling of the Bay may adversely affect the quality of Bay waters and even the quality of air in the Bay Area, and would therefore be harmful to the needs of the present and future population of the Bay Area.

This amendment attempts to ensure that the needs of all Bay Area populations, current and future, are considered when analyzing, planning, and regulating projects in the Bay and along its shoreline. Additionally, this amendment would require analyzing projects' impacts on all residents to ensure that adverse project impacts are not disproportionately affecting certain populations. Therefore, the recommended policies to address environmental justice and social equity in the Bay Plan are consistent with Section 66601 of the McAteer-Petris Act, and Section 66601 provides authority for adopting those policies.

Section 66602 of the McAteer-Petris Act states, in part, that certain water-oriented land uses along the Bay shoreline are essential to the public welfare of the Bay Area; that the Bay Plan should make provision for adequate and suitable locations for all these uses, thereby minimizing the need for future Bay fill to create new sites for these uses; and that existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided. Related to Section 66602's findings and declarations, Section 66632.4 of the McAteer-Petris Act provides that within any portion of the Commission's shoreline band jurisdiction that is located

outside the boundaries of water-oriented priority land uses, the Commission may only deny a permit for a project that fails to provide maximum feasible public access consistent with the project.

This amendment will add new policies to the Public Access section of the Bay Plan in an effort to promote the creation of public access that is more equitable and inclusive, encouraging a wider diversity of users to utilize Bay public access and become stewards of the San Francisco Bay. By requiring meaningful community involvement, these policies also hope to eliminate the potential for certain communities to feel excluded from the Bay. Therefore, the proposed amendments to the Public Access section of the Bay Plan are consistent with Sections 66602 and 66632.4 of the McAteer-Petris Act, and Sections 66602 and 66632.4 provide authority for these policies.

Section 66605 of the McAteer-Petris Act states, in part that: (a) further filling of the Bay should be authorized only when the public benefits from fill must clearly exceed the public detriment from the loss of water areas, and fill should be limited to water-oriented uses or minor fill for improving shoreline appearance or public access; (b) no alternative upland location exists to achieve the purpose of the fill; (c) the water area to be filled should be the minimum amount necessary; (d) the nature, location, and extent of any fill should minimize harmful effects to the Bay; and (e) the fill should be constructed in accordance with sound safety standards.

This amendment will add policies to the Bay Plan regarding environmental justice and social equity in a new section as well as to the existing Public Access, Shoreline Protection, and Mitigation sections. Environmental justice and social equity are public benefits and environmental injustice and social inequity are public detriments. Identifying, analyzing, and accounting for these aspects of a fill project are thus necessary to evaluating and fully considering the full range of public benefits and detriments from the fill. Therefore, the recommended policies to address environmental justice and social equity in the Bay Plan are consistent with Section 66605 of the McAteer-Petris Act, and Section 66605 provides authority for those policies.

Environmental Assessment

BCDC's planning and permitting programs under the McAteer-Petris Act are, as a result of having been certified as a Certified State Regulatory Program pursuant to section 21080.5 of the California Environmental Quality Act (CEQA) 21080.5 and section 15251(h) of the CEQA Guidelines (14 CCR § 15251(h)), exempt from the CEQA requirements to prepare an environmental impact report (EIR), mitigated negative declaration, negative declaration, or initial study. Instead, BCDC's regulations provide for the preparation of an Environmental Assessment (EA), which is considered the "functional equivalent" of an EIR (14 CCR § 11521). An EA is required to be part of the staff planning report prepared and distributed prior to amending the *San Francisco Bay Plan*. The EA must either: (1) state that the proposed amendment will have no significant adverse environmental impacts; or (2) describe the significant adverse environmental effects, the public benefits of the proposed amendments, any feasible mitigation measures that would lessen the significant adverse environmental

impacts, and any feasible alternatives (14 CCR §11003(a)(6)). Because the proposed amendment is a programmatic policy change, rather than a specific project with more quantifiable impacts, the discussion in this Environmental Assessment is more general than an environmental assessment for a specific project.

The proposed Bay Plan amendments would establish overarching Bay-wide policies, but would not authorize any particular action or project. For this reason, the proposed amendments themselves would not have significant adverse environmental effects. The proposed amendments would not affect the Commission's authority and ability to require site-specific environmental review of projects proposed in its jurisdiction under the provisions of CEQA, the McAteer-Petris Act, the Bay Plan, and the Commission's federally approved management program for the San Francisco Bay. Because each project or plan consistent with the amended Bay Plan policies that may be considered by the Commission in the future will require further environmental review, any potential adverse environmental impacts can be identified and, if necessary, mitigated, at that time.

The proposed amendments do not commit the Commission to approve or disapprove any particular project or any particular type of project. The proposed amendments also do not specify a particular use for any area of land or water. At this stage, it is not known what projects will be undertaken under the Bay Plan amendments, where they will be located, or what impacts they will have on the Bay. Therefore, any discussion of whether particular future projects reviewed by the Commission would result in different impacts under the proposed amendments as compared to existing policies would be highly speculative. Because the proposed Bay Plan amendments do not authorize physical alterations or commit the Commission to approve or deny any particular future physical alteration, the Commission's adoption of these proposed amendments will have no identifiable significant adverse environmental effects.

Public Comment and Staff Response

Several written and verbal comments were given at the July 20, 2017 public hearing and vote on issuing a Brief Descriptive Notice for proposed *San Francisco Bay Plan* amendments regarding environmental justice and social equity. All comments supported the Commission's initiation of this amendment process with a few caveats.

Public Comment: Bay Area Council offered support for both Bay Plan amendment 1-17 to use Bay fill for habitat projects and 2-17 to address environmental justice and social equity in a letter, but with the caution that proposed amendments should not complicate, delay, or materially increase project costs. They mentioned that in light of sea level rise, the goal of any changes to the Bay Plan must be the reduction of project timelines and costs.

Staff Response: Staff understands the urgency posed by climate change in the Bay Area but also recognizes that projects will likely result in more positive public outcomes if meaningful community involvement is ensured (especially of underrepresented, vulnerable, and disadvantaged communities) and disproportionate burdens are addressed. The outreach and engagement needed to meaningfully involve communities may take extra time and resources if projects are currently not conducting such outreach and engagement. However, the proposed

policies encourage and expect such involvement to occur at the earliest stages of a project prior to the Commission's review. If there is sufficient meaningful community involvement built into the project process prior to the Commission's review, then this requirement should not add further time or require additional resources for the Commission's process.

Public Comment: Several community and environmental justice organizations, including Bayview Hunters Point Mothers and Fathers Committee, Breakthrough Communities, Earth House, Greenaction for Health and Environmental Justice, Healthy 880 Communities, Literacy for Environmental Justice, Oakland Climate Action Coalition, Resilient Communities Initiative, The Environmental Justice Coalition for Water, West Berkeley Alliance for Clean Air and Safe Jobs, West County Toxics Coalition, and West Oakland Environmental Indicators Project wrote in support of the amendment initiation and emphasized the need to include disadvantaged communities in the Bay Plan and BCDC's decision-making process. Specifically, Sheridan Noelani Enomoto of Greenaction for Health and Environmental Justice gave comment at the public hearing on July 20, 2017, explaining that "water is all inclusive and does not discriminate when it rises and moves," but rather "we are the ones that end up discriminating and not being inclusive." Enomoto urged the Commission to "think like water," in being all inclusive and not discriminating when making decisions.

Staff Response: Staff recognizes the need for more inclusive decision-making processes and is attempting to address this issue in the proposed amendment and in other areas of BCDC's work. Additionally, staff has taken a different approach to outreach and engagement than it has with previous Bay Plan amendments by specifically working to involve underrepresented, disadvantaged, and/or vulnerable communities and organizations that work with these communities. Specifically, staff has worked with a team of representatives from five equity and social justice organizations (several of whom were signatories of the support letter mentioned above).

Public Comment: Arthur Feinstein wrote in support of both of the Commission's proposals to amend the Bay Plan: Bay Plan amendment 1-17 and 2-17. He supported including the impacts of sea level rise on disadvantaged communities that are the least able to address the impacts. He mentioned that he looked forward to the amendment process for the amendments and hoped that the public would be adequately involved.

Staff Response: BCDC has provided several opportunities for the public to be involved in the processes of both amendments. Both amendments have been guided by commissioner working groups who have met monthly. BCDC has held public workshops for both amendments and staff has conducted stakeholder interviews, provided briefings, and attended relevant public meetings.

Public Comment: At the Commission meeting on July 20, 2017, David Lewis of Save the Bay expressed support of the amendment process but urged the Commission to proceed through the process with urgency for both Bay Plan amendment 1-17 and 2-17. He expressed concern that the goals of what BCDC is trying to achieve by addressing social justice are unclear. He questioned what additional social justice would be achieved.

Staff Response: Staff has worked diligently on this amendment, given its capacity. The process for amendment 2-17 was extended to allow for more robust and meaningful community involvement in the amendment process, a tenet of environmental justice.

The goal of this amendment is to amend the Bay Plan to incorporate principles of environmental justice and social equity into the planning, design, and permitting of shoreline projects in and along the San Francisco Bay. Guiding Principles were developed to frame this amendment process and of BCDC processes to come. Operating under these principles, staff has proposed new findings and policies to be included as an Environmental Justice and Social Equity section of the Bay Plan to address issues of meaningful involvement, public agency coordination, and disproportionate burdens. Staff also proposed amendments to existing findings and policies to integrate environmental justice and social equity principles into BCDC's work on public access, shoreline protection, and mitigation. Chapter 3 and 4 of the Background Report expand significantly on these topics.

Public Comment: Matt Gerhart of the California State Coastal Conservancy spoke in support of initiating the amendment processes for Bay Plan amendments 1-17 and 2-17 and expressed the need to work with urgency and expedience in getting the amendments approved.

Staff Response: Staff has worked diligently on this amendment, given its capacity. The process for amendment 2-17 was extended to allow for more robust and meaningful community involvement in the amendment process, a tenet of environmental justice.

Public Comment: Ms. Zegart spoke in support of the amendment initiation but warned the Commission about acting too expeditiously when approving development and urged the Commission to take an aggressive stance on equity.

Staff Response: Staff recognizes the need for more equitable processes and is attempting to address this issue in the proposed amendment and in other areas of BCDC's work.

Public Comment: On April 22, 2019, the Commission received a letter from the Environmental Justice Review Team (EJRT), composed of Nahal (Ghoghaie) Ipakchi, formerly of the Environmental Justice Coalition for Water; Carl Anthony and Dr. Paloma Pavel of Breakthrough Communities; Sheridan Noelani Enomoto of Greenaction for Health and Environmental Justice; Julio Garcia of Nuestra Casa; and Terrie Green of Shore Up Marin. The EJRT, funded by the Resources Legacy Fund, has participated in BCDC's amendment process. They presented at and participated in small group discussions at the January 17, 2019 Commissioner Workshop and led the April 2019 EJ Commissioner Working Group Meeting. The letter included several specific recommendations for the Bay Plan Amendment. Each recommendation is addressed in the table below.

EJ Review Team Comment	BCDC Staff Response
<p>Public Access Recommendation: Public access amenities should include elements and signage that reflect the indigenous and multicultural history of the project site. Signage should also be multi-lingual based on primary languages indicated in county-specific census data.</p>	<p>Staff has addressed this in proposed Public Access Finding I and Policy 5 and 8 by requiring meaningful community involvement in the siting, design, and management of public access areas and by requiring signage to be in the appropriate languages or include culturally-appropriate icons.</p>
<p>Public Access Recommendation: To advance the goal of serving diverse communities, require multi-cultural programming of public access areas to increase community stewardship, with an emphasis on engaging youth.</p>	<p>Staff addressed this in the proposed addition to Public Access Finding c and proposed Public Access Policy 5 by requiring meaningful community involvement in the siting, design, and management of public access areas. Additionally, this idea can be addressed within BCDC's Design Review Board process (see Background Report Chapter 5).</p>
<p>Public Access Recommendation: Emphasize the following in Public Access Policy #9: Ensure community needs are addressed, and signage to report problems or safety hazards are posted in multiple languages based on primary languages indicated in county-specific census data.</p>	<p>Staff addressed this in the proposed addition to Public Access Finding e, proposed Public Access Policy 5, and the proposed addition to Public Access Policy 8 by requiring meaningful community involvement in the siting, design, and management of public access areas and by requiring signage to be in the appropriate languages or include culturally-appropriate icons. Staff believes that these are better places to address this recommendation than in Policy 9. This can also be addressed in BCDC's Public Access Design Guidelines' Signage Guidelines and can be pursued within BCDC's Design Review Board process (see Background Report Chapter 5).</p>
<p>Public Access Recommendation: Incorporate environmental justice and equity criteria in Design Review Board's project design scoring assessment to ensure unique EJ needs are integrated into public access amenities, such as active recreation, language access, and safe routes.</p>	<p>Staff addressed this in the proposed addition to Public Access Policy 13 by requiring the Design Review Board to encourage diverse public access to meet the needs of a growing and diversifying population and by ensuring public access is well distributed around the Bay and designed or improved to</p>

EJ Review Team Comment	BCDC Staff Response
	accommodate a broad range of activities for people of all races, cultures, ages, income levels, and abilities. This can also be addressed in the Public Access Design Guidelines (see Background Report Chapter 5).
<p>Shoreline Protection Recommendation: Require an assessment of impacts of shoreline protection projects, with the goal of avoiding unintended consequences, particularly to adjacent shoreline Disadvantaged Communities (DACs). When impacts are unavoidable, require mitigation for impacts on communities.</p>	Staff addressed this in proposed Shoreline Protection Finding g and the addition to Shoreline Protection Policy 1 by requiring that adverse impacts caused by shoreline protection structures be mitigated.
<p>Shoreline Protection Recommendation: Require assessment of historic use of lands, including community-based understanding and insight.</p>	Staff addressed this in proposed Shoreline Protection Finding i and proposed Shoreline Protection Policy 2 by requiring meaningful community involvement.
<p>Shoreline Protection Recommendation: When development occurs on contaminated lands, require assessment of potential for mobilization of contaminants due to flooding and sea level rise, and set a mandatory depth requirement for soil analysis.</p>	Staff addressed this in proposed Shoreline Protection Finding j and proposed Shoreline Protection Policy 7 which requires all contamination remediation projects in the Bay shoreline to integrate the best available science on sea level rise, storm surge, and associated groundwater level changes into the project design. Contamination issues in the region are typically under the authority of the San Francisco Bay Regional Water Quality Control Board, the Department of Toxic Substances Control, and/or the U.S. EPA. As such, testing and remediation requirements are set on an individual site basis and are overseen by these agencies. Despite this, proposed Environmental Justice and Social Equity Finding m and Policy 2 address this overlapping of jurisdictions and authorities to improve coordination between agencies. This builds off of Bay Plan Water Quality Policy 4 which states, “When approving a project in an area polluted with toxic or hazardous

EJ Review Team Comment	BCDC Staff Response
	<p>substances, the Commission should coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay.” BCDC can provide input and request additional testing, however, the final decisions in most cases lie with the aforementioned agencies.</p>
<p>Shoreline Protection Recommendation: Formalize process and increase transparency about collaboration with relevant agencies to evaluate the adequacy of shoreline protection projects in contaminated, toxic, and hazardous areas. Make information about these types of projects available to the public early in the process.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding m and Policy 2 by collaborating and coordinating with local governments and other regional and state agencies with whom BCDC has overlapping authorities and jurisdictions. This builds off of Bay Plan Water Quality Policy 4 which states “When approving a project in an area polluted with toxic or hazardous substances, the Commission should coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay.” Additionally, this recommendation can be implemented through improved agency communication practices without being included in the Bay Plan.</p>
<p>Mitigation Recommendation: Require mitigation for adverse social and community impacts.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding l and Policy 4 by requiring project applicants to identify disproportionate project impacts and also requiring local governments and the Commission to address disproportionate project outcomes through their permitting and environmental review processes, within the bounds of their respective authorities and jurisdictions.</p>

EJ Review Team Comment	BCDC Staff Response
<p>Mitigation Recommendation: Seek community involvement in identification of impacts and appropriate ways to mitigate.</p>	<p>Staff addressed this in the proposed Mitigation Finding h and Policy 3 and 10 by requiring meaningful community involvement and the consideration of community concerns and priorities. Staff has also addressed this in the proposed Environmental Justice and Social Equity Finding I and Policy 4 requiring that impacted communities are involved in understanding project impacts.</p>
<p>Mitigation Recommendation: Create mechanisms that support flooding and sea level rise protection for vulnerable communities as part of mitigation.</p>	<p>Mitigation measures required for a project's projected impacts must be roughly proportional to the project's projected impacts and the burden created on affected communities. Therefore, this recommendation could only be implemented if a project's impacts included increased flooding (beyond what naturally would occur at the site, including sea level rise) on a vulnerable community. Staff has attempted to address this specific situation in the proposed Shoreline Protection Finding g and the addition to Shoreline Protection Policy 1. Additionally, through BCDC's Adapting to Rising Tides (ART) program, the Commission is working to support the creation of adaptation measures for vulnerable communities.</p>
<p>Environmental Justice and Social Equity Recommendation: Provide history and context with EJ and equity-specific definitions.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Findings a through h by including findings on the history of environmental justice, as well as definitions to provide context for the new findings and policies. This topic is also explored in more detail in Chapter 2 of the Background Report.</p>

EJ Review Team Comment	BCDC Staff Response
<p>Environmental Justice and Social Equity Recommendation: Clarify the role of EJ and equity in BCDC policies and general processes. Provide background on how BCDC complies with state and federal civil rights laws. Recognize role of government in perpetuating racism, environmental injustice, and inequities.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Findings a, b, and d by situating issues of environmental justice and social equity within BCDC’s history and mandate. This topic is also explored in more detail in Chapter 3 of the Background Report.</p>
<p>Environmental Justice and Social Equity Recommendation: Provide a refresher on the criteria BCDC uses to identify vulnerable communities.</p>	<p>Staff has not included the specific criteria in the Bay Plan as the criteria may be updated as thinking around social vulnerability evolves over time. However, extensive information on the vulnerable community criteria is included in Appendix 3 of the Background Report.</p>
<p>Environmental Justice and Social Equity Recommendation: With regard to permitting, siting and related planning processes, particularly where enhanced review is concerned, we recommend that BCDC staff actively facilitate communication between project proponents and EJ organizations in a project’s designated area. Facilitation by BCDC will help ensure that project proponents are aware of and accountable to the concerns of EJ populations.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding m and Policy 2, which require that BCDC support, encourage, and expect local governments to address issues of environmental justice and social equity in their general plans, zoning, and discretionary approval processes as projects are often far into the development and entitlement process by the time the Commission’s review begins. Additionally, this policy requires BCDC to be a leader in collaborating transparently with other agencies on issues related to environmental justice and social equity that fall outside of the Commission’s authority or jurisdiction.</p>

EJ Review Team Comment	BCDC Staff Response
<p>Environmental Justice and Social Equity Recommendation: Conduct consistent and early meaningful engagement focused on EJ communities and communities of color during all stages of all BCDC’s permitting and planning (mitigation, historic land use assessments, public access design guidelines, etc.)</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding k and Policy 3 by requiring meaningful community involvement. This was also addressed with a finding and policy in each of the three sections amended (see proposed Public Access Finding i and Policy 5, proposed Shoreline Protection Finding i and Policy 2, and proposed Mitigation Finding h and Policy 3).</p>
<p>Environmental Justice and Social Equity Recommendation: Require applicant to provide information on how a project will affect communities and how they worked with the community.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding k and l and Policy 3 and 4 by requiring evidence of how community concerns were addressed and by requiring the identification of potential disproportionate burdens from a project.</p>
<p>Environmental Justice and Social Equity Recommendation: Strengthen BCDC’s collaboration, education and leadership on how to work with communities on permits with agencies and departments in charge of earlier stages of permitting.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding m and Policy 2 by requiring the Commission to address environmental justice and social equity issues through leadership and collaboration. Additionally, this recommendation can be implemented through improved agency training and education (see Background Report Chapter 5).</p>
<p>Environmental Justice and Social Equity Recommendation: When a project is proposed in a community with “highest” social vulnerability, per Adapting to Rising Tides’ vulnerability indicators, the Commission should follow stricter protocols to assess the impacts of the project. For example, when a project is proposed in a Priority Use Areas (Water-related Industry, Port, Airport, etc.) where EJ communities may be affected, BCDC staff should require an EJ analysis.</p>	<p>Staff addressed this in the proposed Environmental Justice and Social Equity Finding l and Policy 4 by requiring project applicants proposing projects within an identified vulnerable or disadvantaged community to identify potential disproportionate burdens from projects. Additionally, local governments and the Commission are required to take measures through environmental review and permitting processes, within the scope of their respective authorities, to avoid, minimize, and/or compensate for disproportional adverse project impacts on the identified vulnerable or disadvantaged</p>

EJ Review Team Comment	BCDC Staff Response
	<p>communities in which the project is proposed. Staff has expanded upon this recommendation, requiring stricter protocols for any major or appropriate minor projects in identified or disadvantaged communities, regardless of whether it is located in a Priority Use Area.</p>
<p>Environmental Justice and Social Equity Recommendation: BCDC’s EJ working group should work with EJ representatives or this EJ review team to develop and refine an equity checklist that can be used in the permitting process to evaluate the impacts of proposed projects on EJ communities.</p>	<p>BCDC staff agrees with this recommendation. The Commission hopes to continue working with the EJ Review Team as these policies are refined and implemented.</p>
<p>Environmental Justice and Social Equity Recommendation: Add EJ groups and community leaders to Interested Parties lists for projects.</p>	<p>BCDC staff agrees with this recommendation. This is included in Chapter 5 of the Background Report.</p>