

San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

August 2, 2024

TO: Commissioners and Alternates

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SUBJECT: Public Hearing and Vote to Initiate Proposed Bay Plan Amendment No. 1-24 to Update the San Francisco Bay Plan to Establish Guidelines for the Preparation of Sea Level Rise Plans Pursuant to Senate Bill 272 (Laird, 2023)
(For Commission consideration on August 15, 2024)

Staff Recommendation

The staff recommends that the Commission: (1) adopt the attached “Notice” to initiate the process to consider an amendment to the *San Francisco Bay Plan (Bay Plan)* to establish the Regional Shoreline Adaptation Plan (RSAP), including guidelines for the preparation of Subregional Shoreline Adaptation Plans by local governments within BCDC’s jurisdiction, as required by Senate Bill 272 (Laird, 2023) “Sea Level Rise: Planning and Adaptation” and the *Bay Plan*; and (2) schedule a public hearing to consider the proposed amendment.

Staff Report

Background

The accelerating rate of global sea level rise caused by climate change calls for urgent, coordinated, statewide and regionwide action. In 2011, the Commission adopted new Climate Change policies into the *Bay Plan*. These policies require individual project applicants for certain types of projects to conduct a risk assessment and, based on the results of that risk assessment, design the project to be resilient to sea level rise to mid-century, and develop an adaptive management plan if the duration of the project is expected to span beyond mid-century. The policies also require the Commission to develop a regional sea level rise adaptation strategy in coordination with regional partners.

Bay Plan Climate Change Policy 6 states, in part:

The Commission, in collaboration with the Joint Policy Committee, other regional, state and federal agencies, local governments, and the general public, should formulate a regional sea level rise adaptation strategy for protecting critical developed shoreline areas and natural ecosystems, enhancing the resilience of Bay and shoreline systems and increasing their adaptive capacity [...].



Since the adoption of the Climate Change policies, the Commission has actively led and participated in regional sea level rise planning through its Adapting to Rising Tides Program, among other efforts. In 2019, BCDC convened Bay Adapt: Regional Strategy for a Rising Bay in partnership with a broad range of Bay Area leaders. After two years of collaborative work, the *Bay Adapt Joint Platform (Joint Platform)* was released in 2021. The *Joint Platform* is a regional, consensus-driven strategy that lays out the actions necessary to protect people and the natural and built environments from sea level rise. The *Joint Platform* contains a set of guiding principles. The following tasks from the *Joint Platform* are most relevant here:

- Task 1.1: Create a long-term regional vision rooted in communities, bay habitats, and the economy.
- Task 5.1: Provide incentives for robust, coordinated adaptation plans.
- Task 8.1: Incentivize projects that meet regional guidelines.
- Task 8.2: Encourage collaboration among people doing projects in the same places.

Senate Bill 272 (Laird, 2023)

In recognition of the need for coordinated local adaptation planning, a new state law was enacted in California in October 2023. Senate Bill (SB) 272 (Laird, 2023): Sea level Rise Planning and Adaptation requires all local governments within BCDC's jurisdiction to address sea level rise through subregional San Francisco Bay shoreline resiliency plans (which BCDC is referring to as Subregional Shoreline Adaptation Plans) subject to approval by BCDC. The measure requires BCDC to establish guidelines under which local governments must prepare the plans by December 31, 2024, and local governments within BCDC's jurisdiction must submit plans consistent with the adopted guidelines by 2034.¹ Jurisdictions that complete this requirement will be prioritized for state funding for the implementation of sea level rise adaptation strategies and recommended projects included in the local government's approved Subregional Shoreline Adaptation Plans. Vulnerability assessments and adaptation strategies contained in the plans must be based on best available science and be updated on a timeline agreed upon by the local governments and BCDC. The guidelines established by BCDC must recognize and build upon the guiding principles of the *Joint Platform*.

The Regional Shoreline Adaptation Plan

Building from the *Joint Platform*, and in response to SB 272, BCDC staff have been working with a broad array of interested parties, including BCDC's Commission, a Rising Sea Level Commissioner Working Group, a Local Electeds Regional Task Force, a large advisory group of external stakeholders, and through partnerships with community-based organizations, to begin developing a draft *Regional Shoreline Adaptation Plan (RSAP)*. Ultimately, the RSAP will be a regionwide plan for the Bay shoreline that guides the creation of coordinated, locally planned

¹ The bill similarly requires local governments within the coastal zone to address SLR as part of Local Coastal Programs subject to approval by the California Coastal Commission by January 1, 2034 consistent with guidelines to be established by that agency by December 31, 2024.

adaptation strategies based on a regional vision (called the One Bay Vision) and strategic regional priorities, creates a funding strategy, and prioritizes sea level rise projects.

The overarching goals of the RSAP include:

- Coordinated adaptation
- Priority resources to frontline communities
- Long-term health of wetlands
- Strategic implementation
- Common standards and methods
- Pipeline of funding
- Track and measure progress

The initial components of the RSAP will consist of 1) a One Bay Vision, 2) a set of strategic regional priorities, and 3) guidelines and standards for local governments to follow as they create Subregional Shoreline Adaptation Plans, along with associated resources, best practices, and data and maps to support implementation. Together, these components establish common standards and values for adaptation planning along the San Francisco Bay shoreline and guide local jurisdictions in making adaptation decisions that contribute to not only local benefits but also to regional adaptation goals. Adoption of these components of the RSAP in 2024 will begin implementing the requirements of SB 272 and position the region for strategic planning and funding to advance adaptation.

Commission Adoption of the Regional Shoreline Adaptation Plan

SB 272 requires BCDC to establish guidelines for the preparation of Subregional Shoreline Adaptation Plans by December 31, 2024. However, the bill does not speak to the process for the Commission to approve such guidelines. Therefore, BCDC will use its existing laws, plans, and processes, to implement the provisions of SB 272.

After evaluating several different processes through which the Commission could consider adopting these initial components of the RSAP, staff recommends incorporating them into the *Bay Plan* via a Bay Plan Amendment. Other options, such as simply adopting a Commission resolution, were eliminated because issuance or enforcement of generally-applicable guidelines adopted in this manner would be subject to rulemaking procedures under the California Administrative Procedure Act.

However, the McAteer-Petris Act (Government Code section 66651(d)) specifies that the *Bay Plan* “may contain or incorporate by reference special area plans with more specific findings and policies for portions of the bay and its shoreline and **other plans addressing special needs**, such as seaports” (emphasis added). The *Seaport Plan*, for example, contains its own set of findings and policies for Port Priority Use Areas across the Bay. Special Area Plans have also been approved by the Commission for specific areas along the shoreline. This provision in the McAteer-Petris Act provides a clear avenue for the Commission’s adoption of the RSAP in a similar manner as a “plan addressing special needs,” and BCDC can use its existing procedures to amend the *Bay Plan* to give effect to the guidelines required of BCDC by SB 272.

Staff expect that the initial RSAP components discussed above will be ready for Commission consideration in December 2024. In addition to adopting this initial portion of the RSAP as a Bay Plan Amendment, staff recommends as part of this Bay Plan Amendment undertaking a limited update to relevant Bay Plan Climate Change Findings and Policies. Climate Change Policy 6 in the Bay Plan states, in short, that the Commission should develop a regional shoreline adaptation strategy. Staff suggests updating this and other Bay Plan findings and policies, but such updates will be limited and specific to the Commission's adoption of the RSAP.

It is vital to note that adoption of the initial RSAP components as a Bay Plan Amendment at this time will not alter the Commission's jurisdiction or permitting authority or processes for individual projects under the McAteer-Petris Act. While approval of a permit by the Commission must be consistent with the provisions of the McAteer-Petris Act and of the Bay Plan then in effect, the function of the RSAP is not "to establish policies for reviewing and acting on projects," which is a core function of the Bay Plan (Government Code section 66651(d)), but rather is proposed for incorporation into the Bay plan to serve as the regional sea level rise adaptation strategy called for by existing Bay Plan Climate Change Policy 6 and to serve as a "plan addressing special needs" (*i.e.*, SB 272 implementation). Therefore, under its existing State laws, policies, and regulations, BCDC could not deny a permit for a project on the basis that the project is inconsistent with a Subregional Shoreline Adaptation Plan approved as consistent with guidelines adopted by BCDC under SB 272.

Nonetheless, the RSAP and subsequent Subregional Shoreline Adaptation Plans can serve a useful function by developing a broader context and adaptation framework for individual projects that will come before the Commission for a permit. Implementing SB 272 will be an ongoing process that requires both short and long-term measures. The Commission's adoption of the first components of the RSAP as a Bay Plan Amendment is an important step toward that goal.

Commission Procedure

Circulating a descriptive notice to the public is the first step in the process of amending the *Bay Plan*. A notice of the proposed amendment is required by the McAteer-Petris Act (Government Code Section 66652) and Section 11001 of the Commission's regulations (California Administrative Code, Title 14, Division 5). If the attached proposed descriptive notice is approved by the Commission on August 15, 2024, at least one public hearing will be held to discuss the potential amendment. The staff will distribute a report with their preliminary recommendation for specific changes to the *Bay Plan* to all Commissioners, Alternates, and interested parties at least 30 days prior to that initial public hearing (tentatively planned for October 17, 2024), which is required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11003). After the public hearing, staff will make revisions based on public and Commissioner input, and then send the revisions along with a final recommendation and a response to public comments to all interested parties. Finally, the Commission will vote on the proposed amendment (tentatively scheduled for December 5, 2024).

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Notice

Mailed August 2, 2024

Public Hearing and Vote to Initiate Proposed Bay Plan Amendment No. 1-24 to Update the San Francisco Bay Plan to Establish Guidelines for the Preparation of Sea Level Rise Plans Pursuant to Senate Bill 272 (Laird, 2023)

Notice is hereby given that the San Francisco Bay Conservation and Development Commission will consider an amendment to the *San Francisco Bay Plan (Bay Plan)*. The proposed amendment would update the *Bay Plan* to establish the Regional Shoreline Adaptation Plan (RSAP), including guidelines for the preparation of subregional sea level rise plans by local governments within BCDC’s jurisdiction, as required by Senate Bill 272 (Laird, 2023) and the *Bay Plan*. The initial components of the RSAP will consist of 1) a One Bay Vision, 2) a set of strategic regional priorities, and 3) guidelines and standards for local governments to follow as they create Subregional Shoreline Adaptation Plans, along with associated resources, best practices, and data and maps to support implementation. Together, these components establish common standards and values for adaptation planning along San Francisco Bay and guide local jurisdictions in making adaptation decisions that contribute to not only local protection but also towards regional adaptation goals.

Adoption of the initial components of the RSAP in 2024 will begin implementing the requirements of Senate Bill 272 (Laird 2023) “Sea Level Rise: Planning and Adaptation,” which requires BCDC to establish guidelines for the preparation of subregional sea level rise plans by local governments within its jurisdiction by December 31, 2024.

A Public Hearing on the possible amendment is scheduled to be held on Thursday, October 17, 2024, at 375 Beale Street in San Francisco, California, starting at 1:00 P.M. at a regular BCDC Commission meeting.

At least thirty (30) days prior to the initial meeting, the staff will prepare and distribute a staff report and preliminary recommendation on the proposed amendment. Interested persons may request the staff report and present written comments on or before October 17, 2024. Oral comments may be presented at the October 17, 2024 Commission meeting or thereafter as directed by the Commission.



This **Notice** is prepared in conformance with Section 66652 of the California Government Code and Section 11001 of Title 14, Division 5 of the California Code of Regulations. Whether the *Bay Plan* should be amended as described above, and in what manner, will be the subject of the public hearing and Commission deliberation.

Further information concerning the proposed amendment can be obtained by contacting Jaclyn Perrin-Martinez at the Commission's office, 375 Beale Street, Suite 510, San Francisco, California 94105, by telephone at (415) 352-3631 or via email at jaclyn.perrin-martinez@bcdca.gov.