

# San Francisco Bay Conservation and Development Commission

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

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**SUBJECT: Meeting Summary of the July 21, 2016, Commission Bay Fill Policies Working Group Meeting**

1. **Roll Call, Introductions, and Approval of Agenda.** Bay Fill Policies Working Group (BFPWG or Working Group) Chair Barry Nelson called the meeting to order and asked everyone to introduce themselves. Working Group members in attendance included Commissioners Barry Nelson, Katerina Galacatos, and Jim McGrath. Also in attendance were BCDC staff, Brenda Goeden, Steve Goldbeck, and Anniken Lydon.

2. **Approval of June 16, 2016, Meeting Summary.** The Working Group members approved the meeting summary for June 16, 2016, as presented.

3. **Discussion of Commission Workshops and Working Group Tasks.** Chair Nelson stated he met with Chair Zachary Wasserman, about how to dovetail Commission Sea Level Rise workshops with the Working Group activities. He that they discussed the possibility of the Working Group host workshops in early 2017, and that Chair Wasserman prefers that the Working Group prepare a complete package of issues to bring to the Commission rather than single issues. Chair Wasserman also requested that the issues be framed with optional paths forward rather than final recommendations. Chair Nelson stated they did not discuss short, mid, and long-term recommendations or whether to submit both Habitat and Development issues. Chair Nelson explained the difficulty of separating Habitat and Development issues and suggested presenting a full package of framed issues to the Commission by February or March of 2017.

Chair Nelson stated presenting a full package of issues within six to eight months will be a great deal of work because the Working Group is just now beginning to turn to the Bay Fill policies and has not concluded the work on Habitat. Beyond that, the Working Group will need to consider the relationship of its work to a new process, the Metropolitan Transportation Commission (MTC) process, and work with staff to figure out how to frame the Commission workshops in a way that is most productive.

Commissioner Jim McGrath shared his high-priority list:

- a. Subtidal Habitat and the Subtidal Goals Project – all fill is not equivalent
- b. Protection of access, such as the proposal for raising levies in San Mateo County that would affect existing access to and along the water
- c. Rethink the concept of mitigation to include landscape management, such as Highway 37 and where it sits on the landscape, and the importance of managing the landscape to be more resilient and raise habitat value
- d. Streamline the permitting process, particularly in light of the work that will come forward as a result of Measure AA. This work will necessitate bringing federal partners to the table
- e. Shoreline protection and how impact analyses are done, given Dr. Mark Stacey's work

Commissioner Katerina Galacatos agreed that streamlining the permitting process is important. On the federal side, the United States Fish and Wildlife Service (USFWS) are working with the United States Army Corps of Engineers (Corps) and the National Marine Fisheries Service (NMFS) to streamline projects especially for restoration and enhancement. Commissioner Galacatos agreed with addressing development and restoration together, although it may be easier to handle restoration questions over development questions because of the increased activity in restoration. Chair Nelson asked if the better coordination was among agencies, or if it was statewide.

Commissioner Galacatos stated there is a movement to set statewide restoration permitting in place, but it is a federal effort, because when looking at permitting, many individuals get hung up on the consultation process, which is necessary for satisfying both federal and state permitting requirements. The current discussion is to determine a process that allow more coordination up front on both the federal and state agency level. Commissioner Galacatos stated the California State Water Resources Control Board (Water Board) proposed new procedures for wetland fill, which is an interesting opportunity. Chair Nelson stated a group of Stanford students did a practicum on the aftermath of San Francisco. One of their comments was there needs to be some kind of coordination that brings all of the parties to the table. Chair Nelson found this comment surprising, as this is what the USACE Interagency Meeting Process is supposed to do. His understanding from the Regional Board is that the NMFS does not make a habit of attending those meetings. Improving processes is a good way to identify issues. He questioned whether substituting a different process for the interagency meetings will improve coordination.

Commissioner Galacatos agreed that leveraging what is already in place is important. There are better times of year to schedule an interagency meeting. Brenda Goeden, the BCDC Sediment Program Manager, stated she has been to several interagency meetings and it is not just NMFS, it is the California Department of Fish and Wildlife (CDFW), the USFWS, the BCDC, and the Water Board. She gave the example of a meeting this week on Peyton Slough, in which the Water Board, the applicants, and the Corps who hosted the meeting were in attendance, but the other agencies were not there. There needs to be a better effort to increase attendance by the agencies to accomplish better coordination.

Commissioner McGrath stated there are two aspects behind the request for additional coordination – balancing projects with the responses the political system desires. He stated his staff at the Regional Board faced public and political backlash for carrying forward comments that they had heard from the NMFS, the USFWS, on the San Francisquito Creek project. Commissioner Galacatos stated limiting the agency coordination takes away from the input that the USFWS, NMFS, and Corps staff are supposed to have on projects through the consultation process. Commissioner McGrath stated coordination on projects early enough in the process was important so that the project design has not developed to a point that agency input becomes difficult to incorporate into the project. Commissioner Galacatos stated staffing shortages and workload are critical issues at the USACE and other agencies, such that direction is to finish projects, limiting agency time to attend pre-app meetings. Commissioner McGrath stated that is perhaps political efforts to increase agencies staff is the only solution increase agency bandwidth so projects can be handled more expeditiously.

**4. Follow Up Discussion on Key Policy Issues for Habitat Projects.** Chair Nelson stated there are two items on the agenda: continuing the discussion on Habitat issues and beginning to frame the issues around Development. Commissioners have been discussing several issues that fit into the existing Habitat framework: (1) not all fills should be treated equally - the fill for habitat is not the same as fill for other purposes; (2) protection of access; (3) streamlining the permit process; (4) landscape management versus mitigation and how this fits into the existing habitat framework (5) shoreline protection and impacts; and (6) restoration. Chair Nelson referred to the comment about restoration and stated he thinks about pacing the presentation of issues differently to the Commission. The Commission needs to get farther with habitat while development still needs to be figured out.

Chair Nelson asked staff to: (1) continue the discussion on habitat by ensuring that Commissioner McGrath's comments fit in the habitat framework about landscape management and mitigation, and (2) identify where the discussion had gone in the last meeting. Ms. Goeden listed the seven key policy issues for Habitat from the last Working Group meeting:

- a. Minor amounts of fill for habitat purposes
- b. Adaptive management
- c. Habitat conversion
- d. Mitigation
- e. Approving "good fill"
- f. Fill for restoration projects after breach
- g. Use of dredged sediment for habitat restoration

Ms. Goeden stated the Working Group identified that Issues a, e, f, and g are somewhat aligned with slight variations.

Commissioner McGrath spoke about the first issue and the Cullinan Ranch Tidal Restoration Project (Cullinan). It will take a long time, if it is even possible, for Cullinan to fill in the tidal marsh, which may be good or bad. He stated that under BCDC policies Cullinan Ranch could be filled before it was breached, but not after. In terms of adaptive management of wetland systems, this policy is not well suited for reducing carbon signatures or maximizing restoration potential.

Chair Nelson stated there are two ways for the Working Group to approach that: (1) deal with the Middle Harbor issue and be sure to encourage demonstration projects with different placement approaches; and (2) have a longer-term strategy to figure out which projects to approve when it comes to large-scale Habitat placement. Chair Nelson suggested that the Working Group consider changes in policy in regard to large-scale habitat placement, although it will take time to craft new rules. He suggested a two-track process: (1) encouraging the different kinds of demonstration projects needed to figure potential impact out for larger projects; and (2) implementing a process in partnership with other agencies to craft the policies for long-term placement of dredge material.

Commissioner McGrath did not agree. He gave the example of dredging on the Napa River proximate to Cullinan Ranch, and stated there are policies that do not allow fill in Cullinan Ranch, so fill is either hauled downstream to an in-Bay disposal site or upstream two miles, increasing costs and carbon emissions and leaving Cullinan slowly deepening over time. All of those are lost opportunities. Deputy Director Goldbeck stated the linkage between Commissioner McGrath and Commissioner Nelson's approach is that, rather than doing a wholesale change in policies, doing demonstration projects of that kind of in-Bay disposal to show that it is a good idea as a lead to then changing the policies downstream. Chair Nelson asked if Commissioner McGrath meant this might not be fast enough for some opportunities.

Commissioner McGrath stated he may not have understood Chair Nelson's comment. He asked about the hypothetical scale of a demonstration project. Deputy Director Goldbeck stated it is a matter of figuring out the right scale and what will prove the concept – to take a staged approach before changing policies.

Ms. Goeden stated the Working Group also discussed identifying areas that are "stressed" as targets for adaptation rather than sites that are not in the last meeting. Mr. Goldbeck stated the Working Group should discuss these issues because they are all relevant. He stated he would speak with the Conservancy about their flow of projects so that the Working Group can identify potential future issues. Chair Nelson stated, that a number of upcoming projects were discussed in the last meeting. Currently, the Working Group does not know enough to distinguish a good project from a bad project. The group discussed the sediment supply augmentation process through, thin-layer placement, the barrier island approach to shoreline protection in the Bay, and other dispersive approaches. The Working Group must learn more about these approaches before determining which may be successful.

Chair Nelson stated Cullinan is worth a conversation to determine if it is a different kind of project. The Working Group has gained experience using dredge material to do restoration at Montezuma, Sonoma Baylands, Hamilton, and others, whereas the Working group is not ready for some of the more speculative uses of dredge material. The Working Group has been doing large-scale placement in diked baylands for some time and has learned much from that, but Cullinan presents the new issue of whether natural sedimentation and accretion can keep up with sea level rise. Commissioner McGrath stated he agreed but he is not as cautious as others in terms of the magnitude of the problem. The Citizens' Committee to Complete the Refuge made a comment about the value of transitional zones in marshes. When sediment that is suitable is available from flood-control projects is placed a salt pond and that forms filled habitat. It may not

be appropriate, but it may also be the only way to get sediment into the system fast enough and may be undervalued.

Chair Nelson stated Sonoma Creek is an example of an area where the Commission discouraged a larger transitional habitat feature due to concern over what constitutes “a minor amount of fill.” Deputy Director Goldbeck agreed and stated Sonoma Creek was a compromise to test how something smaller performed. Chair Nelson stated Sonoma Creek was an example of a cautious approach to habitat transition zones, but it was the easy thing to do given the current framework. Commissioner McGrath stated Sonoma Creek project was fairly small in terms of its magnitude and does not address the long-term down cutting in the upper watershed, or resulting accretion of sediment and to the modifications in the Bay from the Gold Rush. He felt the project was too cautious. Ms. Goeden stated there were good reasons for it to be cautious, such as that the USFWS has learned from that process on a small project. One of the things they learned was that dredged sediment shrinks. They now are in the process of figuring out how to augment it.

Ms. Goeden offered treatments in order of scale of fill or potential impacts to Bay habitat:

1. Fill in baylands prior to breach
2. Fill in restored sites that maybe do not have enough sediment to keep up with sea level rise or need augmentation over time
3. Fill in existing marshes to provide habitat diversity, such as high tide refugia and marshes that need elevation in some places
4. Placement of sediment to remedy a problem, such as a marsh that is drowning but has specific application
5. Placement of sediment on a healthy marsh to increase elevation for future sea level rise

Chair Nelson listed the criteria being brought up by Commissioners in today’s meeting:

1. Scale. There is a threshold between minor and large-scale fill, which is unknown.
2. Impacts on existing habitat
3. Understanding of the particular use of fill, and the difference between thin-layer placement and sediment augmentation and other proposals.
4. Time. Restoration always is a trade-off between further manipulation of a site for fast results and allowing nature to do the final sculpting

Chair Nelson returned to Ms. Goeden’s list of the seven key policy issues for habitat discussed in the last meeting and grouping issues a, e, f, and g. Commissioner McGrath stated the Working Group should focus on reluctance to change habitat rather than prohibition.

Chair Nelson listed the category recommendations to bring to the Commission:

1. Encourage a variety of demonstration projects with both uses of dredge material and restoration habitat strategies

2. Encourage fill for habitat purposes that would traditionally not have been approved by the Commission, such as the Cullinan Ranch discussion - a restored site with opportunities to learn over time about augmentation
3. Encourage aggressive use of dredge material as a resource - policies may need to change for projects such as Cullinan Ranch
4. Develop a process for determining how to permit large-scale fill for placement methods not currently well understood, such as thin-layer placement
5. Change the minor fill policy for restoration projects that are well-understood, such as Cullinan, where the need for sediment outweighs other concerns, which is caution but not prohibition
6. Maximize reuse
7. Research Habitat opportunities in diked baylands and, where appropriate, the tidal environment
8. Landscape scale planning

Commissioner McGrath stated there are a number of landscape scale projects that have not been adopted by the Commission or the Water Board. The advantage of not asking for approval at the time was that it simplified the process to complete those projects, but, because they are not part of the regulatory guidance, it limits current work toward potential goals. He suggested they be adopted as guidelines rather than regulatory standards. Chair Nelson agreed and stated there are huge opportunities on the development side to provide guidance to applicants without providing formal regulatory standards.

Chair Nelson asked staff to flesh out the suggestions and review the Working Group notes, especially the habitat memo, to point out what Commissioners have not addressed and where this needs to be pushed farther. He asked staff to find the gaps where questions have not yet been discussed, such as adaptive management or the mitigation issue.

**5. Discussion on Key Policy Issues for Built Environment Projects.** Chair Nelson asked Ms. Goeden to review the Suggested Fill Issues for Built Environment Projects Memo in the meeting packet.

Ms. Goeden stated she had modified the document after it was sent to the Working Group, in that mitigation banking was added per Chair Nelson's request and the topics were reordered to make better sense. She included in her review a summary of the Inventory of Key Issues Related to Climate Change Adaptation, Bay Fill, and Bay Plan Policies Addressing the Built Environment, which is part of the meeting packet:

1. Fill the shoreline band
2. Maximum feasible public access over time
3. Shoreline protection
4. Flood protection
5. Tidal barriers
6. Adjacent existing low-lying areas
7. Transportation corridors and flood protection
8. Green to gray infrastructure
9. Mitigation banking

Ms. Goeden asked Commissioners if there are items missing from this list. No additional items were offered. Chair Nelson suggested the August 18th meeting agenda include the progress made on Habitat and the unanswered questions, and begin discussing these substantively, prioritizing them first and working through them. Ms. Goeden suggested updating the work plan to target January through March at the August 18th meeting.

6. **Adjournment.** Chair Nelson adjourned the meeting at 12:36 p.m.