San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

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TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Lindy Lowe, Acting Planning Chief (415/352-3542; lindy.lowe@bcdc.ca.gov)

SUBJECT: Summary of January 21, 2016 Rising Sea Level Workshop Discussions on BCDC Climate Change Amendments that were Adopted 2011
(For Commission information only)

Workshop Issues and Discussion

The Commission held the first of a series of public workshops to be held throughout the year to provide a continuing forum to discuss rising sea level rise in light of BCDC's current policy and planning framework and possible options and ideas for the future. This first public workshop, held on January 21, 2016 reviewed the current climate change policies in the Commission's *San Francisco Bay Plan*. Commissioners, stakeholders and members of the public gathered around seven tables and discussed answers to a series of questions intended to spark discussion regarding the current climate change policies.

The discussion resulted in four primary themes:

1. BCDC's jurisdiction and authority;
2. The project-by-project approach that is a result of applying the current climate change policies;
3. The balance of risk, innovation and adaptive management; and,
4. The regional approach to resilience.

Notes were taken at the tables to capture the primary themes. Listed below is not everything that was said; rather, it is a summary of the participants' questions, comments and recommendations. The statements and conclusions are those of the speakers and do not necessarily reflect the Commission's position or interpretation of its laws and policies.

This summary will inform the content of future workshops, and there will be further opportunities for Commissioners, stakeholders, and the public to provide additional comments. The next workshop will be held on March 3, 2016 and will focus on the regional approach to resilience, picking up on the themes from this first workshop and exploring them further.

Workshop Discussion regarding the Commission's Jurisdiction and Authority

1. **Questions asked by participants regarding BCDC's jurisdiction and authority:**

    - Why is BCDC's jurisdiction defined the way it is? Why was the width of the shoreline band defined at 100 feet? Has BCDC ever requested that it be made wider than 100 feet?
    - Could the Commission deny a seawall project because it is determined that the impacts of the seawall would outweigh the benefits of the seawall?
    - Can the Commission require that an applicant make improvements to properties or areas outside of BCDC's jurisdiction?
    - Does the Commission have the policy authority to review a proposed project's impacts to adjacent land?
    - How has the Commission defined "larger shoreline projects", which are referred to, but not defined, in the climate policies?
    - Is it possible to make incremental changes to the Commission's jurisdiction?

2. **Statements made by participants on BCDC's jurisdiction and authority:**

    - If the Commission's shoreline band jurisdiction expands, BCDC might have jurisdiction over whole or partial communities, which could create problems.
    - If the Commission's jurisdiction and authority were expanded it could limit local control.
    - It would be helpful to regulate outside of BCDC's current jurisdiction since things that happen upland also affect resilience.
    - BCDC's current jurisdiction will move as Bay water levels rise, and so will the head of tide boundary on creeks.
    - Current policies create barriers to restoration projects.
    - Sea level rise is not coming to BCDC for a permit.
    - Legislation would be needed to change BCDC's jurisdiction and authority.
    - Don't be afraid to push the envelope if what you are doing will be best for the bay.

- Be sensitive to how BCDC's policies might affect other regional priorities, such as higher housing densities in the central bay and transit-oriented development. Some areas at risk from sea level rise are the same areas that are close to transit and jobs and reducing the ability to develop housing on these sites might increase sprawl and people driving rather than taking transit.

- There is a need to justify that the significant amount of fill associated with some restoration projects is the "minimum necessary for the project."

- Putting restoration projects through the same rigorous process as other types of projects seems to go against the goals and objectives of those who fought to create BCDC.

- Public agency projects using tax dollars should not have the same public access and mitigation requirements as those of private developments.

- The Commission's mitigation and public access policies are a problem for restoration projects.

- Sediment should not be considered fill.

- The Commission's Policies for a Rising Bay project and its Bay Fill Working Group are evaluating current policies and determining if there is a need to change those policies or go to the legislature to change the Commission's approach to regulating fill.

- The Commission's climate policy that encourages preservation and enhancement of habitat that is vulnerable to flooding or suitable for restoration is less of a jurisdictional issue, since it doesn't give BCDC the authority to require that preservation and enhancement happen. It should be seen as guidance or a recommendation. It is similar to the Bayland Habitat Goals in that way, a goal, not a requirement.

3. Recommendations made by participants regarding BCDC's jurisdiction and authority:

- Request that the legislature extend the Commission's jurisdiction to cover the area that sea level rise is projected to impact by 2100.

- If a portion of a proposal is in BCDC's jurisdiction, then BCDC should be able to evaluate the whole proposal.

- The Commission needs to articulate/change its mission in light of sea level rise.

- The Commission should amend its current policies to reflect new conditions and to address the limitations of "minimum fill necessary."

- Consider developing an organizational approach similar to the Dredged Material Management Office (DMMO) (which requires that agencies coordinate their review of dredging proposal) for all projects.
- Regulatory agencies need to be more streamlined.
- Better coordination between the permitting and planning divisions of BCDC is needed so that applicants and local governments can have the benefit of the planning division's sea level rise expertise. Develop a way to make what planning has developed into best management practices that the permitting side of the office can use when reviewing projects.
- Analyze a project based on its benefits and do not require that fill be minimized for certain types of projects, such as habitat restoration. In those cases, use regional science to guide the amount of fill necessary for a project.
- The Clean Water Act considers fill (sediment) as a type of pollutant and pollutants are considered bad and should be minimized. It is better to think of fill (sediment) as a beneficial resource and no longer as a pollutant.
- Jurisdiction and authority don't necessarily need to be expanded. Continue to share information and best practices through the Adapting to Rising Tides Program and work with local planners and others, which has been very valuable.
- BCDC should be in the room with the Federal Emergency Management Agency (FEMA) during its workshops on the multi-jurisdictional hazard mitigation plans that local jurisdictions need to develop and it would be helpful to have BCDC in the room with those having to make those plans. Response: BCDC's Adapting to Rising Tides Program team held those workshops in partnership with the Association of Bay Area Governments (ABAG) and we were at all of those workshops and developed the material with ABAG staff for the workshops. It was a valuable experience.
- Leverage the ART Program and other programs to help make regulatory decisions more resilient.

Workshop Discussion regarding the project-by-project approach that is a result of BCDC's current policies

1. **Questions asked by participants regarding the project-by-project approach**
   - Can an applicant be required to get the permission of their neighbors for a proposed project?
   - If BCDC approves a project that is not resilient, who will bear the cost of protecting that project?
2. **Statements made by participants regarding the project-by-project approach**
   - By approving public projects like bridges that can't be accessed in the future because the approaches will be flooded, BCDC is unintentionally putting the responsibility on other property owners to deal with the inadequacies of the bridge project and to take action that these adjacent property owners may not be willing or able to take.
   - If a project is approved that has negative current or future impacts on adjacent properties, the public will likely incur the costs.
   - There is an important distinction between public and private projects. Local jurisdictions can have more impact on public projects, but private projects are often constrained by economic and political considerations that do not always result in moral or smart decisions. Local jurisdictions should carefully consider what to require when private projects are proposed for areas at risk for current or future hazards.
   - BCDC has no authority or mechanisms to require that adjacent properties are considered when projects are proposed and this results in a piecemeal, not resilient, approach. Local governments are slow to support a regional body that could address this issue, but businesses and private property owners will look to government for funding to address sea level rise and protection from sea level rise.
   - BCDC cannot stop development because the roadway and transit access required for the project may flood in the future and there will not be money to fix everything.
   - BCDC can only stretch the idea of considering the access to the public access so far under the "maximum feasible public access" requirement.
   - The project-by-project approach and limited jurisdiction is a challenge, but changing it would be a hot button issue for local government. However, the idea that BCDC can address the public access but not the buildings or the land use and that there is no regional, coordinated approach to this is a big problem. Should BCDC have the authority to step into new areas, such as land use and design? If BCDC doesn't fill this role, who will? Local governments are resource constrained and can only address those issues within their jurisdiction and will find this very hard to do without regional guidance.

Workshop Discussion regarding risk, innovation and adaptive management

1. **Questions asked by participants regarding risk, innovation and adaptive management:**
   - Are there ways to improve an innovative project with adaptive management approaches? It won't always be possible to put an area back to the way it was before a project, but it may be possible to adapt it in a way that makes it better.
   - How would the Commissioners feel if they permitted a project even though they knew it had risks and it turned out that it was not successful and the monitoring data indicated that it was not a good project? Can BCDC accept that a large amount of fill may be permitted in the Bay that results in a failed project?
   - Should applicants be treated differently depending on the type of risk associated with the project, who/what will be exposed, and how the project will be able to respond?
   - Should there be a distinction made regarding the types of uses and projects that are better or less equipped to handle risk? For example, a distinction between a parking lot and a senior care facility?
   - How can BCDC encourage innovative solutions when it is a regulator and in a reactive position?
   - At what point would BCDC know that an innovative project has failed? What would the steps be that BCDC would take when a project was determined to have failed? What mechanisms would need to be built into a permit to ensure there was an appropriate approach?
   - What can BCDC require of a project proposal to ensure that adaptive management actions can be taken later? Currently, BCDC does require that funds or land be set aside to ensure that adaptive management approaches can be taken.
   - The lifecycle of an asset or project is an important consideration. How does BCDC address a 50-year project that may be inundated in 30 years?
2. **Statements made by participants regarding risk, innovation and adaptive management:**
   - There has be a tolerance for public access not being accessible all of the time. There will need to be flexibility to allow for public access to be submerged in high rain events. If regulations are too rigid regarding what a project needs to be resilient to, the region would miss out on a lot of public access opportunities that could provide access for several decades.
   - Encourage innovation and adaptive approaches if they are genuine.
   - There is a concern that certain types of land uses should not be placed in locations that are at risk for current or future flooding, such as schools, hospitals, homes, senior care facilities.

- Innovation is not only nature-based; there are innovative structural approaches that are taken in other countries, such as the Netherlands.
- Projects with bigger benefits should be allowed to take greater risks.
- Consider fill as a way to combat sea level rise.
- There should be different levels of acceptable risk depending on the type of project that is being proposed.
- It is not sustainable to keep retreating and it will not always be about moving back from the shoreline. Shoreline armoring will be very important.
- There is a need for flexibility with innovation. An example is that habitat areas are sometimes too rigidly protected and this can have negative impacts on the region.
- Even those restoration areas that are vulnerable to flooding in the future will have short-term benefits as habitat and they are better than nothing.

3. **Recommendations made by participants regarding risk, innovation and adaptive management:**

- Monitor and reassess thresholds based on reality and on-the-ground monitoring (not models), and allow for flexibility within permits, allow for adaptive actions to be taken.
- Put specific requirements in permits regarding the number of days that public access may be flooded per year before adaptive action must be taken. For other uses, there will need to be a fewer number of days and tiered thresholds should be used.
- Base thresholds on types of flood events, such as El Nino, sea level rise, etc.
- A threshold should be based on advanced notice and should be tied to monitoring to determine if higher water levels are happening more slowly or more quickly than anticipated when the project was permitted.
- Create flexibility and pilot new approaches now and accept that mistakes may be made.
- Create permits with adaptation in mind; build measures, monitoring, and approaches into the permit now.
- Create an advisory group to assist the Commission and BCDC staff in determining which risks are appropriate.
- Consider risk in coordination with other agencies.
- Consider what would happen in a no-project scenario and weigh the risks of that against the risks of the proposal.

Workshop Discussion regarding regional approaches to resilience

1. **Questions asked by participants regarding regional approaches to resilience:**
   - I am concerned and skeptical that it will be possible to address this issue regionally with an informal arrangement and not through some regulation and requirements. Are there models for regional planning from other places? Are there other answers?
   - Local governments can't be expected to make changes alone. How can guidance be provided and coordination encouraged by BCDC and others?
2. **Statements made by participants regarding regional approaches to resilience:**
   - Businesses and private companies will not address sea level rise until their properties flood and then they will leave those properties rather than pay to protect and adapt them. This will reduce the number of jobs in the region and the strength of the economy.
   - The region needs to focus on public regional assets, such as airports, that will need to be protected by public funds.
   - There are certain land uses, such as warehouses, that have relatively low value that could be used as an opportunity to retreat.
   - Some regional assets, such as the railroad, BART, Oakland International Airport and San Francisco International Airport don't own all of the areas along the shoreline that flood them and cannot control the solutions at these sites.
   - The San Francisco Public Utilities Agency (SFPUC) brought multiple permitting agencies together to review a series of the SFPUC's projects and work on finding ways to permit them together to increase coordination.
   - Cities will begin to understand that the long-term costs to the public for approving bad projects will be higher than the benefits to the city. They may begin to rethink which areas should be designated for future development in their plans.
   - Local governments do not want to lower property values by designating them as "at-risk." Having a district or regional approach to these decisions would make things easier and would make it less difficult for local jurisdictions.
   - Cities have a responsibility to identify and alert citizens of potential current and future hazards.
   - The region needs to know where the public infrastructure is that is at risk.

3. Recommendations made by participants regarding regional approaches to resilience:

- Local governments would like to know the best practices developed by BCDC for sea level rise projects and BCDC could be the "go-to" agency to assist local governments. A regional agency like BCDC providing input would empower local governments, organizations, and community advocates to influence the local approval process for projects and make it more likely that local projects would address current and future hazards. BCDC's fee schedule could be adjusted to reflect the additional staff that would be required to provide this role consistently.
- BCDC must soon take a stand on the types of shoreline and flood protection that should be encouraged and what the potential impacts are of other types of flood reduction projects on the Bay and adjacent properties. This is particularly important as large infrastructure projects that will take a significant amount of time to protect, begin to consider approaches to reduce their flood risk.
- The current shoreline location and the current features along the shoreline should not be used to determine the future shoreline location and type of shoreline. The shoreline should be optimized to consider how best to address future conditions.
- Leverage the ART Program to provide guidance and assistance to the region.