

San Francisco Bay Conservation and Development Commission

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August 30, 2019

TO: Environmental Justice Commissioner Working Group Members
FROM: Shannon Fiala, Planning Manager (415/352-3665; shannon.fiala@bcdc.ca.gov)
Clesi Bennett, Coastal Planner (415/352-3613; clesi.bennett@bcdc.ca.gov)

SUBJECT: Draft Meeting Summary of June 20, 2019 Environmental Justice Commissioner Working Group Meeting

1. **Call to Order, Roll Call, Introductions and Approval of Agenda.** The meeting was called to order by Acting Chair Showalter at the Bay Area Metro Center, 375 Beale Street, Claremont Room, First Floor, San Francisco, California, at 11:04 a.m.

Present were Group Members: Commissioners Eddie Ahn, Pat Showalter and John Vasquez.

Not present were Group Members: Chair Teresa Alvarado, and Commissioner Sheri Pemberton.

BCDC Staff in attendance included Planning Manager Shannon Fiala, Planner Clesi Bennett, Permit Analyst Walt Deppe, Enforcement Analyst Matthew Trujillo, Chief of Federal Consistency and Permits Erik Buehmann, Shoreline Development Analyst Yuri Jewett, Permit Analyst Morgan Chow, Planning Director Jessica Fain and Interns Emily Mann and Coastal Planner Katharine Pan.

Also in attendance were Bay Planning Coalition Senior Policy Associate Roman Berenshyteyn, Ella Harris, Megan Zheng and Amanda Hinh with Brightline Defense.

MOTION: Commissioner Vasquez moved approval of the agenda, seconded by Commissioner Ahn. The agenda was approved by voice vote with no objections or abstentions.

2. **Approval of the April 4th and May 2nd, 2019 Environmental Justice Commissioner Working Group Meeting Minutes.**

MOTION: Commissioner Vasquez moved approval of the minutes, seconded by Commissioner Ahn. The motion was approved by voice vote with no objections or abstentions.

3. **Environmental Justice and Social Equity Bay Plan Amendment Timeline Update.** Ms. Bennett presented the following:

Congratulations to everyone who has been coming to the meetings for over a year now. We published our Staff Report on May 31st that included the recommendation with proposed policy changes and we mailed our Background Report a week later on June 7th.

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Now we are in the public comment period until July 12th. So far we have not received any public comments. On July 18th, we will have our first public hearing. We could potentially have more public hearings if the Commission decides they want to.

Here you see the meetings we had scheduled for this group for the rest of the year. I need input from you on these dates.

Acting Chair Showalter stated: My general feeling about this is that it is better to have meetings scheduled than not and then if we don't need them, we can always cancel them.

Ms. Fiala stated: After the first public hearing, what we are envisioning happening is that we will receive public comment and public testimony and then BCDC staff will synthesize that input and present that to you on August 15th or September 5th.

And then you as Commissioners would advise us as staff on how to revise the preliminary staff recommendation. We would then bring our final staff recommendation to the Commission for a vote. I don't think it will be possible to get a vote before September and even October would be ambitious.

4. Environmental Justice and Social Equity Staff Planning Report and Background Report.

Ms. Bennett continued:

I did not prepare a specific presentation. We can walk through the policies if that is easiest for folks.

Acting Chair Showalter commented: The attendees around the room are welcome to take part in our discussions. We appreciate your time and effort.

Ms. Bennett continued: We have copies of the policies around the room for your convenience. We included what we heard at the public workshop in January. We also included what we heard from conversations we have had with communities, environmental justice groups, local governments and all the discussions we have had in these meetings.

We can start with the proposed new section in the Bay Plan entitled, Environmental Justice and Social Equity. The first two proposed findings set the stage for the rest of the amendment. Many of the historical events that have brought us to our current point are covered in these findings.

Proposed Finding D talks about our responsibilities under the Civil Rights Act and California civil rights law. We also get into a series of findings that include definitions.

There are many different definitions of environmental justice that we are dealing with. There are also a number of definitions of social equity that we have reviewed. The terms disadvantaged communities, fair treatment, vulnerable communities, meaningful involvement and underrepresented communities are used throughout the proposed policies and they are defined in the findings.

Commissioner Vasquez stated: I think, at the end of the day, this is about looking at every decision we make – does it harm, does it impact and what does it do to the people themselves? It is a broadening for policy makers to think about their actions and how they impact the environment and the people who live in that environment.

And if there has been wrong done in the past; how do we correct that? This is basic to what we should be doing.

Acting Chair Showalter asked: How do people feel about the definitions? Do we need a glossary?

Ms. Bennett replied: There is currently not a glossary in the Bay Plan. This was a different situation where staff and the Commission felt that it would be necessary to include some definitions.

We tried to include the definitions that are widely used among government agencies.

Acting Chair Showalter continued: I do think that these terms have different meanings to different people and what we are trying to do is come up with what is the most appropriate here. That is really important. I would suggest that we highlight that they are definitions and not just buried in the findings.

Ms. Fain commented: Part of the struggle is how do we also make sure we are keeping the language and spirit of the Bay Plan? This has to fit with the way we have written things historically in the Bay Plan.

It has to be a clear tool for the regulatory folks. That is who is going to be looking at these policies and using them. We are trying to be as specific as we can to make sure that they have the information that they need when they are looking at permitting decisions so they can have guidance.

It is a balance between reconciling those ideas that are reflected in the different definitions and how we make it specific enough so that we can use it as a regulatory tool.

Ms. Bennett added: We haven't talked about formatting yet because we haven't gotten to that level of detail yet, but that is something to look at.

Ms. Fain noted: I think a lot of it might come out as we start to move into implementation. So the next phase is – how do we train people on this work? How do we communicate these policies to people? I can imagine that we will be developing a series of web pages, training tools, and fact sheets.

Commissioner Ahn commented: I am glad it includes the BCDC ART Program as well as CalEnviroScreen. The definitions are currently in flux now. Overall a lot of these terms are being debated and the evolving definitions are going to be important.

Embedded in this language is the fact that we are focusing also on vulnerable shoreline communities as well.

Commissioner Vasquez added: Where it says, “people have” and later where it says, “decision makers will” – should we not put “will” up there? People will have the opportunity.

Ms. Bennett explained: This is a direct quote from the EPA. I kept the definitions as they were.

Commissioner Vasquez pointed out: Well we are telling the decision makers that they will. The opportunity should be – they will have an opportunity. That is what we are saying isn't it?

Ms. Bennett continued: The next proposed finding is a little different than in other places of the Bay Plan. This came from one of our meetings where we talked about guiding principles for environmental justice and social equity.

We created principles that would guide us through this work to ensure that we are integrating this into everything that we do.

There are seven principles. They were developed based on many other sets of environmental principles developed and followed by other agencies. That is what this proposed finding is about.

Our hope is that when we have a vote on this amendment that we will actually pull out these principles and highlight them in a special resolution for the Commission to approve.

Acting Chair Showalter stated: I think this is great because essentially what we are saying is this is our goal. Having clear goals is very valuable.

Ms. Bennett continued: The next finding talks about the importance of community outreach and engagement in order to ensure meaningful involvement which is a key part of environmental justice. This talks about the different barriers that folks may face and the need for engagement to start from the beginning of a project.

It also talks about the Commission's involvement in this work and recognizes that our process is often at the end. And this is something that we have gone round and round with, how do we do this when we are often the last permit in a whole line of permits?

We may need to work with and encourage other folks to start these processes early on.

The next proposed finding discusses the other aspect of environmental justice. This one focuses on that fair treatment piece and the importance of identifying and addressing disproportionate impacts and burdens on communities.

Proposed Finding M talks about how BCDC should be working with collaborating with and coordinating with other agencies, local governments on this topic because not everything is under our purview, not everything will be in our jurisdiction; and the fact that we come at the end of the entitlement process.

Ms. Fiala stated: In the Bay Fill Policies Working Group, we actually focused on the policies rather than the findings because the policies are where the rubber hits the road in terms of what we are suggesting our regulatory staff would use in terms of review for permit decisions.

Ms. Bennett stated: The first proposed policy is around those guiding principles and how they should shape our actions and activities.

The second proposed policy talks about how not everything is under our purview and how we need to work with our local governments and help them and encourage them to build this into their zoning, into their general plans, and their other planning processes.

Proposed Policy 3 is very similar and it talks specifically about the community involvement piece and how that needs to happen at the very beginning of a project before BCDC comes in and how communities need to be engaged and involved in a meaningful way, in a culturally relevant way, from the beginning. Vulnerable and disadvantaged communities should also be engaged.

The other piece in here worth noting is we are not saying that for every single permit that walks through the door that we are going to require this. We have narrowed this requirement down to major projects.

Mr. Buehmann stated: Maybe about five to ten permits a year are major permits. In recent years these numbers have gone up.

Mr. Bennett continued: This would be required for all major projects and appropriate minor projects. There are some minor permits that have large public access components or may have large impacts to the surrounding communities.

And that would be left to the staff or the Commission to use their discretion whether that minor project should require such engagement.

What this does not include is our region-wide permits and our abbreviated region-wide permits.

Mr. Deppe chimed in: Essentially the region-wide and abbreviated region-wide permits are like template permits. There are three different ones and they have to fall within certain categories of small kinds of work being done and those have a quicker issuance deadline.

Essentially the only thing that we do in the permit writing process is write the authorization section and we reference the plans that the project is being based off of.

Mr. Buehmann added: The idea being that future projects that are so minimal in impact would not fall under these requirements.

Commissioner Vasquez stated: I would hope that the language in there gives enough flexibility for staff to make the determination. I would hope that flexibility is in this document.

Acting Chair Showalter noted: When I read this if I was a local government official I might be confused to know whether or not my project qualified. We may get comments about that and some suggestions of how to clarify it.

We have projects that we call major projects and ones we call minor projects. Does somebody know if it is a major project – they have to do it. If it is a minor project, it depends.

Mr. Buehmann stated: We have about 30 minor permits per year. We add a lot of material amendments to existing permits and those are over 100 per year.

Acting Chair Showalter noted: One of the good things about the public release process is that you do get comments. And they may help us with different perspective on things.

Ms. Bennett continued: Another thing in this proposed policy that is important is if outreach was done by some agency or participant involved in a meaningful way then we would take the information from that. So we wouldn't make someone go through the whole process of engaging the community again.

So, processes that were done prior that were meaningful would count for this too.

Proposed Policy 4 is the last policy in the new section and it talks about identifying and addressing disproportionate burdens from projects.

The first part proposes that if the project is proposed within one of these vulnerable or disadvantaged communities, then an applicant would need to identify what these disproportionate burdens are.

The second part proposes addressing those impacts. It takes the standard CEQA guideline of avoid, minimize or compensate for such impacts and that would be restrained and within the bounds of our authority.

Ms. Fiala stated: The findings support the policies it is a bit redundant to go over both the findings and the policies.

Ms. Bennett continued: Page 24 is the beginning of the newly proposed public access policies. Policy 2 talks about in-lieu public access. So, this is when public access cannot be provided at the site.

We typically require this type of public access to be near the project site. In cases where that can't happen, we would like to see that public access then serve vulnerable or disadvantaged communities who are lacking public access.

Proposed Policy 5 is our engagement and outreach policy specific to public access. This is requiring outreach and engagement for public access projects that are going to substantially change the use of the public-access site or substantially change the character of the site.

Proposed Policy 8 is on page 26 and it talks about improvements in public access being barrier-free. Originally the language talked about barrier-free access for persons with disabilities. This expands on that and includes economic barriers or cultural barriers, including language.

This proposed policy also talks about signage and that signage needs to be in the appropriate language or use culturally-relevant icons.

Commissioner Vasquez asked: Do we require for a development to bank public access money, so that we can use it in other places? Do we give any thought about how to bank some of those dollars to allow for or use it somewhere else?

Mr. Buehmann inquired: Are you talking about an industrial site where you can't have public access? So what are you going to do to provide maximum feasible public access? In that case, the policies provide that we can build offsite somewhere.

Commissioner Vasquez asked: But are we targeting that? If we are looking for vulnerable communities that may never an opportunity to get public access?

Ms. Bennett stated: So that is what the first policy is trying to get at. This is constrained by the McAteer-Petris Act including language stating that public access needs to be at the site or near the site.

Commissioner Vasquez observed: But that was in 1965 and this is 2019. We didn't talk about environmental justice back then and it wasn't even considered.

Ms. Fiala stated: That is something that could potentially be put in a McAteer-Petris Act amendment for environmental justice.

Commissioner Vasquez stated: It would allow us the opportunity to do that kind of work in areas that never had that opportunity. It is not just for the rich areas to get public access is what we are saying here, but everybody is entitled to public access.

Ms. Fiala commented: Our current setup is that we are focused on providing access as close to the site as possible but where there are safety considerations does it make sense to have public access there? In those instances, we allow for in-lieu public access as close to the area as possible.

Commissioner Vasquez continued his inquiry: So is there anything that allows us to bank that?

Mr. Fiala answered: This is something that we are exploring through the Special Area Plan for the Port of San Francisco. For the Port of San Francisco, we have been talking about whether or not we can think about public access on a Port-wide scale.

Where there is an abundance of public access we could try to express a preference or send the public access to areas of the Port that need it the most such as the southern waterfront.

Mr. Buehmann chimed in: Most of the time, historically, our preference has been that they actually construct public access near the site but sometimes we have accepted money that could go to the Coastal Conservancy. It could go to other entities and then it is identified for a specific project. So, it has happened in the past.

Commissioner Vasquez clarified: I was thinking of areas, of because where they are at, there may not be development in there for years or there hasn't been and yet, we want to connect these kinds of trails together or access together.

Ms. Bennett surmised: I think the McAteer-Petris Act grounds us a little bit, if there isn't a safety concern, to put it near the project. And we could explore changing that if we were to amend the McAteer-Petris Act for environmental justice.

The other issue that has come up is the one of land ownership. Sometimes folks don't necessarily own the land in disadvantaged communities. Would we require someone to purchase the land? Would the Coastal Conservancy purchase it? Who would be the landowner there?

The Coastal Commission has done that exact thing at the Port of San Diego where public access was required and they built a park right near the disadvantaged community that was still on Port land, but it served this community rather than being right next to the project.

Maybe this is a precedent that we could follow for larger landowners. This could be a potentially difficult situation if the landowner is limited.

Commissioner Ahn commented: I do like what you just said. Is it possible under this process we can also create as an EJ Working Group to submit to the Commission or just consider it internally, legislative changes?

Ms. Fiala stated: Yes, I think that could be a great next step. Clesi has explored other next steps outside of the Bay Plan Amendment in the Background Report. In addition to potential legislative changes we could change our regulations around our permit application and our hearing requirements and our noticing requirements.

There are many implementation next steps that we could take and we are exploring a number of them.

Ms. Bennett continued: We renumbered and put the EJ policies where they flowed the best. What would make the most sense is we will put the environmental justice chapter before all of these chapters.

Proposed Policy 13 focuses on the Design Review Board. This policy is added to ensure that these principles get included in the Design Review Board's process.

One of our potential implementation steps would be to amend the public access design guidelines that the DRB uses to incorporate environmental justice and social equity. But until we can do that, we have this policy to ensure that these topics are explored through the DRB process as well.

Next we have shoreline protection. The first amendment we proposed is to Shoreline Protection Policy 1. Policy 1 talks about all the conditions that must be met for a new, shoreline, protection project to be authorized by the Commission.

We propose adding letter f, which talks about adverse impacts and that such impacts need to be mitigated. These impacts could include things like accelerated erosion or increased flooding from a structure that reflects wave energy.

Proposed Policy 2 is the community involvement policy for shoreline protection structures. This includes which projects or which structures this would apply to. It also talks about small projects as opposed to large projects.

Acting Chair Showalter commented: The sentence that reads, "If previous outreach and engagement was insufficient further outreach and engagement should be conducted prior to Commission action." Do we want to flip that and make it a little bit more positive?

I know that this is more standard regulatory language but I always think making it clearer is better. So that is something to consider.

Ms. Bennett replied: We originally had it the other way and it got switched by our legal staff. (Laughter)

Ms. Fiala qualified: So you mean, “If outreach is sufficient then no further action is necessary?”

Commissioner Vasquez opined: I don’t think you can ever do that. In a public hearing, somebody has the right to fill out a card and speak to an item. So that could change everything again.

We have done extensive outreach and notice on public hearings and we still have people tell us, “I don’t know anything about this. I never heard of it.”

Acting Chair Showalter surmised: I do think that what we are trying to convey is that every opportunity is going to be available and also that we expect the local project proponent to take care of it. We don’t really see this as a BCDC job. We see this as their job. I want to make sure that we convey that.

Ms. Bennett stated: With BCDC’s permitting being so late in the entitlement process, it really wouldn’t be very meaningful. The gist is that if the proponent and the local government do this right from the beginning, it won’t add any further requirements.

Acting Chair Showalter added: And that you include the reference to the existing public process that always will be included.

I also think another reason for incorporating this public access into these shoreline improvements is frankly getting them paid for. We should emphasize the “multi-benefit” aspects of a project.

Ms. Bennett pointed out: This section has also proposed amendments for the Fill for Habitat Amendment. Some of these policies may also change depending on the outcomes of that.

So proposed Policy 6 talks about the need to ensure safe and convenient water access even when shoreline protection is being constructed. This strengthens our policies around public access that we have already but there were concerns that some shoreline protection structures may reduce a community’s ability to get to the shoreline.

The last policy that we propose to add to the shoreline protection section is around contamination. This policy would require that the best available science on sea level rise, storm surge, and any associated groundwater level changes would need to be incorporated into the remediation design selection in order to prevent the mobilization of the contaminants into a community’s water or soils which could have detrimental public health impacts.

Ms. Fiala noted: Remediation falls within the purview of the Department of Toxic Substances Control (DTSC) and we have had recent interactions with them around the use of the Ocean Protection Council’s latest guidelines.

Mr. Buehmann stated: It has also come up in comments under CERCLA for cleanups like at Hunter's Point where the Navy hasn't necessarily used what we consider the best available science for sea level rise in its analysis.

Proposed Mitigation Policy 3 is the community involvement policy for mitigation. We tried to make the language among all of the community involvement policies mirror each other.

This would be required on major projects that require mitigation and appropriate minor permits left to the staff's discretion.

Acting Chair Showalter asked: Is there anywhere in the findings where we talk about financially supporting vulnerable communities in the outreach process?

Ms. Bennett replied: It's in the Background Report. It is not stipulated in a policy. We didn't want to get down to prescriptive methods because every project is different.

We don't go into detail in the policy but that is definitely included in the Background Report.

Policy 4 talks about issues that the Commission should consider when determining the appropriate location and design of a mitigation project. It says that the Commission should consider not only the benefits to natural resources but also benefits to humans including economic benefits or social benefits and we are proposing adding looking at the distribution of these benefits and who are these benefits actually going to.

Policy 10 stipulates that if more than one mitigation program is proposed that the Commission should consider alternatives and it talks about the Commission considering the costs. This proposed amendment to Policy 10 would add looking at the priorities and the concerns of the surrounding communities if more than one mitigation program were proposed.

5. July 18, 2019 Public Hearing. Ms. Bennett continued: The next couple of questions get us to start thinking about the July hearing and what public comment you think folks might give. Do you think that the Commission might have any concerns about certain policies that we are proposing? How best do you think we could prepare? Is there a role that you all want to play?

Ms. Fiala explained: Staff will give a presentation to the Commission so if you have advice on how we should structure our presentation that would be interesting to hear.

Acting Chair Showalter stated: I think that assuming that we will get some real good comment letters like we did for Bay Fill that will pinpoint some areas of confusion. I would go through those and talk about what are the general principles that you have heard from those comment letters.

I think the discussion about when a public agency has to do an environmental justice component and what we mean by that is going to trigger a bunch of comments.

The other thing that will be interesting is will the comments talk at all about how this will change the speed of the permitting process. That is something that is really germane of needing to get a lot of restoration projects done before 2030.

Our concept that the environmental justice outreach has to be an integral part of the program right from the get-go is really how we are dealing with that.

The other thing is the use of the best available science and what is best available science? I think there is going to be discussion about these kinds of things.

And then the other thing that we are kind of silent on, because it is outside of our purview, is how, when you are implementing getting good stakeholder involvement, do you really pay for it? It is not in our purview and yet we want to encourage it. This is also going to come up too.

Commissioner Vasquez chimed in: For me, it is have we given you enough flexibility? You are the ones that have to deal with this on a daily basis. I do know what I think outcomes should be, but how I get to them is what I am hoping as a Commissioner that through this process that we give you those tools and the flexibility to empower that to work towards that goal.

Government is starting to address the issue of how we do business and is it fair? In doing something are we harming or impacting a community of people? This gives you one more opportunity to ask those questions.

Commissioner Ahn commented: For the purposes of this public hearing I would suggest maybe thinking through the thresholds or the frameworks you want the Commission to consider. If a question comes up what constitutes insufficient public outreach? There are adjectives and adverbs that bring up these questions.

I think about my law school training and I wanted to leave it all behind me but I can't.
(Laughter)

It does bring up natural questions around the definitions because it is all new.

Ms. Bennett stated: I am working on the issues you all just mentioned.

Commissioner Vasquez asked: What is the refinement process as we go forward and after we adopt it?

Ms. Fiala shared the following: The last amendment that we went through was the Climate Change Amendment in 2011. Now that we have been using those policies for eight years there are some known issues with how the staff has been using those policies and there are definitely some things about those policies that staff would love to amend.

In lieu of that, we haven't yet embarked on an update to the Climate Change policies and so in 2016, what we had done as staff is embark on the process of Policies for a Rising Bay project where we actually looked at how the climate change policies were being implemented and made some suggestions for how the Bay Plan could be changed to address sea level rise in a more nuanced way.

And that was how we arrived at the conclusion to update the Bay Plan for Environmental Justice and for Fill for Habitat, as well as the ones that are in the queue, adaptive management and the idea of fill for shoreline protection or fill for sea level rise adaptation.

If there are issues with the implementation of these policies I suppose we could have another Bay Plan Amendment to fix them or refine them.

Ms. Fain stated: We have intentionally created a high bar because we don't want to change these willy-nilly. It is important that we give it our best shot now and getting them open enough so that there is room for folks to interpret them and refine some of that process.

Ms. Fiala continued: In a sort of a legal sense, we would define these terms through implementation. The permit decisions would be defining what we mean by insufficient rather than defining it up front we would be figuring it out on a case-by-case basis and it will be challenging.

Ms. Morgan Chow commented: From my experience so far, what I have learned is that is sort of how we operate with understanding what maximum feasible public access is. It is a pretty broad term but there is a lot of permit precedent that helps us define and work with applicants to figure out what has been used and what is appropriate.

That logic can be applied to some of the things here that haven't been defined yet for thresholds. It is something that is vague now but we have ideas about criteria and examples but staff will have to start implementing it and then you can use that to inform your lessons learned from each permit.

Ms. Bennett added: It is a field of work that is evolving really quickly. People are adapting and thinking of really innovative ways to implement this work. We tried intentionally to not be very prescriptive on some of these things in order to allow for that kind of innovation over time.

We are trying to allow for flexibility as this work is new for us and is new relatively for several of the government agencies in this region.

Acting Chair Showalter announced: That is the end of our agenda. I thank everybody for your participation and I particularly want to thank staff. This is conceptually very different from conservation. I applaud you for expanding your intellectual pursuits here to bring in these new concepts. These concepts have not been prominent at all.

What we are trying to do is to make sure that this is not the case anymore and so it is a big change.

Commissioner Vasquez noted: I think Morgan said it best when you mentioned the logical connection between all of this. Intuitively we might know that, but sometimes we have to put it down on paper for the policy makers.

6. **Public Comment.** Public comment was given throughout the proceedings.

7. **Adjournment.** There being no further business, Acting Chair Showalter adjourned the meeting at 12:26 p.m.