

**MEETING SUMMARY – REGIONAL COMPLIANCE FOR A SUSTAINABLE BAY
TAC MEETING #3**

Date of Meeting: September 28, 2020, 10:00 AM – 12:00 PM
Location: Online Meeting
Subject: Regional Compliance for a Sustainable Bay TAC Meeting #3:
Regional Alternative Compliance System Concept
Attendees: Amanda Booth, Sarah Kolarik, *City of San Pablo*
Joanne Le, *City of Richmond*
Michele Mancuso, *Contra Costa County*
Steve Waymire, Lucile Paquette, Cathleen Terentieff, *City of Walnut Creek*
Keith Lichten, Derek Beauduy, Zach Rokeach, *SFBRWQCB*
Luisa Valiela, Jacques Landy, *EPA*
Tony Hale, Gemma Shusterman, *San Francisco Estuary Institute*
Kelly Havens, Lisa Austin, *Geosyntec Consultants*
Mark Kieser, David Chen, *Kieser & Associates*
Jill Bicknell, *EOA*
George Kelly, *Bespoke Mitigation Partners*

Meeting Summary:

1. Introductions and Agenda Review

Roll call for those on the line; Kelly Havens provided an overview of the agenda. No questions or comments on the agenda.

2. Project Schedule/Deliverables and Notes

TAC Meeting Notes #2 approved. Project schedule was presented. Group discussed Literature Review, which was provided to TAC on 8/31/20 for review. Discussion highlights are provided below:

- *Luisa Valiela* – EPA will be submitting comments next week. Question as to how broadly this has been reviewed? Could be helpful to anticipate whether there would be questions from a 3rd party or NGO that we would want to vet early in the process or discuss. *Amanda Booth* – We will have a larger workshop next year when the System is solidified. Thus far, the project team has largely focused on developers and Permittees. We need to discuss if we want to expand the audience.
- *Amanda* - Request that RWB explain comments sent via e-mail. Is this saying that non-LID approaches are not allowed for alternative compliance? Or can we implement these as long as we are consistent with the permit requirements? *Zach Rokeach* – If you have a C.3 regulated project, whether you are doing alternative compliance or not, the project needs to comply with the permit requirements for Regulated Projects. *Keith Lichten* – LID is philosophy for C.3 regulated projects, but it is worth considering instances or considerations where there could be a significant benefit, or it might make sense [to do non-LID]. We've done this in the permit; we need to make sure it fits within the framework

of the permit. We [RWB] are certainly open to it. *Amanda* – So as long as we are within the bounds of the current permit, a great non-LID project could be considered? *Keith* – Yes, it is important to discuss the intent and capabilities in each situation.

3. Regional Alternative Compliance System Concept

Amanda presented the proposed regional alternative compliance system concept. (The concept graphic is provided as an attachment to these notes.) Discussion highlights are provided below:

Pollution Reduction Fee/Fund

- *Amanda (response to question: Who would pay the Pollution Reduction Fee?)* – Concept is that developers that participate in C.3 alternative compliance are required to pay a Pollution Reduction Fee [in addition to purchasing off-site project metrics]. The basis would be meeting the “net environmental benefit”/ equivalent pollutant load requirement. That said, anyone could pay into the Pollution Reduction Fund.
- *George Kelly* - Should the Pollution Reduction Fee only be applicable to those developers that choose to use off-site ACP compliance? Why not apply it to all new development/redevelopment? If you put the fee only on ACP, you create a disincentive to program participation. *Amanda* – This is under discussion. If a fee was levied on all developers, approval of the fee could potentially take a lot longer. This would require all City Councils to adopt it. We would have to create a very clear nexus, and other fee regulations apply. *Kelly Havens* – There could be additional developer cost savings to going offsite that would balance out this fee, still providing incentive, but we still need to explore the economics.
- *Keith* - Can you discuss how the Pollution Prevention Fee might be set? *Amanda* – The first question is which projects would the fee apply to. If the fee applies to all projects, we would need to follow the Mitigation Fee Act, which would influence how the fee is set. We also need to ask what developers would be willing to pay (meaningful but manageable, what is the market willing to pay).
- *Zach* - How about only charging the fee if the donor site has less TMDL benefit than the mother site? or modifying the fee based on that... *Kelly* – this could decrease the potential pool of regulated projects paying the fee. *Amanda* – The impetus for paying the fee is that you can now do more development onsite that wouldn't have been able to do otherwise, which would balance out the cost of the fee.
- *Lucile Paquette* – The fee also needs to cover administration of the program - should those projects that don't use the program be paying for it? *Amanda* – there is likely to be a fee aspect that is related to administrative needs, we can consider participation when setting the administrative fee.
- *George* – Will the Pollution Reduction Fee be administered by the County and allow reduction projects to be developed on a Countywide basis? *Amanda* – This is the preferred

approach, but how the fund is compiled and administered is still under discussion. Additionally, note that the fee could be charged on acres or a project cost basis.

Off-site Projects Considerations

- *Zach* – how far back in time are you suggesting developers will be allowed to go to choose a "non-regulated" donor project? Like if a developer wants to build a project in 2021, will they be allowed to choose a donor project from 2020? from 2019? etc... *Amanda* – this needs to be discussed, but perhaps any project from the onset of the program at a minimum, which would promote development of non-regulated projects. *Lisa Austin* – As an example, once the program is in place, a private entity treats a 200-acre treatment project. Metrics would be available in the system until there enough buyers to purchase all of them. *Keith* – what influence might the system have to encourage retrofit, as opposed to projects that might have been built anyway? Let's talk about it more. Typical concern is the opposite, that a project gets built after the credits are purchased.
- *Tony* - Off-site projects option: is it important to consider the opportunity cost? In other words, if off-site projects are selected, then is it important to assess the "missed opportunity" to capture PCBs and/or Hg at the development site? Perhaps this is a factor to consider in calculating the "Pollution Reduction Fee"? *Amanda* – A City can say when you are allowed to do alternative compliance, could also have this spelled out in the System rules. Note that contaminated sites can be problematic with LID, more benefit is derived from capping or remediating the site than the LID treatment.

Exchange

- *Keith* – An additional question re: contracting. Is the idea that individual contracts would be established between each developer/project proponent and each off-site project sponsor? If so, are there opportunities to standardize/streamline that work? *Amanda* – the project will be creating templates for project specific contracts. If the system becomes popular, it could move to a centralized system. *Mark Kieser* – when the System is at the level where it could be centralized, you don't want to build something new, want to piggyback on what's been done.

Metrics

- *Amanda* – The C.3 lane will have a metric. CCCWP is discussing 3 metrics – 1) greened acres (LID), 2) impervious acres treated (LID or non-LID treatment control), and 3) volume captured. Option 1 is simple, but we need to think about hydromodification. Option 2 is a bit more complicated, would need ratios to convert from LID to non-LID. Option 3 is the most complicated but allows flexibility for regional projects and hydromodification. CCCWP is leaning towards acres greened, but discussions are ongoing. *Derek Beauduy* – Regarding hydromodification, this is more difficult because it is reliant on the project location to protect the receiving channel, so RWB might be reluctant to allow offsite mitigation. *Amanda* – Agreed, projects would have to be constrained in location within the

same watershed for hydromodification. *Lisa* - It might be possible to use underground detention onsite for hydromodification control and go offsite for water quality treatment.

- *Amanda* – We don't anticipate that the Pollution Reduction Fund will have cost-per-metric basis. *George* – Pollution Reduction Fund distribution should have metrics and eligible practices with identified credit yields so that it incentivizes cost effective pollutant reduction practices. To do that, the system needs to define the metrics and projects eligible to receive the funds. Expectation is important. *Amanda* – One way that we might be able to do this is a contracting approach. Also want to allow for expansion of program to other POCs.

Tracking

- *Tony Hale* - Are the two "Project Tracking" symbols in the workflow representing two different databases, datasets, or attributes? *Amanda* – Ideally tracking could be similar for both tracks and compatible with existing databases. The concept of the Pollution Reduction Fund and separate tracks is it gives us the option to implement non-LID projects, gets away from all projects requiring to be LID.

EPA/RWB Review and/or Acceptance of System

Question posed to EPA/RWB – how does the system get “approved” and how much detail is needed?

- *Keith* – The RWB is interested in taking a lighter touch. Thinking about a mechanism that would allow for review and acceptance of the approach. Imagine this will include a reference of the program in the MRP. Would expect this to be reflected in ongoing reporting. RWB wants the ability to understand outcomes, e.g., inadvertent geographic bias over time. It would be helpful to think of these questions and provide info to reflect on them over time.
- *Luisa* – EPA will not be part of certification. EPA comments include redirect away from the idea that this is an EPA-approved program, as what we issue is guidance. We want to make sure everything in the system is legal but will not be involved in certifying the System at a high level. Think of us as a partner that shows we are supportive of the program.
- *Amanda* – Will there be RWB reporting requirements over time to demonstrate there are not undue impacts over time from the system? *Keith* – as the System is developed, does it have its own reporting, or reporting as part of other reporting requirements? Tell us what makes sense to you, we have been trying to recognize a timeline, no fixed framework.
- *Jill Bicknell* – Because this program is still under development and may be rolled out to other counties, we suggest that we keep the MRP language as flexible as possible so that such a System could be accepted without any conflicts.

Pollutant Loading Considerations

- *Keith* - how are you looking at pollutant loads as a trading metric? There is an issue related to different relative land use pollutant loads. We understand using a metric such as surface area and using the fee to address differences in pollutant loads. *Kelly* – it is likely that non-regulated projects that get implemented would have oversight from local jurisdiction and could be focused in areas with higher pollutant loadings than the project seeking alternative compliance (i.e., net benefit).

Certification and Verification

- *Jaques Landy* – who would be conducting the certification of O&M? *Amanda* – we are still discussing this, but the C.3-specified approach is pretty straightforward, and the thought is that this approach would be applied. If it was a different type of project, we would have to establish guidelines (standardize an approach). The City that the project occurs in would do the inspections.

4. Action Items

- Amanda: Please email any additional questions or comments.
- Literature Review will be finalized after comments are received from EPA.
- Next TAC meeting will be in November or December to discuss System components. Scheduling poll to be sent out within the next few weeks.