

DRAFT MEETING AGENDA

Date of Meeting: May 13, 2020, 9:00 AM – 12:00 PM
Location: <https://us02web.zoom.us/j/81301286848?pwd=dDdMWmVFNHo0c3FMSGlmTmhZTzFGdz09>
Subject: Regional Compliance for a Sustainable Bay TAC Meeting #1:
 Regional Compliance Metrics
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*
 Derek Beauduy, Zach Rokeach, *San Francisco Bay Regional Water Quality Control Board*
 Luisa Valiela, Jacques Landy, *EPA*
 Kelly Havens, Lisa Austin, *Geosyntec Consultants*
 Mark Kieser, David Chen, *Kieser & Associates*
 Jill Bicknell, *EOA*

Discussion Topics:

1. Introductions9:00 AM
2. Project Overview and TAC Role (A. Booth).....9:10 AM
Refer to Handout A and Project Description.
3. Alternative Compliance Metric (M. Kieser).....9:25 AM
Refer to Handout B.
Process: Overview and importance of metric in System development, key definitions.
4. Bay Area Context/Considerations (L. Austin/J. Bicknell).....9:45 AM
5. Key Definitions/Decisions (K. Havens/Group Discussion).....10:15 AM
Refer to Handouts B and C.
Process: Detailed discussion relating to metric options and considerations for selection.
6. Next Steps (K. Havens).....11:45 AM
7. Adjourn12:00 PM

Regional Compliance for a Sustainable Bay Technical Advisory Committee Meeting #1 Handout A

Technical Advisory Committee Role

The Regional Compliance for a Sustainable Bay Technical Advisory Committee(s) (TAC) will convene to discuss specific issues and questions relevant to System development. The TAC will provide insight from a technical, financial, and regulatory/legal perspective on key System development decisions. Commitment expectations for the TAC include:

- Active participation in up to five (5) TAC meetings; see schedule below.
- Review of provided materials prior to the meetings.
- Input should be constructive and provided with consideration of how the Regional Compliance System could be successful.

Since TAC meetings will cover a range of specific topics, some TAC members may not be expected to attend all meetings, just those that relate to their expertise.

Technical Advisory Committee Meetings

Meeting Topics	Schedule
1. Regional Compliance Metrics – 3 hours <i>What is the appropriate water quality credit for the Bay Area?</i>	May 13, 2020 (Online Meeting)
2. Regional Compliance System/Legal/P3 and Finance Discussion – 4 hours <ul style="list-style-type: none"> • Provide details on applicable alternative compliance system approaches. • Legal experts to discuss the legal ramifications and potential limitations of different system types. • Finance experts will be included to discuss project financing, potential volume of trades, and classify eligible entities generating alternative compliance metrics. <i>How will a water quality crediting/trading/banking system in the Bay Area operate?</i> <i>How will the region ensure the program is legally defensible?</i>	June 15, 2020
3. Regional Compliance Metric Certification – 2 hours <i>How will projects fund and ensure ongoing operations and maintenance?</i> <i>How will the region approve projects?</i>	September 2020
4. Regional Compliance Tracking System – 2 hours <i>How will the region track projects?</i>	September 2020
5. Legal Review – 3 - 4 hours <ul style="list-style-type: none"> • Federal considerations from Clean Water Act attorney, Brooks Smith. • City and County perspectives and legal representatives. <i>What is the appropriate legal agreement for participating entities that allows for a regional alternative compliance water quality crediting/ trading/banking system, while minimizing the risk imposed on participating entities?</i>	Summer 2021

Regional Compliance for a Sustainable Bay Technical Advisory Committee Meeting #1 Handout B

Regional Alternative Compliance System Metric – Key Considerations

- The unit of the alternative compliance metric is a key early decision in System development.
- The metric is a unit of pollutant discharge reduction that reflects both:
 - the regulatory pollution control requirement and
 - the measurable or estimated outcome at the alternative control
- The metric is often expressed as **mass pollutant load reduction per time** (e.g., kilograms/year) *or* can be expressed as a measure of **equivalency between the regulatory requirement and the benefits metric** from the alternative control (e.g., “acres greened”).
- The metric will set the System accounting to track Regional compliance with key drivers.
- The metric should consider potential evolution to regulatory requirements over time.
- The metric will define the applicable control measures and help drive project innovation.

Meeting Objectives

The TAC meeting should result in clear recommendations from TAC members on the suggested unit of alternative compliance metric **or** a group decision on the straightforward analyses or steps needed to identify the appropriate metric.

The meeting will additionally incorporate discussion of other System components and considerations that relate to the metric decision, including:

Control Measures – The metric drives which control measures generate units of metric (also called “credits” or “offsets”). Introduce how “credits” are certified through confirmation of control measure implementation. Consideration of how metric can also promote control measure innovation uniquely suited to the local setting or targeted pollutant. Introduction to credit “verification”, consideration of how “credits” can be maintained through O&M.

Baseline – The baseline from which “credits” generated from control measures are “valued”.

Calculation Method – Considerations for identifying the appropriate method for calculating “credits” generated from different control measures.

Unit of Exchange, Credit Ratios – Introduction of the factors that could alter the amount of metric generated from a control measure (e.g., land use, control measure drainage area, control measure performance/capture, control measure type) and how different control measures or credit generating entities could be subject to different “credit ratios” as a result.

Eligible Entities/Geographic Area – Introduction of how the metric decision and the resulting “credit”-generating control measures could result in limitations of eligible entities and/or geographic areas where control measures generate sufficient “credits”. Additional limitations of and on eligible entities include restrictions on the use of metric (i.e., cap on the amount of a buyer’s pollutant reduction requirement that can be satisfied through the purchase of “credits”).

Regional Compliance for a Sustainable Bay Technical Advisory Committee Meeting #1 Handout C

Handout C:

Cross-Cut Analysis (see attached excel file) and Glossary of Key Terms

List of Acronyms

BOO	Build-Own-Operate
CEQA	California Environmental Quality Act
CBP3	Community-Based Private-Public Partnership
CWA	Clean Water Act
DBF	Design-Build-Finance
DBFM	Design-Build-Finance-Maintain
DBFOM-AP	Design-Build-Finance-Operate-Maintain-Available Payment
DBFOM-RC	Design-Build-Finance-Operate-Maintain-Revenue Concession
DBOM	Design-Build-Operate-Maintain
GI	Green Infrastructure
LID	Low Impact Development
MRP	San Francisco Municipal Regional Stormwater NPDES Permit
NPDES	National Pollutant Discharge Elimination System
NRDA	Natural Resource Damage Assessment
P3	Private-Public Partnership
PCBs	Polychlorinated Biphenyls
RWQCB	Regional Water Quality Control Board
SRC	Stormwater Retention Credit
SWRCB	State Water Resources Control Board
TMDL	Total Maximum Daily Load
WQBEL	Water Quality-Based Effluent Limitation
WQS	Water Quality Standard
WQT	Water Quality Trading

Glossary of Key Terms

Alternative Compliance Drivers: Regulatory or financial rationale for pursuing the development of an alternative compliance system.

Alternative Compliance Systems: Flexible compliance programs that allow regulated dischargers with costly or infeasible pollution control requirements to meet equivalent discharge reductions by investing in the implementation of cost-effective and feasible controls at other source locations, thereby achieving an overall environmental benefit at a reduced overall cost.

Alternative Compliance System Metric: A common measurement unit of equivalent pollutant discharge reduction that reflects both the regulatory pollution control requirement and the measurable or estimated outcome at the alternative source of control. This metric is often expressed as mass pollutant load reduction per time (e.g., pounds/year) or as a scientifically-defensible measure of equivalency between the regulatory requirement and the benefits metric from the alternative control (e.g., “acres greened”). The compliance metric in an alternative

compliance system is the unit of water quality benefit, such as a pollution reduction credit or offset, that can be generated and utilized in the alternative compliance system.

Angel Investing: A method of financing for projects by an entity seeking higher returns than traditional investing. Angel investing is generally utilized in small-scale applications and for investments that involve more early stage risk, such as new technology applications.

Build-Own-Operate (BOO): BOO is an approach with the greatest transfer of risk to a private partner, requiring the private partner to develop and operate a project on land that it owns or controls.

Bundling: A method of deriving value produced on a piece of land where a variety of overlapping ecosystem services are sold as a single package. Bundled services are often represented through a very general unit of metric such as an area of forest or wetland that is assumed to be associated with a wide range of services.

Buyer: The regulated entity that purchases or provides funding for “surplus” units of metric generated by another entity to meet their own water quality compliance requirements.

Buyer-of-Last-Resort: A method of financing where a promise is made by an entity to purchase credits or offsets if the seller cannot identify another buyer. Buyer-of-Last-Resort is often utilized with a guaranteed purchasing price.

Catalytic First-Loss Capital: Method of credit enhancement provided by an investor who agrees to bear first losses in an investment in order to encourage the participation of co-investors.

Certification: Process that involves the formal inspection, documentation and tracking of implemented actions necessary to ensure the benefits being exchanged as credits are being achieved throughout time. Certification is a demonstration to all stakeholders that the project that is generating pollution reduction credits will meet expectations. Certification often involves third-party project reviews and physical inspections of implemented practices to ensure actions are appropriately designed, implemented and maintained to achieve intended outcomes as defined by the Compliance System framework, guidelines and/or requirements.

Compliance and Enforcement Entities: Entity or entities that ensure(s) that criteria for participants in an alternative compliance system are being met. In the event of non-compliance, the entity can either report to, or is a delegated authority able to enforce water quality non-compliance provisions as necessary.

Credit/Offset: The unit of metric exchanged in an alternative compliance system. A credit or offset may represent a pollutant load reduction or equivalent.

Design-Build-Finance (DBF): An approach that combines innovation of design-build with some amount of private sector capital (such as debt or equity). This model often combines private sector funds with existing public sources and allows private capital to fill any gaps in funding.

Design-Build-Finance-Maintain (DBFM): Similar to the DBF approach, DBFM also includes short to medium term financial and maintenance responsibility for the private partner and requires the public partner to retain the responsibility for operation.

Design-Build-Finance-Operate-Maintain-Availability Payment (DBFOM-AP): Similar to DBOM, DBFOM-AP requires the private partner to be responsible for financing while the public partner maintains control over fees and revenue collection (if applicable) and makes pre-established payments to the private entity for project delivery and performance commitments.

Design-Build-Finance-Operate-Maintain-Revenue Concession (DBFOM-RC): DBFOM-RC is a DBFOM model where the private partner assumes revenue risk. DBFOM-RCs require the private partner to develop the project and enter into a long-term lease with the public sector that allows it to collect some or all project revenues over the contract term.

Design-Build-Operate-Maintain (DBOM): Similar to the DBF approach, DBOM also includes a short to medium-term operational and maintenance responsibility for the private partner.

Eligible Entities: The types of entities that are allowed to participate as either a buyer or seller in an alternative compliance system.

Eligible Exchanges: The types of purchases, trades, and/or sales of units of metric that are allowable in the system based on an entity is a point source (PS) or non-point source (NPS) discharger.

Environmental/Public Bonds: Type of debt security that municipalities use to finance environmental public works and improvements.

Exchange: In authorized alternative compliance systems, “exchange” refers to units of metric that can be transacted between entities to mutually achieve required pollutant reductions. Surplus cost-effective pollutant reductions (or credits) achieved for one pollutant source can be exchanged with another regulated entity for their alternative compliance.

Exchange Baseline: Requirements that must be achieved by a source before generating a unit of metric. This may include meeting specific load reduction requirements before surplus load reductions may be exchanged in the alternative compliance system.

Grants and Reserve Accounts: A fund set aside by an entity to meet any unexpected future costs and future costs of green infrastructure upkeep.

Green Stormwater Infrastructure: Infrastructure that uses vegetation, soils, and natural processes to manage water and create healthier urban environments. At the scale of a city or county, green stormwater infrastructure refers to the patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the scale of a neighborhood or site, green stormwater infrastructure refers to stormwater management systems that mimic nature by soaking up and storing water.

Growth: In the context of alternative compliance demand drivers, growth refers to regulatory requirements to meet water quality standards due to new development or population growth.

Guidance: In the context of a legal basis for alternative compliance systems, guidance refers to standards or frameworks provided or approved by a Clean Water Act-delegated agency to provide advice on how best to comply with specific rules.

In-lieu Fee: An approach to compensatory mitigation that allows permittees to provide funds in the form of an in-lieu fee to an administering government or non-profit conservation organization. Such fees are then pooled to build and maintain offsite mitigation sites.

Incubators and Venture Capital: A method of financing projects by an entity seeking higher returns than traditional investing. As opposed to angel investing, incubators and venture capital tend to be more formal and require a less risky path to repayment.

Joint Ventures: Business arrangements in which two or more entities agree to pool their resources to implement a project and reduce individual risk associated with project failure.

Legal Basis for Alternative Compliance: Mechanism necessary for implementing an alternative compliance system. This may include, but is not limited to rules, guidance, or plans.

Loan Guarantees: A method of financing where a promise is made by an entity to assume the debt obligation of a borrower if that borrower defaults.

Mitigation Banking: An approach to compensatory mitigation that allows an entity (mitigation banker) to generate, bank, and sell credits to permittees for impacts to various wetland and streams designated under the Clean Water Act Section 404.

Offset Program: Similar to water quality trading, offset programs are a market-based alternative compliance approach in which a source can purchase pollutant reduction credits from another source to achieve a pollutant discharge requirement. Unlike water quality trading, offset programs are often utilized in contexts where regulated dischargers are interested in meeting a water quality pollutant reduction requirement, such as new development or urban growth, but may not have to meet a collective cap on water pollutant reductions.

Performance-based Contracting: Unlike traditional contracting where payment is based on pollutant control measure implementation, performance-based contracting (or “Pay-for-Performance”) is an approach to alternative compliance where payment is contingent on the delivery of an outcome. Performance-based contracting can be utilized in several combinations to tie payment to different outcomes.

Plan: In the context of a legal basis for alternative compliance systems, a plan refers to a Clean Water Act-delegated agency approved course of action, such as an TMDL implementation plan, designed to meet water quality standards.

Pollutant Control Measure: Structural or non-structural practices, management changes, or activities that can be implemented to generate measurable or estimated units of pollutant discharge reduction metric in an alternative compliance system.

Reserve Pool: A pool of credits obtained by the administrator of the alternative compliance system to insure against unforeseen credit losses due to project failure. These credits may be set aside from an applied trade ratio.

Revolving Loans: A method of financing where a form of credit is issued that provides the borrower with the ability to draw down or withdraw, repay and withdraw again. This is considered a more flexible method of financing than a term loan which requires a borrower to follow a fixed payment schedule.

Risk Assurances: Mechanisms that can account for a default of a unit of metric due to failure failures to meet criteria of the alternative compliance system. This may include, but is not limited to failure in design, implementation, operation, or maintenance of a pollution control measure.

Rule: In the context of a legal basis for alternative compliance systems, a rule is formal legislation approved by a state's legislative body.

Seller: Entity that generates surplus unit of metric by implementing an approved pollution reduction metric in order to exchange it to a buyer in an alternative compliance system. Sellers are also referred to as generators.

Stacking: As opposed to bundling, stacking is a method deriving value produced on a single area of land where overlapping ecosystem services are measured separately and packaged in a range of different credit types or units of metric.

System Restrictions/Restricted Waters: Potential limitations place on the generation or utilization of a unit of metric.

Trade Ratio: A numerical value used to convert an estimated load reduction into a tradable unit of metric. A trade ratio may include considerations for: 1) lack of information and risk associated with control measures, implementation and performance (uncertainty); 2) trading of different pollutants or different forms of the same pollutant (equivalency); 3) the distance and unique watershed features that will affect pollutant fate and transport between exchanging entities (delivery); and, 4) compliance risk reduction mechanisms (reserve and retirement).

True-up Period: A program provision that allows buyers a window of time at the end of the compliance period to purchase needed credits. True-up periods can reduce risk to regulated sources of over or under-purchasing credits.

Utility Fees: Fees administered to users of utilities used to fund services and projects.

Use Agreement: In the context of a legal basis for alternative compliance systems, a use agreement can represent an agreement between entity and a Clean Water Act-delegated agency for how to comply with a water quality standard.

Verification: The part of the certification process that involves the physical inspection of pollutant control measures for proper implementation, operation and maintenance to ensure adherence to the requirements of the alternative compliance system. Verification may be performed by the entity responsible for the certification process or by a verification entity approved by the entity responsible for certification.

Water Quality Monitoring and Evaluation: Protocols within an alternative compliance system implemented to measure and/or track program success and shortcomings.

Water Quality Trading: Market-based alternative compliance approach in which a regulated source can purchase pollutant reduction credits from another source to achieve a pollutant discharge requirement. Water quality trading is utilized where trading is approved by a regulatory agency for alternative compliance by permitted dischargers required to meet a cap on water pollutant discharge reductions

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