

FINAL MEETING SUMMARY

Date: June 16, 2020 1:00 PM – 3:00 PM
Location: Online Meeting
Subject: Regional Compliance for a Sustainable Bay Advisory Committee Meeting #1
Attendees:

<u>Advisory Committee:</u>	<u>In Attendance (Yes/No)</u>
Shannan Young , City of Dublin, ACCWP	Yes
Kristin Hathaway , City of Oakland, ACCWP	Yes
Karin Graves , CCCWP	Yes
Frank Kennedy , Kennedy & Associates, CCCWP	Yes
Matt Fabry , SMCWPPP	Yes
James O’Connell , City of Redwood City, SMCWPPP	Yes
Rinta Perkins , City of Santa Clara, SCVURPPP	Yes
Pam Boyle Rodriguez , City of Palo Alto, SCVURPPP	Yes
Kevin Cullen , Fairfield-Suisun	Yes
Rob Carson , MCSTOPPP	Yes
Jamison Crosby , Napa County Stormwater Management Program	Yes
Sarah Minick , SFPUC	Yes
Oriana Hart , County of Sonoma	Yes
Angela Clapp , Port of Oakland	Yes
Hardeep Takhar , Caltrans	No
Wilfung Martono , Caltrans	Yes
<u>Steering Committee:</u>	
Amanda Booth , City of San Pablo	Yes
Sarah Kolarik , City of San Pablo	Yes
Joanne Le , City of Richmond	Yes
Steve Waymire , City of Walnut Creek	Yes
Lucile Paquette , City of Walnut Creek	Yes

Michele Mancuso, Contra Costa County

Yes

Project Consultant Team:

Lisa Austin, Geosyntec

Yes

Kelly Havens, Geosyntec

Yes

Mark Kieser, Kieser & Associates

Yes

Meeting Summary

1. Introductions

Roll call conducted; brief overview of agenda provided by Kelly Havens.

2. Project Schedule Update and Notes Approval

Update on project schedule provided to AC (see action items at end of notes).

AC Meeting #1 notes were approved by Amanda Booth, Matt Fabry; no AC members voiced dissent.

3. TAC Summary and Discussion/Input from Advisory Committee

Summary of TAC input provided by Brooks Smith of Troutman Sanders on System legal basis: MRP provides a very solid legal framework for the Regional Alternative Compliance system and provides linkage between PCBs TMDL and GSI. As we think about it at the local level, may need new or revised local ordinances to implement the System.

AC input:

- *Matt* – We are expecting changes to MRP 3 regarding the linkage between PCBs and GSI – will that affect this assessment? *Amanda/Kelly* – Based on discussions with Brooks, linkage between C.3 and C.12 (accounting, etc.), along with fact sheet language will provide enough of a linkage. Proposed MRP 3 changes not expected to change the legality of the regional alternative compliance System.
- *Matt* – on the ordinance, do local mechanisms provide the driver for the System? It seems like it is more the MRP is the driver. *Sarah M.* – We were interested in looking at whether we could implement fee in lieu under our current ordinance, were told that we would need to revise our ordinance to implement it. *Amanda* – San Pablo City attorney has also said that updates to ordinance is highly likely to implement the program.

- *Kelly* – are their permittee concerns with ordinance updates? *Matt* – seems that this program is more complex than current 1990s era ordinance, cities could likely expect their ordinance would to be updated. *Pam* – we've been working on an updated stormwater ordinance; we will definitely need an updated ordinance when we move forward with an alternative compliance system. There may be concerns when we are there. It would be helpful to have some standard language for the ordinance. *Rinta* – Agree with Matt and Pam that current ordinance would need to be updated to allow for these types of transactions.

Summary of TAC presentation/discussion on Metric Selection: An overview of current draft definitions of metrics provided. Luisa Valiela mentioned while trending towards simplicity may have benefits, she's wondering about the assumed audience of developers, her sense was that the System was for the cities; doesn't want to skew the product the System to an audience (developers) who may not be aware of this System. Wants to make sure this is accessible for cities, so they can use the System. Keith stated that it would be ideal for the system to do both (C.3 and C.11/12). Would we trade urban runoff pollutant in general for PCBs load in particular? Initial answer is no, but something to think about relating to what is the net benefit. Would have to think about the overall driver. A challenge is, going back to customers. Who has PCBs load reduction responsibility: permittees. Separate from C.3. Can we think about a cross-walk between the two?

AC Input:

- *Matt* – May need to clarify acres greened or treated definition to include flow-volume combination sizing. In example shown, Richmond site only rose to the top because of land use and model output, would be great to tie the system to more measurable outcomes. San Mateo county would like to use this system to move more towards resiliency. There is also a difference between volume treated and volume managed. Would find value in creating a System that allows for expanded capability. Can do the cross-walk to account for PCBs loading as more data is available and science evolves. The vast amount of GSI is through new and redevelopment, will be the primary interest. RWB is currently stating they may lower thresholds for projects to implement GSI, none of which are related to PCBs, but are saying that alternative compliance will be provided. PCBs not the way to go.
- *Sarah M.* – agree with Matt that we are trending away from PCBs as the metric, do think volume managed is the best. If we go through acres greened or acres treated – both easy to track and manage and could be stand-ins for a lot of things we are trying to control for.
- *Lisa* – Luisa and Keith input was related to the fact that permittees may have the need to interact with the System on their own, outside of private land owners as buyers and sellers, want to make sure System not prohibitive to them. Will need to consider other equivalency considerations.
- *Shannan (chat)* – Will you please explain Keith's perspective more about not being willing to trade PCB load reduction for urban runoff pollution in general?

- *Amanda* – Also heard that Luisa and Keith want PCBs to be considered. In response to Shannan’s comment as well, don’t want projects that didn’t have as many water quality benefits, EPA/RWB comments were getting at scaling factors.
- *Jamison* – Leaning towards first three metrics, skeptical of PCBs due to accurate accounting. Using volume managed, it seems if you have a project of the same size, are we setting up a situation to disadvantage projects that are located in areas of lower rainfall? *Kelly* – We need to continue to consider this. May need to have some kind of normalization for rainfall (unless we think locating projects where there is more rainfall provides additional benefit).

At the end of the meeting, AC was provided the following poll relating to this topic:

1. Do we anticipate that cities would be buyers of PCBs *or* volume/acre-based credits (not using developer funds)?

AC Votes	Selection
1	Yes, this would be accommodated by current city budget
6	Yes, but an updated stormwater utility fee or other funding source such as state revolving fund would be needed
3	No
6	Not sure

- *Matt* – 1st question – municipality buying credits – answer was “not sure”, dependent on what RWB puts in next permit. If specific GSI mandate in the next permit, could be more likely. Still uncertain.

At the end of the meeting, AC was provided the following poll questions relating to this topic: Please select your current preference for metric:

AC Votes	Metric
7	Acres Treated (Expanded suite of control measures)
6	Volume managed/treated
2 ^{1,2}	Other (please chat)
1	Acres Greened (GSI treatment only)
0	PCBs (g/year)

- ¹ I like the idea of volume but normalize for precipitation... I would want to know more about how this would work.
- ² Would still prefer a metric that combined acres greened and PCBs load reduction.

Summary of TAC presentation/discussion on Metric Scaling for performance: Keith – we are talking about two types of metrics or pollution – one is PCBs, one is urban generally. For PCBs, much simpler to imagine a partial credit system. On the ground, it is challenging to retrofit impervious surface, open to the concept of other scaling. What we want to see is that it is backed

by guidance. We could imagine some type of scaling that is part of that credit calculation. What is the pollutant loading for current project vs. smaller sized project with some type of scaling?

Summary of TAC presentation/discussion on Metric Scaling for Control Measure Considerations: Amanda – Ideally we try to create something so that we allow for new methodologies for innovation, allow for the System to grow. George – Suggest you define the metric and initial suite of control measures well, then can establish a process for innovation. Amanda – MRP outlines control measures, we will have to create some more definitions and clarity from a credit/pricing perspective. Lucile – The TMDL has a timeline, but GSI is going to be the building out of the bay area over time, has a longer timeline. Jill (chat) - One of the main reasons that we have shifted from non-LID to LID control measures in the MRP is the ancillary benefits provided by LID/GI.

At the end of the meeting, AC was provided the following poll relating to this topic: Should the system allow the use of non-LID/GSI control measures?

AC Votes	Selection
9	Yes, System success more likely with an expanded suite of control measures, but non-LID should have a scaling factor.
3	Not sure/ no response at this time.
2	Yes, ideally, but the System could work with just LID/GSI.
1	Yes, System success is dependent on an expanded suite of control measures.
1	No, the System will be more successful if it just focuses on LID/GSI.

Summary of TAC presentation/discussion on Metric Scaling for Pollutant-Based Scaling: Keith – We’ve identified a real need for TMDL implementation, to have a focus on areas with higher PCBs concentrations. That’s important to do. With respect to a broader green infrastructure goals, suggest that more credit be given per acre implementing something in a location that’s more heavily polluted. That’s intrinsic if the metric is PCBs loads reduced. Luisa – ditto on Keith’s comments. *Key take-away: If we aren’t using a pollutant-based credit, it is sounding like RWB and EPA would want to scale the metric based on pollutant load.*

Summary of TAC presentation/discussion on Metric Scaling for Equity and other Non-quantifiable Scaling Factors: Amanda – It is important to take into consideration equity and equality, also part of public acceptance and net environmental benefit. Need to be aware that we can’t over-prescribe to the point it doesn’t work from a market perspective, though hopefully they align. Luisa – I hear what you said that something needs to work using a market, if we develop a trading program that doesn’t serve DACs, I will think it will have failed. Has to work with the market and serve our disadvantaged communities. George – create a SOP for how credits are produced. Could include many things, including socioeconomic factors and environmental

benefits. Create a ratio-based system, 1:1 if you have all benefits, less if you don't have all of them. System benefits for DACs could include programs for engaging local disadvantaged business enterprises in the design and construction of control measures, doesn't necessarily have to mean construction of control measures within disadvantaged communities.

AC Input:

- *Matt* – Would be helpful to see examples of how the pricing happens. Seems like you could provide scaling on the metric or it could be dealt with through the pricing metric. How does the pricing happen, and how does the pricing incentivize buying credits in a disadvantaged community? More examples would be helpful.
- *Pam* – It's important to think about how what we do will incentivize vs. not incentivize projects in different areas. How does attracting developers to specific cities or locations fly politically? Are we concerned that these incentives may result in a developer leaves one community for another, and have concerns in communities in which the projects are not built? Additionally, will areas with high water table or other physical limitations be precluded from project implementation? *Kelly* – regarding pricing, we are continuing to learn/develop this. Regarding areas with physical feasibility limitations for control measures, System would ideally allow for a larger suite of control measures.
- *Sarah K.* – With regard to DAC considerations, suggest this not be used necessarily to complicate credit calculations, but used instead to incentivize project implementation. CalEnviroScreen or some other DAC/equity/health measure could be used to demonstrate a net environmental benefit for a project funded by one jurisdiction and installed in another.

At the end of the meeting, AC was provided the following poll questions relating to this topic: Please rank the three benefit criteria that are most important for this system to address, on top of water quality considerations (note, some of these may overlap):

AC Votes ¹	Benefit Criteria
11	Flood control, including future climate-related flood resiliency
9	Environmental and ecological benefits – habitat, restoration, heat island reduction
8	Equity considerations/ benefits to disadvantaged communities
6	Community beautification/education generally, in both disadvantaged communities and non-disadvantaged communities
5	Managing trash loading, especially relating to support of homeless population or clean-up programs
4	Consistency with regional plans and/or advancement of jurisdictional vision or CIP
4	Hydromodification mitigation and natural drainage system benefits
1	Water supply benefits – groundwater recharge (where feasible) or reuse

¹ Three votes per poll taker = total of 48 votes. Reflects votes recorded during the meeting.

Following the meeting Shannan sent a note to change the three votes as follows: “I believe my responses were: 1) equity, 2) urban heat island/habitat improvement, and 3) jurisdiction or other CIP concerns. I had been looking for flood mitigation in the list but somehow missed that response when I was reading through the list. I would probably replace flood mitigation with urban heat island, but I think they are both important to consider.”

At this time a presentation of various System approaches was provided by Mark Kieser.

AC Input:

- *Matt* - Approaches that require funding source like a fee, etc., are not very applicable to the Bay Area. Should allow for flexibility to include that in the future, use P3s to get some GSI built. Seems those are relatively limited applicability at this point. Levers are: (1) RWB in regulatory requirements on regulated projects and permittees; (2) local jurisdictions can go above and beyond or can require a higher standard; (3) Climate resiliency could be a key driver for credit buying. Advocate for a System that is visionary, create structure and mechanisms to allow for that, starting small and limited with grant-funded projects.
- *Mark* – We want to look at which approaches meet the prevailing conditions. Hard to build systems where we can’t predict what happens. Don’t want to design too narrowly and unintentionally exclude great options down the road. Lessons learned from other programs.
- *Amanda* – Because this is a pilot, intention is to start small and then grow System, want to develop something that was manageable. Was intrigued yesterday by how other areas are using state revolving loan funds, would like to research more. Could be a way to get some funds to get program established.
- *Mark* – This can get a bit complicated when you get into revolving loan funds. State of Iowa would reduce interest rate for large infrastructure projects, basically giving extra grant funds to implement investments in watershed credits towards municipality regulatory requirements. State of Pennsylvania clearing house for Chesapeake Bay

Summary of TAC presentation/discussion on who “owns” the credit? Question: If a credit-generating project is implemented by a seller in one City, and the price-setting metric is sold, who owns the other multi-benefits, or who gets to account for them? Is it the City in which the control measure is implemented, or is it the City in which the buyer (i.e., regulated project seeking alternative compliance) is located? TAC considerations for this include: (a) Splitting the “credit” from the “asset” (i.e., credit generating project); (b) If the “credit” (i.e., PCBs load reduced) is not needed by the City within which the project is located (for example, their population-based portion has been met), then this could be an “offtake”, similar to utilities. Allowed where there isn’t a direct connection to someone who wants this credit. This concept will need to be explored more, especially as it relates to metric selection and bundling of metrics.

Summary of TAC presentation/discussion on how to encourage innovation? Greg – Allowing for entrepreneurial investment that add value to developers/users of the program, welcome that,

could fund investment in environmental benefits. George – Anne Arundel County – example, allowed for private financing with expected funding with performances. Innovation – as part of program, suite of traditional practices eligible, and list of other practices potentially eligible with science-backing to demonstrate performance (presumably equivalent performance). Greg – are programs with CDBG, opportunity zones, grants integrated into developments?

AC Input

- *Matt* – comments on generating entrepreneurial investment - we will have to be very clear up front about what generates a credit. To get the investors in, they will have to understand what they will get as a credit provider; buyers will need certainty on the compliance side – how much they have to buy and what the price is.
- *Amanda* – “who owns the credit” from a legal standpoint is an important question to ask. If we get the developers to purchase the credit, who owns that? When we come back and discuss that detail, we should have a good understanding.
- *Pam* – Will we get to see the TAC notes?
 - Post-meeting note: TAC highlights have been provided herein; full TAC notes will be provided once reviewed and approved by the TAC.

4. Summary of Key Discussion; Next Steps

Kelly provided a summary of next steps: AC will receive notes for review, will have two weeks to provide comment on notes or other follow-up comments before finalizing.

Next Steps for Project:

1. Draft Literature Review – July
2. Next AC meeting – Fall 2020