

BCDC BAY PLAN AMENDMENTS

November 4, 2011 by *Michael B. Wilmar & Alex Merritt*

Last month the San Francisco Bay Conservation and Development Commission (BCDC) amended the San Francisco Bay Plan to include new findings and policies addressing climate change and sea level rise.

The new climate change and sea level rise policies were the result of more than two years of planning, drafting, and public hearings. The process was contentious at times. Development and business interests, together with other members of the regulated community, initially argued that the proposed policies would discourage development and economic investment in the Bay Area, while environmental groups pressed BCDC to issue a moratorium on new shoreline development. Municipalities also raised concerns about the policies, fearing that they would allow BCDC to intrude into local planning decisions.

However, by the time of adoption, key environmental groups, business groups, and others, including Save the Bay, the Bay Planning Coalition, the Bay Area Council, and DMB, the developer of the proposed Saltworks project in Redwood City, had all expressed their support for the policies.

Significant new policies in the Bay Plan include the following:

- *Regional Strategy*—BCDC recommends that regional, state, and federal agencies, local governments, and the public create a regional strategy for adapting to climate change and sea level rise. The regional strategy should identify areas where existing development should be protected and areas where it should be removed.
- *Project Review*—Until a regional strategy is adopted, BCDC will review proposed developments on an individual basis, considering their public benefits, resilience to flooding, and capacity to adapt to climate change and sea level rise. The amendments also encourage specific types of projects, provided that their public benefits outweigh risks from flooding. Encouraged projects include natural resource restoration, transportation projects, and projects that concentrate employment or housing near transit service.
- *Risk Assessments*—Proposed projects must submit risk assessments that take into account 100 year flood elevations, sea level rise projections, existing flood protection, planned flood protection, and inundation maps.

- *Resilience to Flooding*—Projects in areas vulnerable to shoreline flooding must be designed to be resilient to a mid-century sea level rise projection. If a project will remain in place longer than mid-century, it must have an adaptive management plan to address longer-term impacts from sea level rise.
- *Habitat Restoration and Protection*—The amendments revise criteria for habitat restoration projects to focus on restoring ecosystems that are resilient to sea level rise and climate change.
- *Adaptation Strategies*—The amendments encourage the innovation of strategies for adapting to climate change and sea level rise.
- *Shoreline Protection*—the amendments establish criteria for authorizing new shoreline protection projects, and make it clear that BCDC can approve the use of fill for shoreline protection. When shoreline protection projects will cause adverse impacts to natural resources or public access, those impacts must be mitigated.
- *Public Access*—Public access to the Bay must be made resilient to sea level rise. When public access is required as a condition of approval, it must remain viable in the event of sea level rise or flooding.
- *Jurisdictional Limits*—BCDC will only enforce the new climate change and sea level policies within its existing permit jurisdiction under the McAteer Petris Act (San Francisco Bay, the 100-foot shoreline band, salt ponds, managed wetlands, and certain waterways) and the Suisun Marsh under Section 29101 of the Public Resources Code. As adopted, the policies also specifically provide that they do not apply outside BCDC jurisdiction for purposes of implementing the California Environmental Quality Act or the so-called “federal consistency” provisions of the federal Coastal Zone Management Act. These restrictions were included to address concerns from municipalities and others that otherwise the policies, whether intended to or not, could be used to affect development outside BCDC’s jurisdiction.

Authored By:

Michael B. Wilmar

(415) 774-3242

MWilmar@sheppardmullin.com

and

Alex Merritt

(415) 774-2983

AMerritt@sheppardmullin.com