

SAN FRANCISCO BAY AREA WETLANDS RESTORATION PROGRAM DESIGN REVIEW GROUP

MEETING SUMMARY APRIL 21, 2003

Attendees:

Bob Batha (San Francisco Bay Conservation and Development Commission)
Andree Breaux (San Francisco Bay Regional Water Quality Control Board)
John Brosnan (Wetlands Restoration Program)
Arthur Feinstein (Golden Gate Audubon Society)
Laura Hanson (Independent Biologist)
Rachel Kamman (Kamman Hydrology and Engineering)
Marla Lafer (San Francisco Bay Regional Water Quality Control Board)
Phil Lebednik (LFR Levine-Fricke)
Mike Monroe (U.S. Environmental Protection Agency)
Barbara Salzman (Marin Audubon Society)
Stuart Siegel (Wetlands and Water Resources)

1. Introductions/Review Agenda

Mike Monroe chaired the meeting and opened the discussion with a review of the agenda and a roundtable of introductions. He asked the group if there were any announcements. John Brosnan stated the Executive Council meeting had been scheduled for Tuesday, June 10, 2003. John also stated he presented the Wetlands Restoration Program at the national Restore America's Estuaries conference in Baltimore the week before. John offered to distribute the daily summaries of the conference to the DRG and all members were interested in receiving these. John also pointed out there was a DRG roster being circulated and asked members to check their information for accuracy.

2. Letters of Review Update

John said Dr. Bailey from the Lake Merritt Institute had forwarded to the group a circulation study done at Lake Merritt so that it might be available to the group. John said this begat a discussion that was beyond just the Lake Merritt letter and that this topic would be discussed further along down the agenda. John said that the Coyote Hills Wetlands Enhancement and Drainage Improvement Project letter was finalized on March 31 and sent to Joe DiDonato at the East Bay Regional Park District. John said Joe's reaction to the Letter was very favorable.

John then highlighted the status of the Bahia Lagoon Dredging and Lock Project and said the letter had final comments from four of the eight review team members incorporated; other team members were still awaiting materials they'd requested for review. Phil Lebednik asked about the status of the MEC Analytical report he'd requested. John had thought this was taken care of, but told Phil that he would follow up on this right away. Stuart Siegel added there was one item (USFWS comments) he'd requested that he not been received; John volunteered to call John Zentner immediately following the meeting. Barbara Salzman said she'd submitted a list of questions to John Zentner and that he'd asked for the respective responses to be kept private. Barbara said this approach contributed to problems with trust in the project process.

3&4. Discussion of DRG Policy Concerns and Evaluation of DRG Process

Bob Batha asked how could we best go about achieving a comprehensive review? Arthur stated a mitigation project should not be reviewed until the project causing the mitigation project has been permitted. He added that, unless this the adopted tack, the environmental community would constantly antagonize the Restoration Program. He stated the DRG should strictly review restoration projects or adopt this approach to mitigation projects. Andree Breaux said that, as an agency staff person, she welcomed technical assistance on projects, but suggested we could have agency staff questions incorporated into the review. Rachel Kamman stated the DRG could benefit from hearing from both sides of a project (i.e., the proponent and those who might oppose the project). She added that much information was left out of the project presentation on the Bahia project; for this reason, she felt it was better to get more balanced questions from agencies and, potentially, the public, so long as the volume of questions did not overload the DRG staff, who already operate on thin budgets. Participation on the DRG must still be attractive to its participants in order for the group to remain at all viable.

Laura Hanson stated she was new and wanted to hear a succinct definition of the purpose of the DRG. John replied that the DRG reviews project designs and provides feedback towards achieving the highest quality habitat and function for that project; depending on the location of the proposed project, the feedback may include any special opportunities or recommendations found within the *Habitat Goals Report*. Stuart suggested that perhaps the DRG should be housed within the regulatory realm, as every project review will always leave someone unhappy. He clarified that we have to know that we are performing this function in the right place. Bob stated this is still a learning process, but that the DRG needed more context about the Bahia project that was not provided to them. To this end, the DRG should not let the proponent frame all of the questions and something else is needed to get at this critical information. Bob stated the question the DRG is asking is relative to the objectives of the project: "Can you get/do what you want with this project?" Bob added knowing certain key information early on is critical, so waiting until a project is approved could be detrimental.

Marla Lafer suggested the DRG require a list of agency contacts to be kept abreast of issues, and added early input is important. She resounded the need to come up with critical questions to ask. Barbara said the proponents should absolutely not be able to frame their own questions. Phil stated it was most critical to determine whether or not we're going to address mitigation projects. He added his perception of this group was it did not address the impacts that preceded a mitigation project, as it is strictly technical and not policy-oriented. Stuart agreed, stating the group is made of scientists, biologists and engineers making sure the designs are able to meet their goals. He added the group should not back away from mitigation projects, but it needs to be clearly defined. He restated the possibility of embedding this function in a regulatory agency. Rachel supported continuing review of mitigation projects, but added clearly stated context plus project goals were essential for effective DRG review. She also pointed out the DRG's Conflict of Interest statement and stated no one on review teams is serving the financial interests of the project proponents. She then suggested the DRG adopt a limitation of liability statement for participants. She also stated the DRG needs to place equal emphasis on physical and biological functions of a project.

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Arthur felt there was a major problem getting away from the regulatory process and stated the DRG had private employees acting in a regulatory capacity. He added that some people likely wanted to become involved with the DRG to further their own interests. He asked how the DRG could screen these people and justify a "no" response to them. He added an entire commission selects BCDC's DRB participants and that approach is not present in the DRG selection process. He also added the DRG needs another layer for public involvement.

John clarified for the group the concept of a checklist of standard issues for each project has been raised before and is addressed on the agenda. Mike added the development of this was part of the experiment of the group and that these contentious projects help us figure out the drawbacks more expeditiously. Referring to the concept of folding the DRG into a regulatory body, Mike asked whether or not the Wetlands Restoration Program was enough of a government entity to maintain the DRG function. He added that government employees are no longer on review teams. Barbara stated there's a terrible risk of project proponents using the Letter of Review as leverage in obtaining a permit. Andree added the need to bring in viewpoints from outside of the DRG and the project proponent.

Bob suggested developing different criteria for restoration and mitigation projects, but the DRG should be a critical factor in raising a whole host of issues. Bob noted the potential for misuse of the Letter of Review and noted Commissions will not be aware of those difference DRG members are aware of; there is a perception issue that could cause problems at the Commission/Executive level. Bob also added the need to address DRG participant indemnity. Marla stated the folding of the DRG into an agency might not make the process less political. She advocated keeping peer review available for mitigation projects, but advocated leaving regulatory decisions to regulatory agencies. She stated the DRG process might point to changes required in regulatory performance criteria.

Arthur reiterated his feelings this process could give developers one more leg-up. He reminded the group the DRG has more power than it thinks. Stuart suggested that DRG review of mitigation projects raise concerns and stop short of offering advice and feedback. Andree asked if there were other projects causing problems, or if issues were specific to Bahia; the group alluded to the Breuner Mitigation Bank and the Lake Merritt Marsh Restoration. Bob stated the DRG and the Restoration Program need to the environmental community and agreed with Marla that more questions need to be raised, so the group can say that certain critical questions were asked. Mike Monroe then gave the group a short break.

The group reconvened and Mike stated the final agenda items that needed to be addressed. Mike asked the group what they thought about only producing a meeting summary that would serve as the feedback and, thus, stop producing a Letter of Review. Stuart felt this would provide feedback with insufficient background information. He felt it would be a reduction in the service of the DRG. Marla suggested a more formatted letter, based on the previously discussed checklist. She felt this would lend more clarity and would clarify the degree of review; Arthur stated no checklist would cover everything that needed to be addressed for all projects. Rachel felt that two documents could be problematic from the standpoint of the reviewer and that one could be better. Phil felt meeting minutes would have a different context and preferred producing both a meeting summary and a letter.

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Mike raised the prospect of providing continuing comments on the website (e.g., rebuttals to comments or additional comments), which could be linked to the Letters of Review on the website. John said this was Roger Leventhal's idea. Arthur pointed out the wide range of opinions of the Lake Merritt letter and the lack of consensus. Bob stated it could be confusing to list several opinions and highlighted BCDC's DRB, in which the DRB chair brings the group around to consensus at the end of each meeting. John pointed out the fundamental difference that DRB project proponents are seeking a permit, whereas DRG project proponents are not; accordingly, the DRG provides sometimes conflicting feedback to the proponent to them to interpret it as they please. Andree felt that people often hear different things at meetings and that some form of accounting would be beneficial. Phil pointed out that "rebuttals" might not be the best way to frame other feedback, but rather call it "additional information". The group generally agreed that providing this on the website would be a good thing.

Mike said that he and John would work on development of the checklist. He added John does public outreach and asked the group where the projects were that needed review. Barbara stated it takes time to bring in projects. Arthur suggested contacting Caltrans for the Bay Bridge mitigation, which has already been approved.

John talked about his suggestion of hosting a charrette, or a facilitated meeting, either hosted or co-hosted by the Wetlands Restoration Program and an environmental nonprofit. The meeting would be tailored to focus on a specific issue as it relates to the Restoration Program, and various members of the environmental NGO community would be invited. Hopefully, participants from the Executive Council, the Coordinating Committee, the DRG, and the Monitoring Group could be on hand to attend. Goals of the meeting would be to build relationships with the NGO community while collecting their feedback on the Restoration Program. Arthur felt these present issues need to be resolved before such a meeting took place. Mike suggested we hear from the Executive Council first and perhaps they could give some instruction on what the charrette could focus on. Bob suggested taking to the Council a variety of those topics we want input on and letting them choose.

The meeting was adjourned.

[PLEASE NOTE: Although not covered at the meeting, the next DRG meeting is tentatively planned for Monday, May 19th. The agenda needs may not warrant a meeting, but I will let everyone know, either way, as the agenda develops. Thanks - JTB]