

STORMWATER COMMITTEE
Regular Meeting
Thursday, April 20, 2017
2:30 p.m.

Meeting Minutes

The Stormwater Committee met in the SamTrans Offices, 1250 San Carlos Avenue, San Carlos, CA, 2nd floor auditorium. Attendance at the meeting is shown on the attached roster. In addition to the Committee members, also in attendance were Sandy Wong (C/CAG Executive Director), Matt Fabry (C/CAG Program Manager), Reid Bogert (C/CAG Stormwater Program Specialist), Kristin Kerr (EOA, Inc.) Azalea Mitch (Menlo Park), Grant Ligon (City of San Mateo), Jennifer Lee (City of Burlingame), Breann Liebermann (San Mateo County Office of Sustainability), Steve Tyler (Town of Atherton), Richard Chiu (Daly City), and Keegan Black (City of Brisbane). Vice Chair Walter called the meeting to order at approximately 2:45 p.m.

1. Public comment: None

2. C/CAG staff Matt Fabry stated there were no stormwater related updates from the April annual retreat C/CAG Board meeting, which focused on transportation. Fabry introduced Denise Hutten, the newly designated committee member representing the City of Half Moon Bay, and Steve Tyler, who was attending on behalf of the Town of Atherton.

3. ACTION – The draft minutes from the March 16, 2017 Stormwater Committee meeting were unanimously approved as drafted (motion: Oskoui, second: Willis).

4. INFORMATION – Announcements on stormwater issues:

Stormwater funding - Fabry announced three open stormwater funding solicitations. Only the EPA grant has a 1-to-1 non-federal match requirement, and municipalities are highly encouraged to apply. All proposal deadlines are in May.

- California Natural Resources Agency Urban Greening Grant
- EPA Water Quality Improvement Fund (likely last funding for next four years)
- California Coastal Conservancy Prop 1 – most recent of quarterly calls for urban greening grants

Regional Roundtable - Fabry provided an update on the EPA-funded BASMAA project for a Regional Roundtable series addressing barriers to integrating transportation and stormwater projects. Announced the kick-off Roundtable meeting on March 28, 2017, which was well attended with around 100 participants from various agencies and organizations, including relevant funders such as the Natural Resources Agency, the Strategic Growth Council, the State Water Board, FEMA, MTC, and others. There will be additional Roundtable meetings of a more technical nature, with the final goal of creating a “road map” for overcoming barriers to integrating green infrastructure into transportation projects.

Reasonable Assurance Analysis update – Fabry updated the committee on the RAA, which must be submitted in the 2020 Annual Report as required in the MRP and must demonstrate compliance with the TMDLs for mercury and PCBs in the Bay through green infrastructure and additional control measures with milestones for 2020, 2030 and 2040. C/CAG staff, Chair Breault, Vice Chair Walter and Steve Carter from Paradigm Environmental presented the final slides on the revised calculations for PCBs and mercury loading from sediment transport in San Mateo County to Regional Water Board staff on March 28, 2017. Provided methodology on calibration of the hydrologic and sediment transport modeling and

demonstrated San Mateo's lower estimated sediment associated pollutant loading relative to the population based allocation in the TMDL. Water Board staff were concerned that this lower number is inconsistent with what's written into the TMDL, especially if other countywide programs develop similar results in which case the TMDL may be jeopardized, and also that these results are inconsistent with some monitoring data from local watersheds. Fabry explained the purpose of the BASMAA project on RAA guidance, which will establish accepted boundaries for various modeling approaches. This process has slowed down Paradigm's work for San Mateo County, but we expect resolution on the San Mateo approach within this fiscal year. Vice Chair Walter shared that Water Board staff Tom Mumley was very receptive to the presentation, and that Carter provided strong, defensible answers to his questions. Vice Chair Walter asked if the BASMAA RAA guidance document will change Paradigm's approach. Fabry stated the approach would not change, but San Mateo's findings demonstrate that the Water Board and other countywide programs may need to reconcile the fact that a population based loading allocation may not match the more accurately modeled numbers, and that Permittees will ultimately need to choose the path that best serves their interests within the somewhat fixed numbers in the TMDL, which are the waste load reduction requirements.

EPA Finance Forum – Fabry mentioned the EPA Stormwater Finance Forum held in Oakland on April 5, 2017. This was a follow-up to a similar event in Southern California. There were no major conclusions or answers to the problem of stormwater funding provided during the forum, but several good examples of how to better manage limited resources, especially with revenue generating constraints from Prop 218. Public/private partnerships were presented as a feasible approach to filling the stormwater funding gap, with a focus on performance based repayment to private owners and operators of green infrastructure, but this requires a dedicated revenue stream to pay back private entities. Fabry will send out links to presentations from the forum once they are posted.

Annual Report items – Fabry highlighted two new items pertaining to this year's Annual Reports:

- 1) Alternative to population based share of mercury/PCBs wasteload reduction – The MRP allows for Permittees to submit with their 2017 Annual Report an alternative approach to meeting the overall wasteload allocation for mercury/PCBs in the TMDL, via green infrastructure, other control measures and the adoption of a program to manage PCB-containing materials during building demolition. Because of the short timing for proposing an alternative written into the MRP, with respect to development of the RAA, Paradigm Environmental has not yet looked at scenarios to more cost-effectively achieve compliance for San Mateo County's overall wasteload reduction requirements. This work will be done in the first few months of next fiscal year. There are still questions about whether a countywide or jurisdictional approach is optimal, and Fabry has emailed Water Board staff to ask if Permittees can submit an alternative approach after the Annual Reports are due on September 30.
- 2) Exemption from building demolition program for managing PCBs-containing materials – Jurisdictions seeking exemption from the building demolition program must request exemption in their 2017 Annual Report. The MRP requires all Permittees to adopt a protocol for managing materials with PCBs with concentrations of 50 ppm or greater during demolition so that PCBs do not enter the MS4. Permittees can request exemption if evidence is provided to show that only structures that existed pre-1980 within its jurisdiction were single family residential and/or wood/frame buildings. Fabry suggested there will likely be no exemptions in San Mateo, but C/CAG will provide guidance to jurisdictions that may seek an exemption. Vice Chair Walter suggested this might be something the PCB workgroup might address as an inquiry to the group.

Unfunded Mandate Test Claims – Fabry shared background on the unfunded mandate test claims filed by all C/CAG member agencies except one jurisdiction under MRP 1.0 (2009/10). All agencies are filed under the City of Brisbane's claim, since Brisbane was the first to file. As an update, the Commission on

State Mandates (Commission) has been understaffed since the initial claims were filed, and there is an assumption that the Commission is also waiting for the results of proceedings for the test claims in Los Angeles and San Diego counties. The Supreme Court has already ruled in favor of LA County, but the case will go back to trial for further consideration of certain components of the test claims. C/CAG's contracted legal firm, Meyers Nave, informed Fabry that the Commission has issued a notice of "incompleteness" of the claims filed by San Mateo jurisdictions. Meyers Nave stated, however, that these issues are linked to new Commission staff assigned to the claims and should be resolvable. There may be a need for new cost estimates of the unfunded mandate test claims, which have not yet been budgeted for.

Committee members had several questions regarding these announcements. Committee member Donohue asked whether C/CAG had budgeted for an MRP reporting workshop this year, and if so, will there be a greater focus on GI requirements. Fabry confirmed and stated that much of the load reduction accounting work will be done by C/CAG, especially this year as this is the first year that Permittees will be reporting on GI for PCBs and mercury loads reduced. Fabry mentioned that EOA would provide Annual Report review and guidance for all member agencies, as in previous years.

Committee member Willis asked whether the building demolition program would necessarily require changes to local building codes. Fabry was uncertain about the extent of changes to local codes and ordinances, but said the BASMAA project to develop the program would inform this question. It was also asked whether the jurisdictions will be prepared enough to go to Council with GI Workplans this June. Fabry highlighted the various workplan components coming out of the GI TAC, including a model workplan, staff report, table of contents, etc., and asserted that staff should have all the resources needed at this point to craft a workplan for approval by Councils/City Managers. He also reasserted that the Water Board is more interested in having Permittees show through the approval of workplans, including a budgetary and staff resource commitment, to implementing the GI Plans, which are due with the 2019 Annual Reports, rather than the actual content of the workplans. Fabry also confirmed that he would be available for presenting to City Councils to help inform Councils of the GI planning process required by the MRP.

Committee member Oskoui asked about the MRP petition to the State Water Board prior to MRP 2.0. Fabry reminded the committee that San Mateo County signed onto the Santa Clara petition focusing on the issue of PCBs being a numeric effluent limit, rather than an action level. The State Board declared a motion to review the petition beyond the standard 270-day timeframe. The Santa Clara petition will likely be reviewed after the appeals to the Los Angeles permit are resolved. Fabry confirmed there is a budget line item for FY17/18 to support the petition process in the next fiscal year. Finally, in response to a question about the possibility of reissuing a Prop 218 process on behalf of the County, Fabry established there was not enough political support last time to move forward with a Prop 218 process (with an estimated \$37 million shortfall annually needed to adequately fund stormwater programming), but that there is a \$500,000 placeholder for FY17/18. There is no active contract with a consultant for supporting this process, should the C/CAG Board approve this as an action item next fiscal year.

5. ACTION – Fabry provided background on the issue of the C.4/C.5 compliance for business inspections and illicit discharge detection and elimination, as addressed by the Regional Water Board's Jan 30, 2017 letter to the 17 cities with active agreements with the San Mateo County Environmental Health Services Division (CEH) for stormwater inspections and Matt Fabry as the program manager for SMCWPPP. Fabry recapped that Heather Forshey, Director of CEH, spoke at the March Stormwater Committee meeting and informed committee members that due to cost-recovery concerns, CEH would be terminating all agreements with the cities by the end of the calendar year. The Stormwater Committee approved a response letter to the Regional Water Board, due March 30, 2017, asking for a one-month extension to provide a complete response, given the information received from CEH approximately a week before the original due date for the response letter. The extension was granted for submission no later than April 28, 2017.

The revised response letter acknowledges CEH's plans to dissolve the agreements by December 31, 2018 and includes the attached letter from Forshey informing the cities of this plan. The letter also acknowledges that CEH will continue services through the calendar year and includes the plan and efforts already made to ensure compliance with the MRP, specifically through updates to the cities' ERPs and BIPs. The letter specifies that all compliance issues will be addressed through these updates, rather than through updating the ERPs/BIPs and the Agreements with CEH, since these agreements will be terminated by the end of the calendar year. Where there are questions specifically about the County's role in business inspections the letter references CEH's ERP/BIP, which are in substantial compliance with the MRP, according to the Regional Water Board. The letter and the updated BIP/ERP templates also use agnostic language about contracting stormwater inspections, so that future contracting arrangements will easily fit into these documents. Fabry confirmed he will send the updated BIP/ERP templates to city staff for review prior to the April 25 CII workshop, where staff will have a chance to make jurisdiction-specific adjustments and additions to their templates.

Fabry also mentioned that he attended the City Managers meeting on April 13, and that it was concluded by Louise Rogers, County Health System Chief, that even with additional resources, the stormwater inspections program would need to be a stand-alone program with dedicated staff, and this is not an option for the County at this time. The County Manager also stated the inspection program would not be extended through 2017-18 fiscal year and would terminate at the end of 2017. Several options for the future of the business inspection program were discussed at the meeting, including San Mateo sharing more about their stormwater inspection program conducted in-house or Daly City, South San Francisco, and San Mateo conducting inspections through agreements with nearby jurisdictions (as agencies already performing all stormwater inspections in their jurisdictions). Fabry also mentioned the County made a spreadsheet of other countywide approaches to C.4 inspections which can be shared. The draft response letter was approved unanimously (motion: Oskoui, second: Ocampo).

6. INFORMATION – Fabry provided information on the preliminary C/CAG stormwater budget for FY17/18. Presented the initial estimates for revenue via the property tax and Measure M vehicle license fee and established a Revenue/Available Funds amount of \$2,536,000 and a starting balance of \$1,295,000 for FY17/18. With expected expenditures of roughly \$3,244,000, the anticipated ending balance would be \$587,000, with \$500,000 of that being reserved for a funding initiative. There is an additional reserve balance of \$120,000. The total available balance for FY18/19 would then be \$87,000. C/CAG will need to have internal discussions about how to best use 5% administrative cost allowance from the Measure M vehicle license fee. Looking ahead, the program is moving toward less dependency on rollover balance and more dependency on revenue only, which means there will likely need to be cuts to the budget now or in the future, especially regarding discretionary consulting costs. Fabry suggested that some larger budget items, especially water quality monitoring, will not decrease over time and will likely be best managed at the countywide level, but portions of that work are discretionary. For example, conducting ongoing monitoring to identify source properties with elevated PCBs concentrations is not mandated by the permit. These efforts do, however, support the Permittees in identifying potentially high priority sites and source properties for referral to the Water Board, which could secure significant PCB load reduction credits, where otherwise these reductions would need to be met through C.3 projects and green street or regional stormwater projects in the public right-of-way. Trash assessments are another high cost service currently being provided by EOA Inc., which the agencies could take on individually. There are areas of budget reductions in the coming years. Specifically, the Stormwater Resource Plan work is complete and the GI planning work will largely shift to the local level after this next fiscal year.

Fabry explained that C/CAG staff will be reviewing the proposed scopes of work from consultants in more detail and will look more carefully for potential cuts for FY17/18. The draft budget will be brought

to the C/CAG Board in May, and the final budget will be recommended for approval at the June C/CAG Board meeting.

Members discussed the question of a Prop 218 funding initiative, recognizing the need for more funding in future years, especially with increased mandates. It was asked if the next opportunity to propose a funding initiative would be 2018. Fabry clarified that for property related fees, there's no restriction on timing for mailing out the ballot initiative and a simple majority of property owners is required for approval. The committee also discussed SB 231 proposed by Senator Robert Hertzberg, which would clarify the term "sewer" in the Prop 218 Omnibus Implementation Act to include storm sewers. If successful, then property related sewer fees in San Mateo County could be implemented without voter or property owner approval, but still would be subject to the majority protest process, similar to proposed water and sewer rate increases. Fabry mentioned that even if the bill passes and is signed into law, it would likely be challenged in court and the only certain option would be to have a constitutional amendment. It was also mentioned that the potential 2018 regional toll measure and a Transportation Authority measure may preclude the political feasibility of a Prop 218 initiative. It was recommended by the committee that C/CAG plan ahead and perhaps work with the Ad-hoc Committee to develop a strategy for a strong pitch to the C/CAG Board if a funding initiative is agreed to. In general, the Committee agreed that the budget was in good standing and should be supported, because SMCWPPP provides invaluable services to the member agencies.

Fabry concluded by saying that with the upcoming RAA results and modeling scenarios for GI implementation, there will be better opportunities to discuss funding approaches, which will include conversations about how exactly funds will be spent, e.g., distribution of green streets vs. regional capture projects and actual plans for implementation. This effort will also provide a more presentable story to the public of how stormwater funding from a Prop 218 initiative would be used. Fabry said the reserve funds for the funding initiative would be maintained in the budget, based on this conversation.

7. Regional Water Board Report: NONE.

8. Executive Director's Report: C/CAG Executive Director, Sandy Wong, shared that the State Legislature passed SB 1 in both houses, and that due to Matt Fabry's efforts in coordination with C/CAG's lobbyist was able to include stormwater language for roads and highway projects. Executive Director Wong also shared that the C/CAG Water Committee is scheduled for its kick-off meeting on May 17 and that the agenda will be distributed soon.

11. Member Reports: NONE.

Vice Chair Walter adjourned the meeting at 3:55 p.m.