

BAY FILL POLICIES WORKING GROUP MEETING

MAY 8, 2020

FILL FOR HABITAT AMENDMENT UPDATE

Process after Commission adoption (10/3/19)

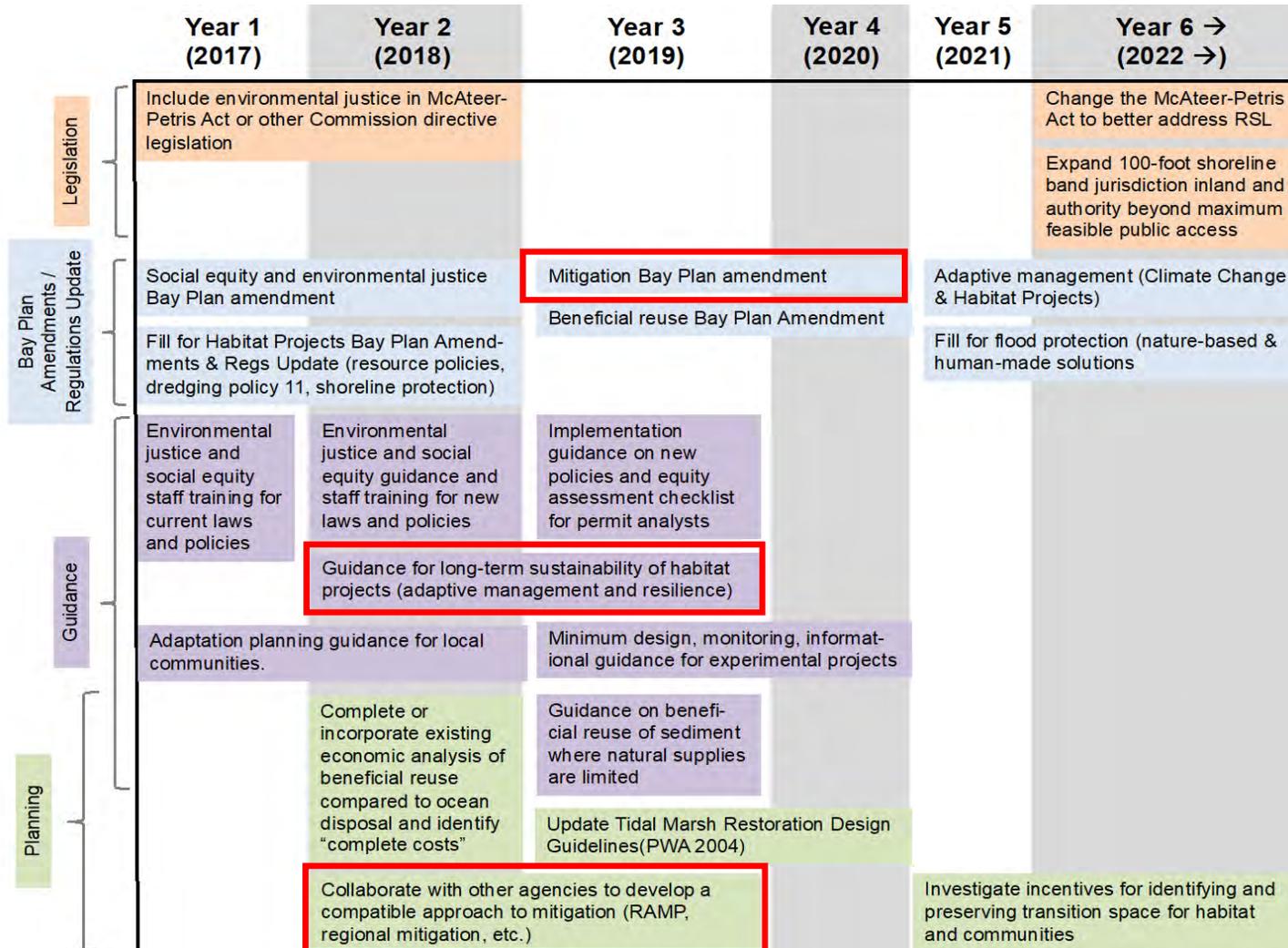
- Submission to the Office of Administrative Law, approved on 12/27/19
- Submission to the Office for Coastal Management on 1/9/19
 - Review still underway

MITIGATION BAY PLAN AMENDMENT (BPA)

Objectives

- Gather Working Group feedback on:
 - The scope of the Mitigation BPA
 - Staff recommendation on initiating Mitigation BPA
 - Next steps in the Mitigation BPA process

BACKGROUND



- Mitigation BPA, guidance for long-term sustainability of habitat projects, and collaboration with other agencies on mitigation approach were identified as needs during the Commission workshops on Rising Sea Level.

PROCESS TO DATE

- Preliminary research by RIPTIDES intern, Elena Huynh, in Fall 2019
- Background research
 - BCDC mitigation law and policy
 - Commission workshops on Rising Sea Level
 - BCDC mitigation staff reports
 - Other agency mitigation policies and practices
 - Bay Area mitigation planning efforts
 - Interviews/briefing with BCDC Regulatory Staff
 - Discussion with BCDC Senior Staff

MITIGATION BAY PLAN POLICIES

1. Avoid, minimize, compensate
- 2. Site and design within Baywide ecological context**
3. Community involvement
- 4. Consideration of multiple benefits in deciding location and design**
- 5. Criteria for amount and type of mitigation**
6. Restoration > creation; **site selection to increase likelihood of long-term success**
7. Provide benefits prior to impacts
8. Required components of mitigation program
9. Interagency coordination
10. Costs and community concerns in choosing among alternative programs
- 11. Mitigation banking**
- 12. Fee-based mitigation**

SCOPE AND PRELIMINARY FINDINGS

“Mitigation” for purposes of this amendment:

- Dealing primarily with compensatory mitigation, not avoidance and minimization
- Compensatory mitigation at BCDC: fill removal, wetland/habitat restoration (including restoring diked Baylands), and contaminant capping/removal

Seven main issues identified:

1. Long-term maintenance of mitigation sites
2. Preference for on-site mitigation
3. BCDC’s role in mitigation planning
4. Required mitigation kind (nexus)
5. Required mitigation amount (proportionality)
6. Environmental Justice and Social Equity
7. Lack of clarity in current mitigation policies

1. LONG TERM MAINTENANCE OF MITIGATION SITES

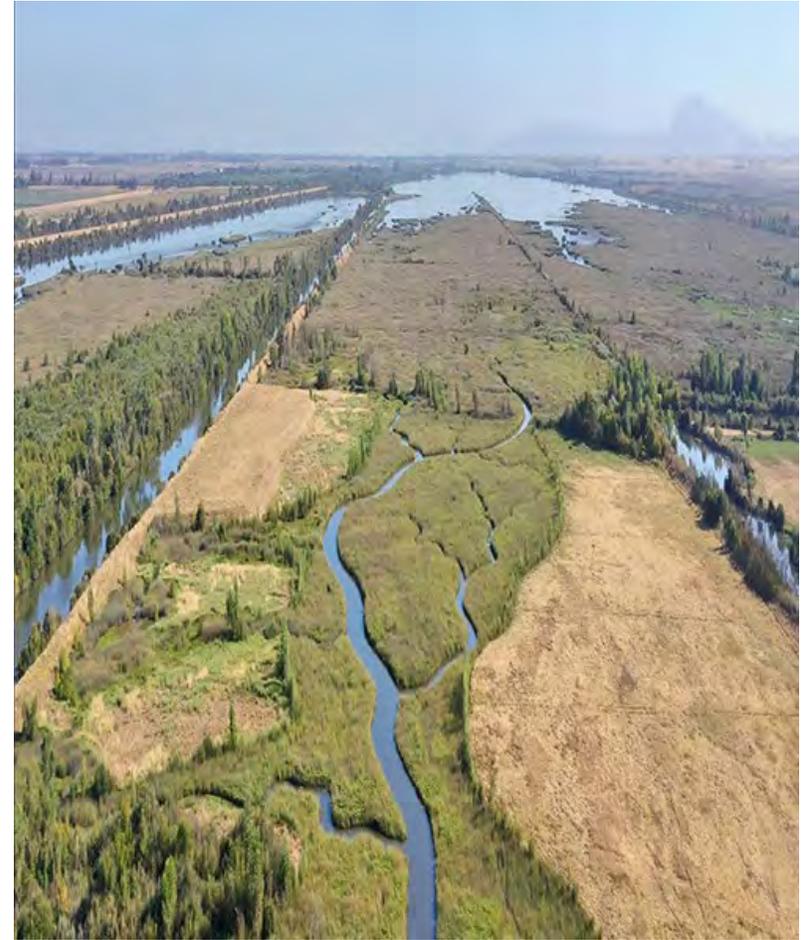
- Issue: How long must mitigation sites be maintained considering sea level rise? How does projected habitat change in the impacted area affect required mitigation kind, amount, and duration?
- Potential solutions:
 - Change to Policy 2 (site and design within Baywide ecological context) or Policy 6 (site selection to increase likelihood of long-term success)
 - Policy addition to address maintenance of mitigation with sea level rise
 - Develop guidance on monitoring and management criteria to ensure long-term success of mitigation projects.
 - Develop guidance on assessing risk and vulnerability of proposed mitigation to determine necessity of long-term maintenance.



Peyton Slough Restoration, Source: <http://www.dutragroup.com/project-details-marineconstruction-aggregates-dredging-marine-construction.html?id=18>

2. PREFERENCE FOR ON-SITE MITIGATION

- Issue: BCDC policies state an order of preference for mitigation that conflicts with other regulatory agencies and does not reflect the potential advantages of mitigation banking and in-lieu fee programs, including increasing habitat benefits and sea level rise resilience.
- Potential Solutions:
 - Change Policy 11 (mitigation banking) and/or Policy 12 (fee-based mitigation)
 - Develop guidance on the use of mitigation banking and in-lieu fee programs to improve sea level rise resilience
 - Improve interagency coordination of mitigation requirements.



Liberty Island Restoration Bank, Source: <https://res.us/projects/liberty-island-conservation-bank/>

3. BCDC'S ROLE IN MITIGATION PLANNING

- Issue: BCDC has thus far had limited involvement in regionwide mitigation planning efforts, but our involvement may be increasingly important to facilitate multi-agency permitting of mitigation projects and to ensure mitigation projects address sea level rise adaptation needs (and vice versa).
- Potential Solutions
 - Change Policy 11 (mitigation banking), Policy 12 (fee-based mitigation), or Policy 9 (interagency coordination)
 - Policy/finding addition to address sea level rise benefits of mitigation planning
 - Collaborate to develop a mitigation bank or fund for fill removal
 - Increase BCDC involvement in regional advance mitigation planning efforts or mitigation bank development.
 - Improve interagency coordination of mitigation requirements.



Encinal Terminals, Alameda Island, Source: <http://starharboralameda.com/tag/encinal-terminals/>

4. MITIGATION KIND (IN-KIND/OUT-OF-KIND) AND NEXUS

- Issue: Can we and should we require more out-of-kind mitigation (different habitat type, different watershed, etc.) when appropriate to work toward greater sea level rise resilience of the estuary? How could and should Environmental Justice be considered?
- Potential Solutions
 - Add specificity to Policy 5 (Criteria for amount and type of mitigation)
 - Policy addition to detail determination of nexus
 - Develop guidance on how to determine acceptable/appropriate nexus and thus mitigation



5. MITIGATION AMOUNT (PROPORTIONALITY)

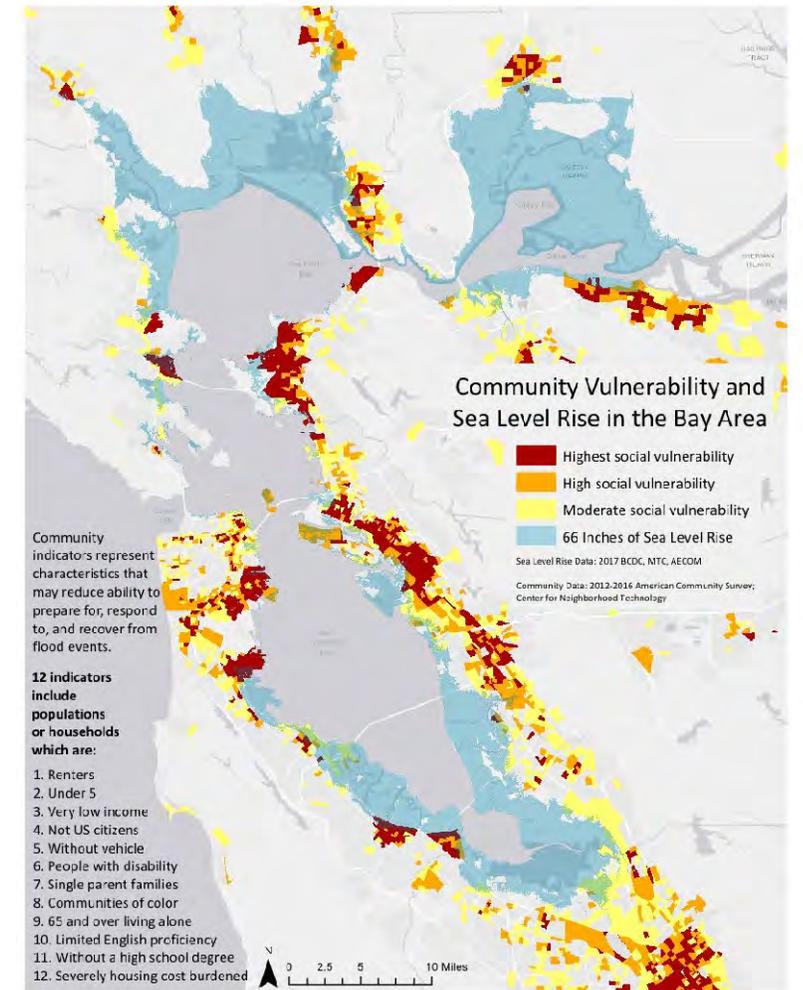
- Issues: How should mitigation requirement and amount be assessed for fill/impacts for sea level rise adaptation or multi-benefit projects (both natural and built environment)? Should mitigation be required for habitat type conversion? Can and should reduced mitigation requirements be used as an incentive to encourage desirable adaptation processes and solutions?
- Potential Solutions
 - Add specificity to Policy 5 (Criteria for amount and type of mitigation)
 - Policy addition to detail determination of necessary mitigation amount
 - Develop guidance on measuring “benefits” vs “detriment” considering climate change/SLR, and how to determine appropriate mitigation ratio



Highway 37, Source: <https://sanfrancisco.cbslocal.com/tag/highway-37/>

6. ENVIRONMENTAL JUSTICE (EJ) AND SOCIAL EQUITY

- Issue: How could mitigation project siting and design address environmental justice and social equity needs, especially in the context of sea level rise? How should EJ/social impacts be integrated into regional mitigation planning efforts?
- Potential Solutions
 - Modify policies to include EJ in consideration of project sustainability, required amount and kind of mitigation, and preference for on-site mitigation.
 - Policy addition to further EJ benefits of mitigation projects
 - Incorporate EJ analysis into guidance document(s) addressing issues 1-5



Source: BCDC

7. LACK OF CLARITY IN CURRENT MITIGATION POLICIES

- Issue: It is unclear how the mitigation policies should be applied in many cases, and they have not been applied clearly and consistently across projects. As a result, applicants don't know what to expect.
- Potential Solutions:
 - Policy change/addition to add specificity and clarity to policies
 - Develop guidance document on interpreting the current mitigation policies.



Replacement of the Eastern span of the Bay Bridge, Source: Leonard G. <https://commons.wikimedia.org/w/index.php?curid=11395654>

GENERAL CONCLUSIONS FROM REGULATORY STAFF INTERVIEWS

- The current mitigation policies are likely flexible enough to address most of the issues related to sea level rise, but these policies also lack clarity and are applied inconsistently as a result.
- More clarity would benefit permit analysts and applicants when handling current and future issues.
- For some issues, more research is necessary to determine the extent of the problem and the options to address the problem.

STAFF RECOMMENDATION

Begin a Mitigation Bay Plan Amendment process by conducting background research, interviewing stakeholders, and continuing meetings of the Bay Fill Working Group to identify necessary policy changes and explore the need for other non-policy solutions.

SUMMARY OF NON-POLICY SOLUTIONS

- Develop guidance on the following topics, as appropriate:
 - Monitoring and management criteria to ensure long-term success of mitigation projects.
 - Assessing risk and vulnerability of proposed mitigation to determine necessity of long-term maintenance.
 - The use of mitigation banking and in-lieu fee programs to improve sea level rise resilience
 - How to determine acceptable/appropriate nexus and thus mitigation
 - Measuring “benefits” vs “detriment” considering climate change/SLR, and how to determine appropriate mitigation ratio
 - Interpreting and applying the current mitigation policies.
- Improve interagency coordination of mitigation requirements.
- Collaborate to develop a mitigation bank or fund for fill removal
- Increase BCDC involvement in regional advance mitigation planning efforts or mitigation bank development.

SUMMARY OF NON-POLICY SOLUTIONS (2)

- Develop guidance on the following topics, as appropriate:
 - **Monitoring and management criteria to ensure long-term success** of mitigation projects.
 - **Assessing risk and vulnerability of proposed mitigation to determine necessity of long-term maintenance.**
 - The use of mitigation banking and in-lieu fee programs to improve sea level rise resilience
 - How to determine acceptable/appropriate nexus and thus mitigation
 - **Measuring “benefits” vs “detriment” considering climate change/SLR**, and how to determine appropriate mitigation ratio
 - Interpreting and applying the current mitigation policies.
- Improve interagency coordination of mitigation requirements.
- Collaborate to develop a mitigation bank or fund for fill removal
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NEXT STEPS

- Brief BFWG (May 8)
- Brief Commission and gather feedback (May 21)
- Background Research (April - August)
 - Draft Background Report
 - Internal review of Background Report
 - Public release of Background Report
 - Initial policy drafting and discussions
- Formally initiate BPA (September)
- Commission briefings, workshops
- Initial public hearing

WORKING GROUP NAME

- Considering the Working Group's focus, what should the name be?
 - Keep "Bay Fill Policies Working Group"
 - Change to "Wetlands Policy Working Group"
 - Other suggestions?