

San Francisco Bay Conservation and Development Commission

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April 3, 2020

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Cody Aichele-Rothman, Coastal Planner (415/352-3641; cody.aichele@bcdc.ca.gov)

SUBJECT: Staff Report and Final Recommendation Concerning Proposed Bay Plan Amendment No. 5-19 to Remove the Water-Related Industry Priority Use Area Designation from a Site along Pacheco Creek, East of Martinez
(For Commission consideration on April 16, 2020)

Staff Recommendation Summary

The staff recommends that the Commission adopt the attached Resolution No. 2020-01 (Attachment A) that would:

1. Amend the San Francisco Bay Plan (Bay Plan) Maps 2 and 3 by removing the Water-Related Industry Priority Use Area designation from a 172-acre site west of Pacheco Creek near Martinez; and
2. Make necessary findings regarding environmental impacts outlined in the environmental assessment.

An affirmative vote of two-thirds of the Commission (18 members) is required to amend the Bay Plan.

Staff Report

Background

In 1969, the subject site at Pacheco Marsh, along with other large parcels in the surrounding area, was designated by BCDC as the North Contra Costa Water-Related Industry Priority Use Area (WRI PUA) in the original Bay Plan. The site was considered appropriate for water-related industry as it was adjacent to a deep-water channel, intermodal transportation, and pipelines associated with surrounding industry. The Commission adopted Resolution No. 16 on November 18, 1971, establishing within the shoreline band the boundaries of water-oriented PUAs designated in the San Francisco Bay Plan, including the North Contra Costa WRI PUA. Commission Resolution No. 16 describes the boundaries of the North Contra Costa WRI PUA as the “East line of Concord Naval Weapons Station,” and the “West line of property on assessor’s map page 378-1.” Current Bay Plan Maps 2 and 3 show the WRI PUA at North Contra Costa in five sites or sections extending along either side of Pacheco Creek, consistent with the boundaries described in Commission Resolution No. 16 (See Figures 1 and 2 for current Bay Plan Maps 2 and 3).



By the 1980's, Pacheco Creek's deep-water channel was no longer maintained and had silted in. The north end of Pacheco Marsh was used to store sand mined from the Bay, an activity that ceased approximately 10 years ago. In 2003, the majority of the site was acquired by the Contra Costa County Flood Control and Water Conservation District (the Applicant) and its partners, John Muir Land Trust and East Bay Regional Park District, at a tax default sale, and these partners initiated restoration planning and design for the Lower Walnut Creek Restoration Project (LWCR Project). In 2019, the Applicant and its partners acquired the remaining northernmost parcel where sand had been stored. The LWCR Project will restore and enhance approximately 386 acres of coastal wetland habitat along Walnut Creek and Pacheco Creek, improving habitat quality, diversity, and connectivity along the creeks and along the southern Suisun Bay shoreline. The project will also improve flood protection by increasing the potential capacity for flood water retention and eliminating the need for dredging the creek channels. The subject site is currently undeveloped, supporting a mix of pickleweed, muted marsh, ruderal grasslands, and seasonal ponds. The other sites in the LWCR Project are located south of the subject site, upstream along Pacheco Creek, and are not within the North Contra Costa WRI PUA designation (or any other Bay Plan priority use area designation). The LWCR Project also proposes to provide new and connecting public access trails and amenities such as restrooms, a small interpretive/educational center, and a parking lot in a previously inaccessible location.

Staff Analysis

Pursuant to the Commission's authority under the McAteer-Petris Act and the Bay Plan, any development within WRI PUAs in the Commission's jurisdiction must be consistent with the Bay Plan's Water-Related Industry policies, which describe appropriate uses and other considerations for development and management of water-related industry. Bay Plan Water-Related Industry Policy 1 states: "Sites designated for both water-related industry and port uses in the Bay Plan should be reserved for those industries and port uses that require navigable, deep water for receiving materials or shipping products by water in order to gain a significant transportation cost advantage." Thus, wetland restoration within the subject site would be inconsistent with Bay Plan Water-Related Industry policies. In order to approve the restoration of 172 acres of coastal wetlands, the Commission would first need to approve a Bay Plan amendment to remove the designation from the subject site. In order to approve the removal of the designation, the Commission would need to determine that the site is no longer suitable, or no longer needed, for the designated use.

In 1986, BCDC staff evaluated the need for WRI PUA designations around the Bay.¹ Portions of the North Contra Costa PUA were identified as no longer being suitable or needed for water-related industry. As a result of this analysis, several WRI PUA designations were removed around the Bay shoreline, including from sites in the North Contra Costa WRI PUA,² but the WRI PUA designation was not removed at the subject site because, as described above, the north end of the subject site was still used to store and dry sediment dredged from the Bay. The parcel has not been used for that purpose since 2009. Thus, the use for which the WRI PUA designation was retained in 1986 has been discontinued, and the fact that this site has remained unused for water-related industry further supports that this site is not needed for future water-related industry uses.

On October 17, 2019, the Commission adopted Bay Plan Amendment 2-17, which added new policies and findings regarding environmental justice and social equity. Although these new policies and findings were not yet in effect when staff published the preliminary recommendation for this amendment, they were approved by the State Office of Administrative Law on December 27, 2019 and are now in effect for local- and state-level actions. The policies are currently being reviewed by the federal Office for Coastal Management (OCM), and after the policies are approved by OCM, they will be in effect for federal actions.

Bay Plan Environmental Justice Policy 1 states that “the Commission’s guiding principles on environmental justice and social equity should shape all of its actions and activities.” These guiding principles include, among others: endeavoring to eliminate disproportionate adverse economic, environmental, and social project impacts caused by Commission actions and activities, particularly in disadvantaged and vulnerable communities; ensuring that the Bay remains a public resource, free and safe for all to access and use regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability; and ensuring that the needs of vulnerable shoreline communities are addressed as the Commission assists all stakeholders in planning for current and future climate hazards. As described in Bay Plan Environmental Justice Finding I “identifying whether a community would be disproportionately impacted by a project is an initial step in addressing environmental justice. Taking steps to reduce such disproportionality can help ensure people are being treated fairly regardless of race, culture, and income.” Additionally, Bay Plan Environmental Justice Finding I acknowledges that “meaningfully involving impacted communities is essential to addressing environmental justice.” Thus, staff provides the following information for the Commission’s consideration.

¹ An Analysis of the Economic Demand for Land to Support the Needs of Water-Related Industry Around San Francisco Bay, for BCDC, by QED Research and BCDC staff, October 1986.

² Bay Plan Amendment 3-86 Concerning Bay Plan Policy and Map Designations Related to Water-Related Industry, Adopted by the Commission on January 15, 1987.

- 1. Assessment of Community Vulnerability.** The subject site is located near Martinez, partially in a census block group whose residents have been identified by BCDC staff through Adapting to Rising Tides (ART) program as having “moderate social vulnerability” and “moderate contamination vulnerability” based on BCDC’s ART program community vulnerability analyses. Martinez has a population of approximately 38,000, of which 65% identify as White, 3% Black African American, 9% Asian, 17% Hispanic or Latino, and 6% as two or more races.³ The census block group in which the subject site is partially located has social vulnerability indicators that are in the 70th percentile for the nine-county Bay Area for: very low income, people with disability, people without a high school degree, and being severely burdened by housing costs. Another indicator, people with disability, is in the 90th percentile for this census block group. Contamination vulnerability indicates the presence of contaminated lands and water, which may also be used to assess community vulnerability, and was calculated using statewide data compiled by the CalEPA Office of Environmental Health Hazard Assessment for use in CalEnviro Screen 3.0.
- 2. Meaningful community involvement.** The Applicant has conducted community engagement and outreach efforts for over 10 years in planning the LWCR Project. Outreach and engagement activities have included open houses, public workshops, over 20 site tours, a social media presence, and a series of videos showcasing the site and potential improvements called “Lower Walnut Creek Adventures.” Public and agency feedback has been incorporated into the project plans. No additional community outreach was conducted specific to the proposed Bay Plan amendment to remove the WRI PUA designation.
- 3. Disproportionate impacts.** As described in the environmental assessment provided in the preliminary staff recommendation, the LWCR Project may have temporary and site-specific environmental impacts, and the Mitigated Negative Declaration (MND) for the project⁴ included mitigation measures that would reduce the identified impacts to less than significant levels. The proposed project will provide public access to a part of the Bay shoreline that is currently inaccessible. Access to the Bay shoreline in North Contra Costa County is limited relative to other parts of the Bay shoreline that have continuous Bay trail. Furthermore, the removal of the WRI PUA designation could be considered beneficial to a community that has been historically surrounded by industrial land uses and the air and water pollution that may result from such land uses.

For these reasons, staff recommends that the Commission amend the Bay Plan by removing the North Contra Costa WRI PUA designation at the subject site next to Pacheco Creek and revise Bay Plan Maps 2 and 3, as shown in the following attachments:

Figure 1: Proposed Amendment to San Francisco Bay Plan Map 2, Carquinez Strait, and

Figure 2: Proposed Amendment to San Francisco Bay Plan Map 3, Suisun Marsh and Bay.

³ <https://www.census.gov/quickfacts/martinezcitycalifornia>

⁴ State Clearinghouse No. 2019099043

Proposed Specific Changes to Resolution 16

The proposed map change would affect a site within the North Contra Costa WRI PUA and would not affect the PUA's western or eastern boundaries along the Bay shoreline. Therefore, no changes to Resolution 16—which established within the shoreline band the boundaries of Bay Plan priority use designations—would result from the proposed amendment.

Staff Recommendation

The staff recommends that the Commission adopt the attached Resolution No. 2020-01 (Attachment A) that would:

1. Amend the Bay Plan Maps 2 and 3 by removing the Water-Related Industry Priority Use Area designation from a 172-acre project site at Pacheco Creek, to the east of Martinez, that is a portion of the North Contra Costa WRI PUA;
2. Make necessary findings regarding environmental impacts outlined in the environmental assessment; and
3. Make necessary findings that the Bay Plan amendment conforms to all applicable policies of the McAteer-Petris Act.

Environmental Assessment

As staff concluded in the [preliminary recommendation](#), the environmental assessment, as informed by the MND certified by Contra Costa County on November 21, 2019, finds that no substantial adverse environmental impacts would result directly from the map change in the proposed Bay Plan amendment. The MND found that the LWCR Project may have temporary and site-specific environmental identified feasible mitigation measures that would reduce the possible impacts to less than significant levels, considered a no project alternative, and determined that the LWCR Project would provide public benefits.

Response to Comments

On November 21, 2019, the Commission approved a Descriptive Notice of the proposed Bay Plan Amendment, and on November 22, 2019, the Descriptive Notice was mailed to all agencies, organizations, and individuals interested in the proposed amendment. On November 27, 2019, the staff report, preliminary recommendation, and environmental assessment was mailed to all agencies, organizations, and individuals interested in the proposed amendment. On January 16, 2020, the Commission held a public hearing to receive public comments on the proposed amendment, preliminary recommendation, and environmental assessment. There were no public comments provided at the public hearing on January 16, 2020, and no written comments have been received. While the Commission has closed formal public hearing, the public will be able comment on the recommendation at the April 16, 2020 meeting.

Attachment A

Resolution No. 2020-01

Adoption of Bay Plan Amendment No. 5-19
Modifying the Water-Related Industry
Priority Use Area Designation
at Pacheco Creek east of Martinez

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606

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Resolution No. 2020-01

Adoption of Bay Plan Amendment No. 5-19 Modifying the Water-Related Industry Priority Use Area Designation at Pacheco Creek east of Martinez

Whereas, in 1965, the McAteer-Petris Act established the San Francisco Bay Conservation and Development Commission (BCDC or the Commission) as a temporary State agency, designated the San Francisco Bay as a State-protected resource, and charged the Commission with preparing a plan for the long-term use of the Bay and regulating development in and around the Bay while the plan was being prepared;

Whereas, the initial San Francisco Bay Plan (Bay Plan) was approved in 1969, BCDC was made permanent one year later, and BCDC updates the Bay Plan regularly to ensure that the Bay and its shoreline are developed and conserved responsibly and to address new issues as the Bay Area changes;

Whereas, Government Code Section 66652 states that “the Commission at any time may amend, or repeal and adopt a new form of, all or any part of the San Francisco Bay Plan but such changes shall be consistent with the findings and declaration of policy” contained in the McAteer-Petris Act;

Whereas, the Legislature directed the Commission to keep the Bay Plan up-to-date so that it reflects the latest scientific research on the Bay and addresses emerging issues that could impact the Bay in the future. To accomplish this, the Legislature empowered the Commission to amend the Bay Plan if two-thirds (18) of the 27 members of the Commission vote for the amendment, after providing an opportunity for public review of the proposed amendment and after holding a public hearing on the amendment. Over its history, the Commission has made numerous amendments to the Bay Plan, some of which have dealt with simple matters, such as changing a boundary of a Bay Plan map designation, and some of which have addressed major issues, such as climate change;

Whereas, the Commission received and filed an application from the Contra Costa County Water Conservation and Flood Control District (Applicant) to modify San Francisco Bay Plan Maps 2 and 3 to remove a portion of the water-related industry priority use area designation at Pacheco Creek, to the east of Martinez;



Whereas, the Commission: (1) on November 21, 2019, approved a Descriptive Notice of the proposed Bay Plan Amendment and set a public hearing date for January 16, 2020; (2) on November 22, 2019, mailed the Descriptive Notice to all agencies, organizations, and individuals interested in the proposed amendment; (3) on November 27, 2019, mailed by first class postal service the staff report, preliminary recommendation, and environmental assessment to all agencies, organizations, and individuals interested in the proposed amendment; (5) on January 16, 2020, held a public hearing to receive public comments on the proposed amendment, preliminary recommendation, and environmental assessment; (6) on February 28, 2020, mailed the final staff recommendation to all agencies, organizations, and individuals who received the staff planning report and who are known to be interested in the proposed amendment; (7) on April 16, 2020, voted on the staff's final recommendation, all in accord with the requirements and procedures set out in Government Code Section 66652 and the California Code of Regulations, Sections 11000, 11001, 11002, 11103, 11004, 11005, and 11006;

Whereas, no oral comments were presented at the public hearing on January 16, 2020, and no written comments have been received;

Whereas, the attributes of the proposed project site for which it was designated as a water-related industry priority use, e.g., access to a deep-water channel, are no longer necessary for such a potential future use of the site, and the site is no longer used for dredged sediment storage or any water-related industry;

Whereas, the City of Martinez and Contra Costa County general plans and zoning maps are in accordance with the proposed public restoration use and Lower Walnut Creek Restoration Project plans, and removing the water-related industry priority use designation from the property would enable a shift in land uses consistent with public ownership and the County's and City's general plans and zoning maps;

Whereas, the Contra Costa County Department of Conservation and Development (DCD) prepared the Notice of Public Review and Intent to Adopt a Proposed Mitigated Negative Declaration (MND), County File Number 19-25, on the Applicant's proposed project, the Lower Walnut Creek Restoration Project, and Contra Costa County certified the MND pursuant to the California Environmental Quality Act (CEQA)(Public Resources Code sections 21000 et seq.) on November 21, 2019 (State Clearinghouse 2019099043);

Whereas, the Commission has prepared an environmental assessment for the proposed Bay Plan Amendment in accordance with the Commission's regulations implementing CEQA. The environmental assessment considered the information and analysis in the MND, as certified by Contra Costa County, which found that the Lower Walnut Creek Restoration Project may have temporary and site-specific environmental impacts and identified feasible mitigation measures that would reduce the possible impacts to less than significant levels, considered a no project alternative, and determined that the Lower Walnut Creek Restoration Project would benefit the region;

Whereas, the Commission, pursuant to its authority under Public Resources Code section 21080.5 and California Code of Regulations, Title 14 Section 15251(h), has evaluated the environmental impacts of amending the San Francisco Bay Plan Maps 2 and 3 to remove 172 acres from the water-related industry priority use area designation at Pacheco Creek, east of Martinez;

Whereas, the amendment of San Francisco Bay Plan Maps 2 and 3 enacted by this resolution and attached hereto as Attachment A, is intended to be a revision of the Commission's coastal management program for the San Francisco Bay segment of the California Coastal Zone as approved by the U.S. Department of Commerce under the federal *Coastal Zone Management Act of 1972*, as amended;

Now, Therefore, Be It Resolved That, the San Francisco Bay Conservation and Development Commission hereby adopts the following Bay Plan Amendment

1. No. 5-19 modifying the Water-Related Industry Priority Use Area Designation at Pacheco Creek, east of Martinez, by removing 172 acres from the designation.

Be It Further Resolved That, the above Bay Plan Amendment makes changes to the *San Francisco Bay Plan* by removing the water-related industry priority use area designation from a 172-acre area, as shown on Attachment A;

Be It Further Resolved That, the above Bay Plan Amendment conforms to all relevant policies of Government Code sections 66000 through 66661. In particular, the Bay Plan Amendment is consistent with Government Code section 66602 because it would facilitate funding for the proposed improvements that will increase and improve water-oriented recreation and public access along the Bay shoreline. The Bay Plan Amendment is also consistent with Government Code sections 66611 and 66652 because the site is already owned by a public agency along the shoreline that intends to improve the site for public benefits;

Be It Further Resolved That, the Commission finds that there will be no substantial adverse impacts on the environment directly created by or resulting from amending the San Francisco Bay Plan by modifying Maps 2 and 3 to reflect the removal of 172 acres from the water-related industry priority use area designation at Pacheco Creek, east of Martinez, as requested by the Applicant;

Be It Further Resolved That, the Commission find that, as summarized in the environmental assessment, the MND for the Lower Walnut Creek Restoration Project identified possible significant secondary or indirect adverse impacts associated with the Bay Plan amendment that would possibly result from the Applicant's overall project, related to temporary and site-specific construction impacts. The Commission further finds that the MND identified feasible mitigation measures that would reduce these environmental impacts resulting from the Applicant's overall project to less than significant levels, and considered a no project alternative;

Be It Further Resolved That, the Commission finds that the Applicant is required to apply for and obtain a permit from the Commission to authorize those portions of the proposed Lower Walnut Creek Restoration Project that are in the Commission’s Bay and shoreline band jurisdiction. The Commission further finds that in considering any permit application submitted by the Applicant, the Commission will evaluate the consistency of the proposed Lower Walnut Creek Restoration Project with the Commission’s laws and policies, as well as any feasible alternatives and mitigation measures within the scope of the Commission’s authority and jurisdiction;

Be it Further Resolved That, the San Francisco Bay Conservation and Development Commission authorizes the Executive Director to make minor, non-substantive editorial changes to this Resolution, in particular to comply with the determinations of the Office of Administrative Law in its review of the Resolution under the California Administrative Procedures Act.

We certify that this resolution was adopted by a vote of _____ “yes” votes, _____ “no” votes and _____ abstentions at the Commission meeting held April 16, 2020 in San Francisco, California.

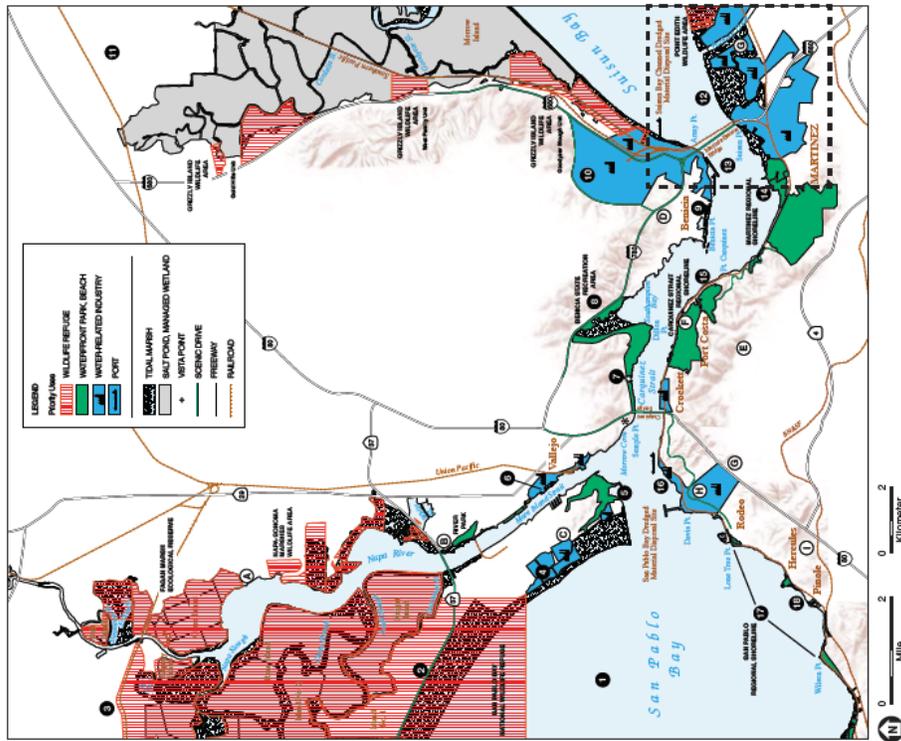
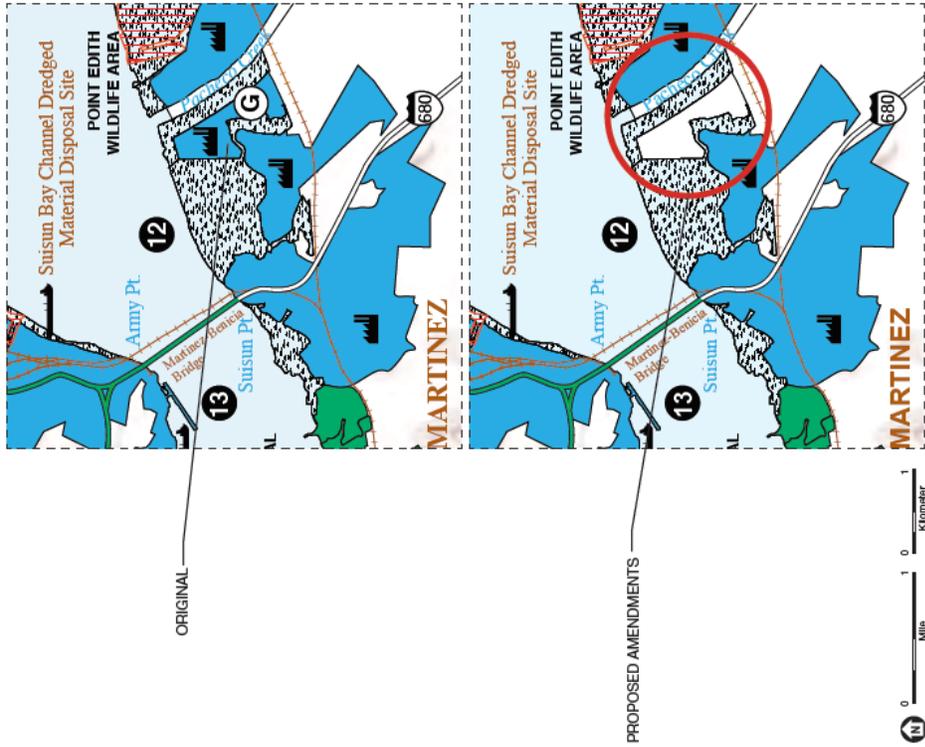
Executed on this _____ day of _____, 2020 in San Francisco, California.

R. ZACHARY WASSERMAN
Chair

Executed on this _____ day of _____, 2020 in San Francisco, California.

LAWRENCE J. GOLDZBAND
Executive Director





Lower Walnut Creek Restoration Project

SOURCE: San Francisco Bay Conservation and Development Commission, Amended Sept. 2008

Figure 1: Proposed Amendment to San Francisco Bay Plan Map 2, Carquinez Strait

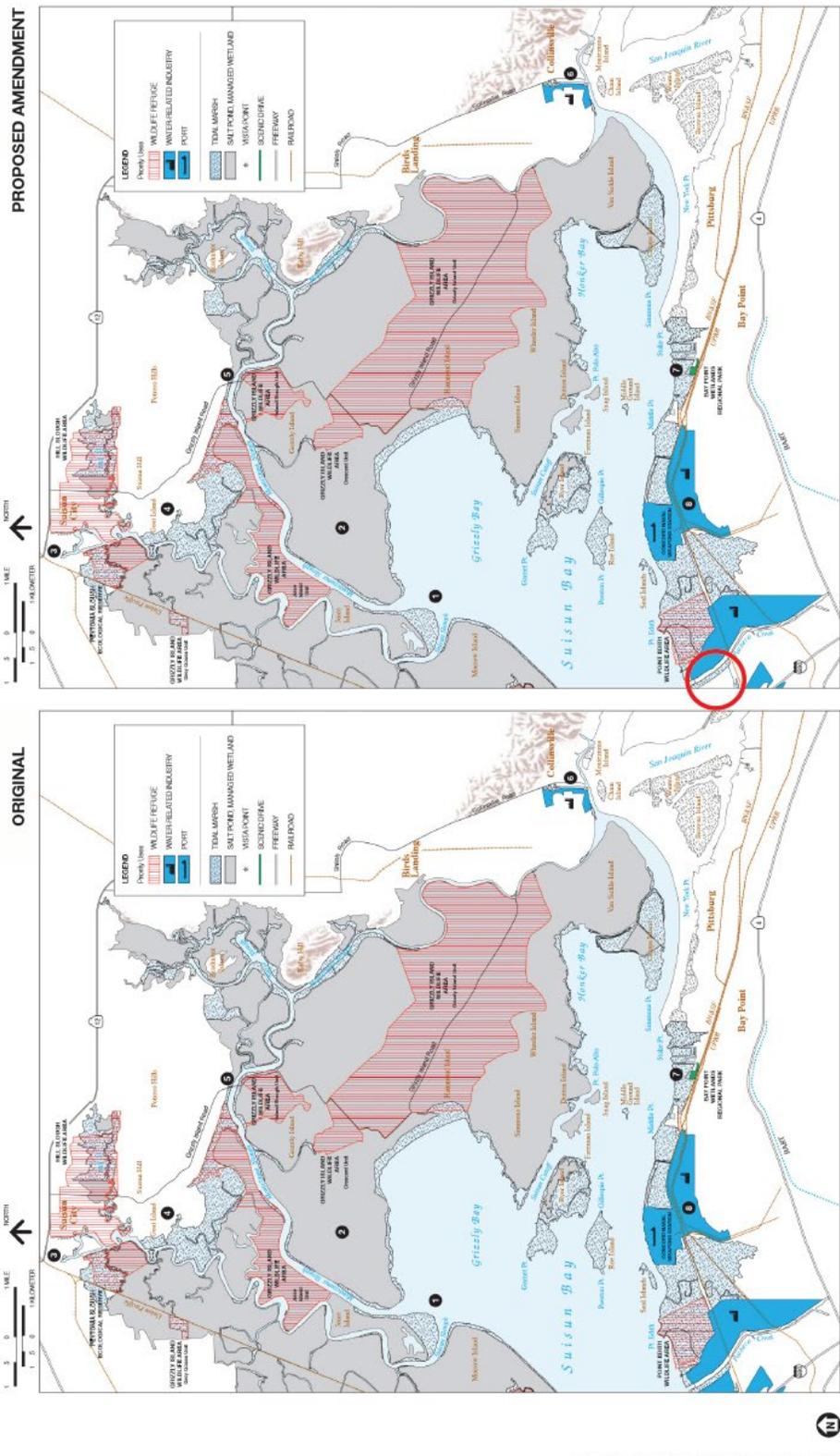


Figure 2: Proposed Amendment to San Francisco Bay Plan Map 3, Suisun Bay and Marsh