San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

October 25, 2019

TO: Commissioners and Alternates

FROM: Larry 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 Recommendations on (1) Proposed Brief Descriptive Notice for Possible Bay Plan Amendment No. 5-19 to Consider Removing the Water-Related Industry Use Designation at Pacheco Creek in Martinez; and (2) Authorizing the Executive Director to Execute a Contract with the Contra Costa County Flood Control and Water Conservation District for the Cost of Processing the Application. (For Commission consideration on November 7, 2019)

Staff Recommendation

Staff recommends that the Commission (1) adopt the attached Brief Descriptive Notice to amend *San Francisco Bay Plan* (Bay Plan) Maps 2 and 3 to remove the Water-Related Industry Use Priority Use Area designation to the west of Pacheco Creek[1] shown on Bay Plan Maps 2 and 3; and (2) schedule a public hearing to discuss the proposed amendment with the Commission on January 16, 2020.

Staff also recommends that the Commission authorize the Executive Director to: (1) execute a contract with the Applicant under which the Contra Costa County Flood Control and Water Conversation District will provide up to $8,400 to the Commission for staff time to analyze the request and for the Commission to consider the proposed Bay Plan amendment; and (2) amend the contract so long as the amendment does not involve substantial changes in scope.

[1] In the Bay Plan maps the creek is labeled Pacheco Creek. In the application for this Bay Plan Amendment the Applicant has identified the neighboring creek as Lower Walnut Creek to align with the U.S. Army Corps of Engineers project described in the application. Their proposed project for the site is also called the Lower Walnut Creek Restoration Project. For Bay Plan continuity staff is referring to the creek as Pacheco Creek.

Staff Report

The Contra Costa County Flood Control and Water Conservation District (the "Applicant") has applied to amend the *San Francisco Bay Plan* (Bay Plan) to remove the 172-acre Water-Related Industry Priority Use Area (PUA) designation on Bay Plan Maps 2 and 3 in order to to allow construction of the 355-acre *Lower Walnut Creek Restoration Project* (see Figures 1 and 2 for the area proposed to be removed). The project site is located west of the mouth of Pacheco Creek in Martinez, California (see Exhibits 1 and 2).

The *Lower Walnut Creek Restoration Project* would restore tidal action to the existing diked marsh and provide public access and recreational opportunities. The following habitat types would be created or restored in the 172-acre site: tidal marsh, muted tidal wetlands, tidal channels, tidal marsh ponds, fringing marsh, and lowland terrestrial habitats, including grassland, seasonal wetland, and sandy alkali playa flat.

This project would advance regional goals to restore tidal marsh in the Bay, particularly in the Walnut Creek wetland system, where there has been an 80-85% reduction in historic tidal wetlands. This project could provide much-needed marsh habitat for the rare plant and animal species in California that have been adversely affected by loss of tidal marsh habitat. Expansion and restoration of the tidal and seasonal marsh habitats would also provide flood protection and potential for future public access improvements.

Bay Plan maps are an integral part of the Bay Plan and provide the Commission with guidance on how to apply Bay Plan policies to specific areas. The maps also identify the shoreline PUAs, which reserve shoreline areas for water-oriented uses to minimize the need to fill the Bay in the future for such uses.

In 1969, this site was designated as a "Water-Related Industry" PUA because the attributes of the site had similar characteristics of nearby sites owned and operated by Shell and Tosco oil refineries. This site is bordered by a former deep-water ship channel on Pacheco Creek to the east, and an active petroleum pipeline system and undeveloped State Lands Commission property to the west.

To consider removing a priority use area designation, the Commission has historically evaluated the physical characteristics of the site, the suitability of the site for continued water-related industrial uses, and whether the site is still needed for the reserved purpose. Therefore, to approve the requested amendment, the Commission must determine that the removal of the water-related industry designation would not result in the need for Bay fill for water-related industry in the future.

Consistent with the Commission's Regulations (California Code of Regulations §11008), and with the Commission's approval, the Applicant will enter into an agreement with the Commission to pay $7,000 to reimburse BCDC's cost of processing this proposed amendment to the Bay Plan. Accordingly, the staff recommends that the Commission authorize the Executive Director to: (1) execute a contract with the Applicant under which the Applicant will provide funds to the Commission for the staff's time to analyze the proposed amendment to the Bay Plan, while, per Commission regulation, retaining the authority to charge an additional 20% of this amount (up to $8,400) if the costs exceed the baseline; and (2) amend the contract so long as the amendment does not involved substantial changes in the scope.

Commission Procedure

Circulating a descriptive notice is the first step in the process of amending the Bay Plan. The McAteer-Petris Act (Government Code Section 66652) and Section 11001 of the Commission's regulations (California Administrative Code, Title 14, Division 5) require a notice of the proposed amendment. If the attached proposed descriptive notice is approved by the Commission, on November 7, 2019, it will then be mailed to Commissioners and Alternates, and all agencies organizations and individuals with an interest in, or jurisdiction over, the matter. A public hearing on proposed Bay Plan Amendment No. 5-19 regarding the proposed changes to Bay Plan Map 2 and 3 will be held January 16, 2020.

The public can comment to the Commission regarding the proposed adoption of the Brief Descriptive Notice either through written comments to the Commission's offices, by email to cody.aichele@bcdc.ca.gov, or by providing verbal comments at the Commission's meeting on Thursday, November 7, 2019.

The staff will distribute a report on the proposed amendment with the staff's preliminary recommendation and environmental assessment for the specific changes to the Bay Plan to all Commissioners, Alternates, and interested parties at least 30 days prior to the public hearing as required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11003). Upon conclusion of the public hearing, and after submission of the Executive Director's final recommendation, the Commission can vote upon the proposed Bay Plan map changes.

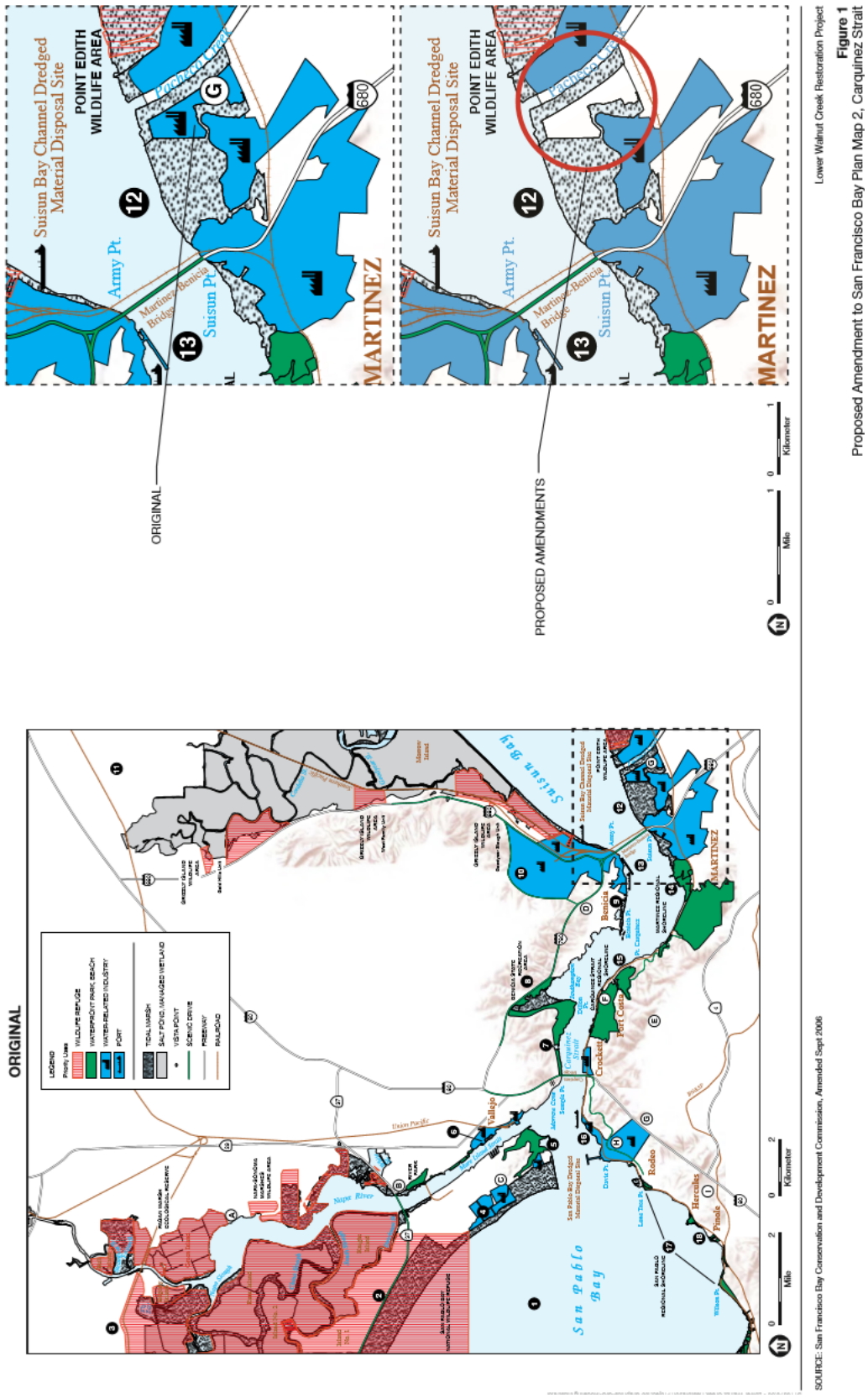

Figure 1 Proposed Amendment to San Francisco Bay Plan Map 2, Carquinez Strait.

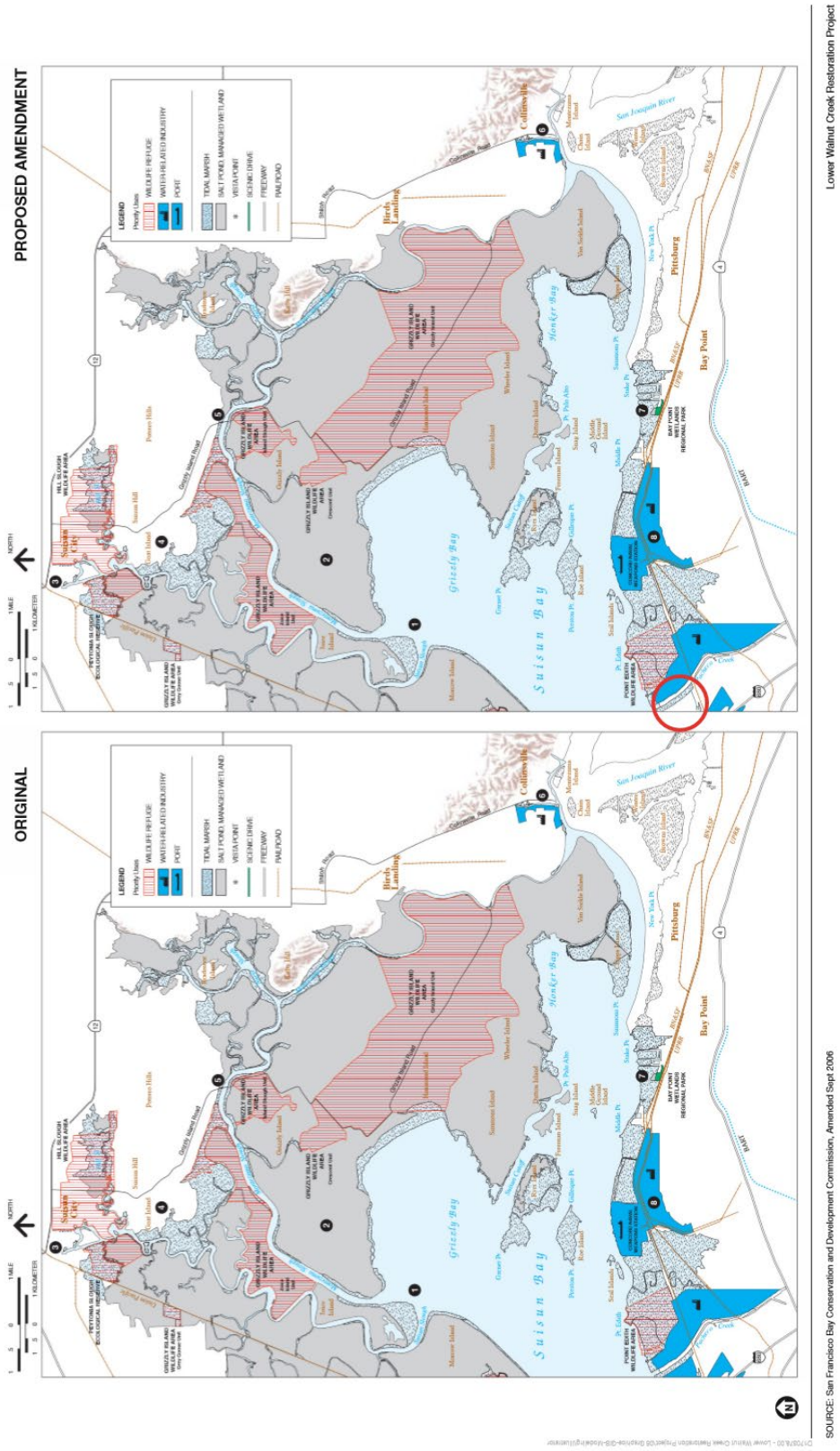

Figure 2 Proposed Amendment to San Francisco Bay Plan Map 3, Suisun Bay and Marsh

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 415 352 3606
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Descriptive Notice

November 8, 2019

Proposed San Francisco Bay Plan Amendment No. 5-19

Hearing Concerning Potential *San Francisco Bay Plan* Amendment of Bay Plan Maps 2 and 3 to Remove the Water-Related Industry Use Designation at Pacheco Creek in Martinez

Notice is hereby given that the San Francisco Bay Conservation and Development Commission will consider an amendment to the *San Francisco Bay Plan* (Bay Plan). The proposed amendment would remove the "water-related industry" priority use area designation at Pacheco Creek on Bay Plan Maps 2 and 3, (as shown on attached Exhibits 1 and 2).

A Public Hearing on the possible amendment is scheduled to be held January 16, 2020 at 375 Beale Street in San Francisco, California, starting at 1:00 P.M. At least thirty days prior to the initial public hearing, the staff will prepare and mail a staff report and preliminary recommendation on the proposed amendment. Interested parties may request the staff report and present written comments on or before January 16, 2020. Oral comments may be presented at the January 16, 2020 Commission public hearing or thereafter as directed by the Commission.

This **Notice** is prepared in Conformance with Section 66652 of the California Government Code, Section 11001 of Title 14, Division 5 of the California Code of Regulations, and Section 312 of the federal Coastal Zone Management Act of 1972. If, after the hearing, the Commission adopts an amendment to the *San Francisco Bay Plan* described in this notice and subsequent staff report, such amendment will be processed as a routine program change of the Commission's federally-approved Coastal Management Program for San Francisco Bay. Any federal agency interested should, therefore, comment to the Commission on or before January 16, 2020. Any written comment received subsequent to the close of the public hearing and public comment period will be distributed to the Commission; however, the staff will not provide a response to the comment in its staff recommendation but will advise the Commission whether it believes the comment raises a new, substantial issue. If the Commission determines that the comment raises a new, substantial issue, the Commission may reopen the public hearing, and the staff would prepare and distribute a new planning report.

Whether the Bay Plan should be amended as described above, and in what manner, will be the subject of the public hearing and Commission deliberation.

Further information concerning the proposed amendment can be obtained by contacting Ms. Cody Aichele-Rothman by telephone at (415) 352-3641, or by e-mail at cody.aichele@bcdc.ca.gov, or at the Commission's office, 375 Beale St, Suite 510, San Francisco, California 94105.