

San Francisco Bay Conservation and Development Commission

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February 22, 2019

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Staff Report and Recommendation to Revise the Scope of Bay Plan Amendment No. 1-17 Concerning Amendment of Various Sections of the Bay Plan to Address Bay Fill in Habitat Projects, Associated Natural Resource and Dredging Policies, Shoreline Protection Policies, and Major Conclusions and Policies
(For Commission consideration on March 7, 2019)

Staff Recommendation

The staff recommends that the Commission adopt the attached “Notice of Revision of Scope” to add consideration of the “Major Conclusions and Policies” section of the *San Francisco Bay Plan* (Bay Plan) as part of Bay Plan Amendment No. 1-17 to address Bay fill in habitat projects, in addition to those sections of the Bay Plan previously identified: Fish, Other Aquatic Organisms and Wildlife; Tidal Marshes and Tidal Flats; Subtidal Areas; Dredging; and Shoreline Protection.

Staff Report

To enhance coastal habitats’ ability to keep up with rising seas, the Commission initiated a Bay Plan amendment in 2017 to consider allowing Bay fill for habitat-based projects on a scale beyond what may be allowable under the current Bay Plan policies. In light of the change in environment, advances in science and technology, and uncertainties about the future of Bay ecosystems, the Commission recognized the need to examine: (1) whether, and how, several Bay Plan policies associated with natural resources, fill, and dredging may need to be amended to reflect updated scientific knowledge; (2) the potential need for fill in habitat projects, including living shorelines and nature-based infrastructure to adapt to climate change impacts; (3) the ability to use dredged sediment in habitat projects; and (4) the effects of rising seas on public access and the ability to maintain the access in place in the future. The Commission voted to initiate the Bay Plan Amendment (BPA 1-17) to address Bay fill for habitat on July 20, 2017. The Brief Descriptive Notice identified the following sections of the Bay Plan for potential amendment: Fish, Other Aquatic Organisms and Wildlife; Tidal Marshes and Tidal Flats; Subtidal Areas; Dredging; and Shoreline Protection.

While considering the proposed amendment, the Commission's Bay Fill Policies Working Group and Commission staff have determined that the "Major Conclusions and Policies" section of the Bay Plan—which was not initially included in the scope of the Bay Plan Amendment No. 1-17—should also be updated to support the approval of Bay fill for habitat projects. The Major Conclusions and Policies section was last modified in 1969, and it characterizes Bay filling as always "destroying the habitat of fish and wildlife, disrupting the ecological balance in the Bay, endangering the very existence of some species of birds and fish, increasing water pollution, and diminishing the scenic beauty of the Bay." The section also states that some Bay filling may be justified for purposes of providing "substantial public benefits" and lists the types of projects that provide substantial public benefits as being limited to developing port terminals, water-related industry, recreational opportunities, airport terminals, new freeway routes, and new public access.

Since 1969, the practice of habitat restoration has become a widespread approach for increasing the sustainability and resilience of the Bay's natural resources. Habitat restoration is in line with the Commission's goals of sustaining and increasing the Bay's natural ecosystems, and restoration often requires Bay fill. The Major Conclusions and Policies section does not yet reflect this change in thinking about the potential benefits of fill for habitat restoration. Although the language in the "Major Conclusions and Policies" has not hindered and is not expected to hinder permitting of habitat restoration projects, it portrays an outdated perspective in which beneficial fill for habitat restoration is not addressed, and therefore warrants an update.

Commission Procedure

Circulating a descriptive notice to the public is the first step in the process of amending the Bay Plan. A notice of the proposed amendment is required by the McAteer-Petris Act (Government Code Section 66652) and Section 11000 of the Commission's regulations (California Administrative Code, Title 14, Division 5). Consideration of additional Bay Plan sections within the scope of the amendment requires the approval and circulation of a revised descriptive notice. Staff will hold a public workshop on the draft policy concepts on March 21, 2019. A public hearing will be held to discuss the scope and contents of the amendment on June 20, 2019 and adoption of the revision to the scope will not change the date of the public hearing. The staff will distribute a report on its preliminary recommendation for specific changes to the Bay Plan to all Commissioners, Alternates, and interested parties no later than May 20, 2019, which is required by the Commission's regulations (California Administrative Code, Title 14, Division 5, Section 11001). The Commission can vote upon proposed plan changes after concluding the public hearing(s) and after the Executive Director submits his final recommendation. The descriptive notice detailing the proposed plan changes must be mailed at least 30 days prior to a public hearing on those changes and the vote cannot take place earlier than 90 days from mailing the descriptive notice (Government Code Section 66652).

Notice of Revision of Scope

March 8, 2019

**Revision of Scope of Proposed San Francisco Bay Plan Amendment No. 1-17
Concerning Amendment of Various Sections of the Bay Plan to Address Bay
Fill in Habitat Projects, Associated Natural Resource and Dredging Policies,
Protection of Shorelines, and Major Conclusions and Policies**

On July 20, 2017, the San Francisco Bay Conservation and Development Commission voted to initiate an amendment to the *San Francisco Bay Plan*. The proposed amendment will address the ramifications of climate change by updating several sections of the Bay Plan with new findings and policies.

Notice is hereby given that the sections of the Bay Plan to be considered in the Fill for Habitat Bay Plan Amendment include the Major Conclusions and Policies section, in addition to those sections previously identified in the initial descriptive notice: Fish, Other Aquatic Organisms and Wildlife; Tidal Marshes and Tidal Flats; Subtidal Areas; Dredging; and Shoreline Protection. The initial descriptive notice adopted by the Commission set May 3, 2018 as the date for the public hearing on the proposed amendment and the revised descriptive notice adopted by the Commission set November 15, 2018 as the date for the public hearing on the proposed amendment.

The latest revised descriptive notice adopted by the Commission has set the date for the Public Hearing on this matter for June 20, 2019. A Public Workshop will be held on March 21, 2019 to discuss staff findings and the proposed amendment prior to the Commission's public hearing. No later than May 20, 2019, the staff will prepare and mail a staff report and preliminary recommendation on the proposed amendment. Interested persons may request the staff report and present written comments. Oral comments may be presented at the Commission meeting or thereafter as directed by the Commission.

This **Notice** is prepared in conformance with Section 66652 of the California Government Code, Sections 11001 and 11004 of Title 14, Division 5 of the California Code of Regulations, and Section 312 of the federal Coastal Zone Management Act of 1980. If, after the public 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, therefore, should provide comment to the Commission by June 20, 2019 or thereafter as directed by the Commission.

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

Further information concerning the proposed amendment can be obtained by contacting Megan Hall, Coastal Scientist/Project Manager, at the Commission's office located at 455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102, by telephone at (415) 352-3626, or by email at megan.hall@bcdc.ca.gov.