



# **Sediment and Beneficial Reuse Commissioner Working Group Meeting**

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# Agenda Item 3:

## Bay Plan Amendment Draft Policy Concepts



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# Outline

- Regulatory landscape
- Bay Plan Amendment process
- Enforceable policies under CZMA
- Draft policy concepts + discussion
- Workplan & timeline going forward
- How to get involved
- Discussion



Photo: Clamshell Dredge in Richmond, Contra Costa County

# **McAteer-Petris Act and San Francisco Bay Plan**

- **McAteer-Petris Act:**

- 66605 (b) That fill in the bay and certain waterways specified in subdivision (e) of Section 66610 for any purpose should be authorized only when no alternative upland location is available for such purpose;
  - (c) That the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;
- 66632(a) “Any person or governmental agency wishing to place fill, to extract materials, .... within the area of the commission’s jurisdiction shall secure a permit from the commission.”
- 66632(f) “the commission may grant a permit subject to reasonable terms and conditions including .... methods for dredging or placing of fill.”
- 66636-66666. Dredging Findings. Calls for Beneficial Reuse, and partnership with LTMS.



San Francisco Bay Conservation  
and Development Commission

## San Francisco Bay Plan

- Guides the review of projects under the McAteer-Petris Act
- Policies related to:
  - Protection of the Bay as a Resource
  - Development of the Bay and Shoreline
- Policies are updated periodically for regional needs
- Permits issued if consistent with McAteer-Petris Act and San Francisco Bay Plan policies.



# Coastal Zone Management Act of 1972 (CZMA)

- State agency can review federal actions affecting the “Coastal Zone” for consistency with the state agency’s coastal program
  - BCDC’s Management Program for San Francisco Bay (1979)
  - Mac Act, Bay Plan, Regs, etc.
- Federal Agency submits a “consistency determination” – BCDC reviews and issues a “Letter of Agreement” that can include special conditions
- Dredging and restoration projects conducted by federal agencies require review of consistency determinations under the CZMA

# **CZMA – Enforceable Policies – 15 C.F.R. § 923.84(b).**

Policies must be enforceable to be certified as part of BCDC's Coastal Zone Management Program. Among other requirements, enforceable policies must:

- **“Contain standards of sufficient specificity to guide uses...”**
  - A specific standard. Use “shall” or “must” instead of “may.” Instead of “greatest extent feasible,” try to define specific criteria that should be shown or met.
- **“Not refer to or purport to apply to federal agencies...”**
  - There cannot be policies that specifically target federal agencies
- **“Not discriminate against a particular type of activity or entity.”**
  - Policies should have universal applicability (public and private, small and large).

# Bay Plan policies supportive of wetland restoration

## Tidal Marshes and Tidal Flats

Policy 5: “where feasible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action...”

## Fish, Other Aquatic Organisms, and Wildlife

Policy 7: “Sediment placement for habitat adaptation should be prioritized in (1) subsided diked baylands, tidal marshes and tidal flats... (2) intertidal and shallow subtidal areas...”

## Water Quality

Policy 1: “the Bay’s tidal marshes, tidal flats, ...should be conserved and, whenever possible, restored and increased to protect and improve water quality”

## Subtidal Areas

Policy 8: “fill may be authorized for habitat enhancement, restoration or sea level rise adaptation of habitat”

## Climate Change

Policy 4: “undeveloped areas that are... especially suitable for ecosystem enhancement should be given special consideration for preservation...”

# Bay Plan policies supporting beneficial reuse

Policy 1

“Dredging and dredged material disposal should be conducted in an environmentally and economically sound manner. Dredgers should reduce disposal in the Bay and certain waterways over time to achieve the LTMS goal of limiting in-Bay disposal volumes to a maximum of one million cubic yards per year....”

Policy 5

“dredging projects should maximize use of dredged material as a resource consistent with protecting and enhancing the Bay natural resources such as creating, enhancing or restoring tidal and managed wetlands”

Policy 10

“Interested agencies and parties are encouraged to explore and find funding solutions for... transporting dredged material to nontidal and ocean disposal sites”

Policy 12

The Commission should continue to participate in the LTMS, the DMMO, and other initiatives conducting research on Bay sediment movement, the effects of dredging... alternatives to Bay aquatic disposal and funding...”

# Bay Plan Amendment Policy Concepts

**Staff have identified potential areas for exploring amended or new policies and findings in the Bay Plan:**

1. Sediment as a Resource
2. Upland Soils
3. Flood Protection
4. Dredging and Beneficial Reuse
5. Restoration

# Sediment as a Resource

**Issue:** The Bay Plan doesn't recognize sediment as an important natural resource that needs to be conserved and carefully managed.

**Example amendment:** Strengthen findings that provide for restoration as a justifiable use of fill and sediment as an important public resource in:

- The Bay Plan Introduction
- Subtidal Habitat findings
- Tidal Marshes and Tidal Flats findings
- Other policy sections

## **Benefits:**

- More scientifically accurate
- Foundation for policies to support fill for beneficial reuse and restoration
- Supports the application of policies to projects involving sediment
- Addresses a gap. Few issues with this revision

# Upland Soils

**Issue:** While BCDC supports shoreline restoration projects importing upland soils from outside of BCDC jurisdiction, the Bay Plan lacks related findings and policies.

## **Summary:**

- Soil is a valuable resource for restoration, levees, ecotones
- Increases the volume of material available for restoration, especially in areas too shallow to barge in dredged sediment

## **Example amendment:**

- Policy supporting use of upland soils and standardizing testing procedures
- Advisory policies for areas outside of BCDC jurisdiction and local governments that they should consider the use of soil in restoration, and connect with local soil-providers

## **Challenges:**

- Upland soils need to be tested for contamination
- Trucking soils can cause noise, pollution, and traffic concerns in communities

# Flood Protection

**Issue:** The Bay Plan lacks findings and policies regarding:

- Sediment's role in reconnecting creeks and flood channels to marshes
  - Natural flood control systems over trapezoidal channels
  - Widening floodplains
- Testing and beneficial reuse of sediment from:
  - Tidal creeks
  - Streams/streambeds
  - Flood protection channels

## **Benefits:**

- Clarify regulatory requirements for flood control agencies
- Encourage a local source of sediment
- Could increase sediment available for beneficial reuse
- Opportunity to address overlaps or gaps between BCDC and Water Board's jurisdiction

## **Challenges:**

- Flood control agencies would need to adjust to new policies
- Sediment dredged from flood control channels is low in volume and often too contaminated for BRU

# Dredging and Beneficial Reuse

**Issue:** Restoring and adapting wetlands to rising seas requires more beneficial reuse of sediment. The current program is only accomplishing beneficial reuse of approximately 40% of what is available from navigation dredging. In addition, some in the dredging community have requested an examination of the in-Bay disposal limit, and the LTMS program as a whole, and how changing them may support more beneficial reuse.

## **Example:**

- Modify the existing dredging policies and findings to require beneficial reuse under specific criteria

## **Benefits:**

- Findings about sea level rise and habitat restoration needs will offer a clearer and stronger basis for requiring beneficial reuse
- An opportunity to improve specificity and enforceability of BRU policies

## **Challenges:**

- The current dredging program and permitting is predicated on the LTMS Program
- Dredgers and other resource managers may push back due to earlier LTMS agreements, may alter their existing operations

# Restoration

**Issue:** More BRU would likely occur if restoration projects were required to use beneficial reuse of sediment and soil.

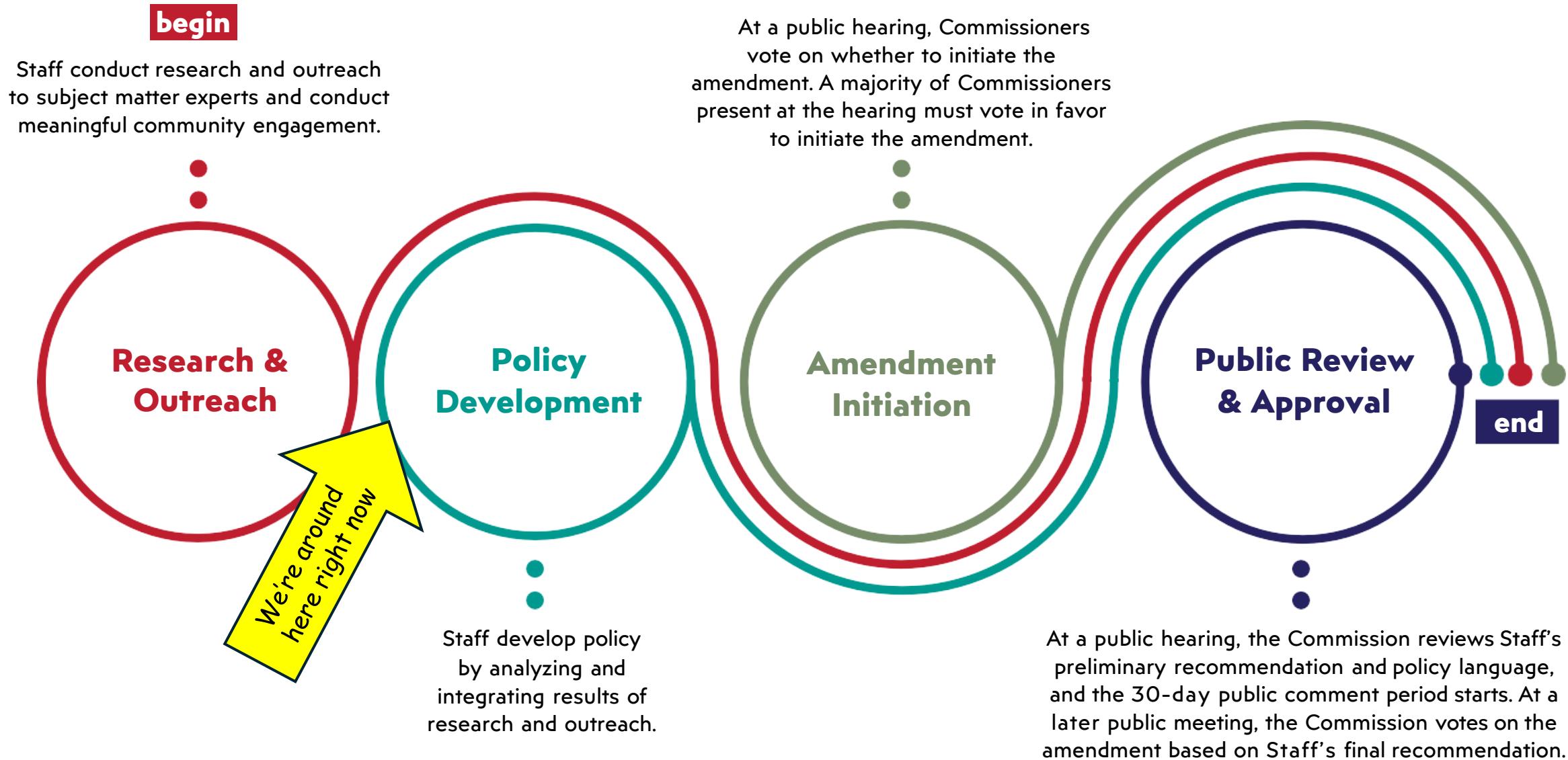
**Summary/Example:** Encourage innovative solutions to increase BRU demand

- Advise smaller restoration sites to coordinate with local dredgers for BRU material

## **Challenges:**

- Encouraging but not requiring restoration projects to take BRU material makes the road to adaptation longer
- Restoration projects already face regulatory burdens, and have expressed a preference for not increasing requirements
- A requirement could increase financial and logistical challenges

# Bay Plan Amendment Process



# Discussion

## Recap of policy concepts

1. Sediment as a resource
2. Dredging and beneficial reuse
3. Restoration
4. Upland Soils
5. Flood protection

- What are the **most important** policy concepts to you?
- Are any policy concepts **missing** from the list?
- Are any of these policy concepts **not** priorities?