

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Thirty Van Ness Avenue • Suite 2011 • San Francisco, California 94102 • (415) 557-3686 • FAX: (415) 557-3767 • <http://ceres.ca.gov/bcdc/>

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**TO:** Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/557-8775 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Jeffrey Blanchfield, Chief Planner (415/557-8773 [jeffb@bcdc.ca.gov](mailto:jeffb@bcdc.ca.gov))

**SUBJECT:** Status Report on Updating the San Francisco Bay Plan Policies  
(For Commission information only)

## Staff Report

In December 1998, the Commission adopted a five-year work program for updating the Bay Plan policy elements with the then—available staff and funding resources. The work program places priority on the continuation and completion of studies underway before initiating new studies. The purpose of this report is to inform the Commission of the status of the update work and the revisions the staff believes should be made to the work program schedule in response to varying circumstances explained in the discussion of each of the policy studies below and as shown in Table 1, page 6.

**Work In Progress.** In its FY 1999-00 work program, the Commission scheduled work on the following Bay Plan policy elements: (1) Part V. Carrying out the Bay Plan, (2) dredging, (3) navigational safety, (4) marshes and mudflats, (5) airports, (6) public access and wildlife, and (7) fish and wildlife. The status of each of these studies is discussed below.

**1. Part V. Carrying Out the Bay Plan.** This section of the Bay Plan specifies how the Plan is implemented. The purpose of updating this section is to bring Part V into full consistency with the provisions of the McAteer-Petris Act and to eliminate redundant and outdated material. The currently approved schedule calls for the Commission to consider the proposed changes to Part V in the second quarter of FY 99-00 (October - December 1999). In November 1999 the staff mailed to the Commission a proposed descriptive notice of possible changes to Part V, and in December the Commission approved the notice and scheduled a public hearing for March 16, 2000. The time for Commission consideration of possible changes to Part V was extended by one month to allow additional time for staff to work with representatives of Save San Francisco Bay Association who expressed concern over particular staff proposed changes to Part V. The staff has met with representatives of Save the Bay and on February 4, 2000 mailed its staff report and preliminary recommendation. The staff recommends revising the Part V schedule to include the additional time the Commission will consider the proposed amendment, which is the third quarter of FY 99-00, as shown in Table 1.

**2. Dredging.** The Long Term Management Strategy for dredging program (LTMS) was established in 1990 as an interagency program to resolve and manage issues related to dredging and the disposal of material dredged from San Francisco Bay. Based on the work of the LTMS, the Commission is scheduled to consider updating the Bay

Plan dredging policies during the first quarter of FY 00-01 (July-September 2000). Work on this study is on schedule except for environmental information needed to address the beneficial use of dredged material for restoring and creating subtidal habitat.

In October 1998, the Commission approved a "stage one" federal consistency determination for a joint Port of Oakland/U.S. Army Corps of Engineers proposal to dredge channels and berths at the Port to a depth of 50 feet and use some of the dredged material to create shallow water and eelgrass habitat in the Port's Middle Harbor area. The Commission determined that the proposal had considerable merit, but was inconsistent with the current Bay Plan dredging policies and regulations. To determine whether these inconsistencies can be overcome in a manner that will not compromise the overall sound management of Bay resources, the Commission directed the staff to evaluate two courses of action: (1) amending the Bay Plan policies to allow beneficial reuse of dredged material in the Bay to restore or create habitat; and (2) amending the Commission's regulations to include the Middle Harbor as a designated in-Bay dredged material disposal site.

In order for the Commission to adopt Bay Plan policies that would allow the reuse of dredged material in the Bay, the Commission must comply with the provisions of the California Environmental Quality Act, which require a programmatic analysis of the environmental benefits and detriments of alternative in-Bay reuse projects. The LTMS EIR/EIS did not provide this analysis because the LTMS studies did not address in-Bay beneficial reuse for habitat creation. Extensive technical and scientific analysis is needed to complete this environmental review. Accordingly, the staff prepared a scope of work for a consultant to provide this analysis at an estimated cost of \$200,000. The Commission's FY 99-00 state budget does not include funds for this consultant work because the need for this work was not envisioned when the budget was prepared.

In an attempt to secure the needed funding, the staff consulted with its LTMS partner agencies, and particularly the Corps of Engineers, as well as with the Port of Oakland. Working with the Bay Area Congressional delegation, the Port has attempted to secure federal funding for the needed consulting work. Unfortunately, these funds were not included in the FY 2000 federal budget nor are they proposed in the President's FY 2001 budget, which was released this week. The Commission also requested that \$200,000 for consulting assistance be included in BCD's FY 00-01 budget for contingencies such as this, but the Administrative did not find sufficient justification to include this request in the Governor's proposed budget for BCD. The staff recently inquired whether the Resources Agency would reconsider supporting this request if the funding were specifically earmarked for consultant work needed for the dredging policy development. Resources Agency staff opined that it is likely the Administration would support this request because the Port of Oakland would be the primary beneficiary of the dredging policy update work, and the Governor vetoed State funding from the FY 99-00 budget for dredging at California's ports finding that the ports could raise revenues to pay for the needed dredging.

In light of this situation, the staff believes the four most viable options for resolving this issue are:

- a. The Commission could direct the staff to prepare a regulation change designating Middle Harbor as an in-Bay disposal site, without amending the Bay Plan policies to address beneficial reuse. The staff believes that this option would not meet the Commission's interest in addressing the concept of in-Bay beneficial re-

use comprehensively throughout the Bay. Designating Middle Harbor for in-Bay disposal would also seem to be inconsistent with existing Bay Plan dredging policies which requires, in part, that disposal in the Bay should only be allowed if use of ocean or upland sites is infeasible.

- b. The Commission could complete the revision of its Bay Plan dredging policies and rely solely on the Port of Oakland's environmental analysis of its Middle Harbor enhancement project, which does not include information about disposal at other sites in the Bay. This option would leave the Commission adoption of a Bay Plan amendment open to legal challenge.
- c. The Commission could wait to consider the in-Bay beneficial reuse policy until either the environmental analysis or funding to carry out the needed analysis becomes available from others. This option relies on uncertain funding and could delay the Port and Corps' schedule for the 50-foot dredging project.
- d. The Commission could redirect all of its General Fund supported staff who are working on updating other sections of the Bay Plan and have them work exclusively on updating the Bay Plan dredging policies. This option would not provide the Commission with the services of an environmental science consultant, could delay any favorable consideration of the 50-foot deepening project for about a year, and would delay for at least a year the update of all other Bay Plan policies, including those dealing with aquatic resources, marshes, mudflats, wetlands, public access, and fish and wildlife.

The staff believes that at the present it is prudent to continue to focus on option "c". If, over the next few months it becomes clear that neither funding nor the necessary information can be secured elsewhere, the Commission will present option "d" to the Commission when it considers its FY 00-01 work program in July 2000 and a proposed revised schedule for Commission consideration of the dredging policies.

**3. Navigational Safety.** Under the state Oil Spill Prevention and Response Act, the Commission has the responsibility for participating in the development of the San Francisco Bay Harbor Safety Plan with the Office of Spill Prevention and Response of the Department of Fish and Game. The Commission has proposed to incorporate the applicable navigational safety provisions of the Harbor Safety Plan into the Bay Plan to guide the Commission on permit applications that present navigational safety issues. Work on this project has been predicated on funding being available from the State Lands Commission. Funding has recently been made available to the Commission from the State Lands Commission for this work; however, the funding not available until three months later than anticipated. Consequently, the program schedule should be revised by extending the schedule for the Commission's consideration of the possible amendments of the Bay Plan three months, from the fourth quarter of FY 99-00 (April-June 2000) to the first quarter of FY 00-01 (July-September 2000) as shown in Table 1.

**4. Marshes and Mudflats.** The Bay Plan marshes and mudflats policies are at the heart of the Commission's wetland policies. The staff has completed working drafts on the chapters for the report on this study. Based on discussion with Bay ecological scientists and resource agency personnel, the staff has become convinced that the marshes and mudflats report should be integrated with the fish and wildlife report to produce a broader, ecological approach to the Bay Plan policies. This approach would incorporate a discussion of Bay subtidal habitat not now addressed in the marshes and mudflats report and allow for an analysis and discussion of the interrelationship of the Bay's habi-

tats and associated aquatic and wildlife species. Moreover, this approach would provide a better way to introduce and discuss invasive plant and animal species that affect the Bay. Because both the marshes and mudflats and fish and wildlife reports would rely on color maps to communicate the location and interrelationship between habitat types and fish and wildlife species, a cost savings can be achieved with producing just one report with color maps rather than two reports because some maps in the marshes and mudflats report would have to be duplicated in the fish and wildlife report. Therefore, the staff recommends that the marshes and mudflats schedule be revised to coincide with the fish and wildlife report schedule as shown in Table 1. The combined reports would be considered in the second quarter of FY 00-01 (October-December 2000).

5. **Airports.** In 1999 the Commission secured funding from the San Francisco International Airport (SFO) to retain a consultant, with limited staff assistance, to participate in the update of the Regional Airport Systems Plan (RASP), SFO's airport runway re-configuration study, and independently review and advise SFO on the Commission's requirements for a Commission permit and on SFO's environmental documents for re-configuration of its runways. The updated RASP would provide information on which the Commission would rely in updating its Bay Plan airport policies. The Commission agreed that it would not schedule consideration of possible amendments to its Bay Plan airport policies until after it considers and takes action on any permit application for re-configured runways submitted to it by SFO. At that time the current Bay Plan update schedule was approved, SFO believed it would submit its permit application to the Commission in October 2000. The Commission agreed that it would not consider any Bay Plan amendment during a three-month period proceeding submittal of a permit application by SFO, nor during a three-month period after SFO submitted its permit application. It currently appears that SFO will not submit its application until mid-2001. Therefore, the staff recommends that Commission revise its schedule for consideration of possible amendments to the Bay Plan airports policies to the first quarter of FY 02-03 (July-September 2002) as shown in Table 1 which should provide sufficient time for the Commission to consider and act on SFO's application before considering any possible changes to the Bay Plan airport policies.

6. **Public Access and Wildlife.** The continued development of the San Francisco Bay shoreline has increased the interaction and possible conflict between the public and wildlife use of the shoreline and adjacent water areas. To address this issue, in association with the Association of Bay Area Government's Bay Trail Project, the Commission has initiated a study to generate improved information on public impacts on wildlife which will lead to recommended changes to the Bay Plan. To assist staff in its work, a Policy Advisory Committee has been formed with representation from public wildlife management agencies, public resource agencies, nonprofit recreation and wildlife organizations and regional park organizations. The staff, with the assistance of the Policy Advisory Committee, has completed its literature research, is compiling a report of its findings, and is scheduled to complete a report on the management of public access impacts on wildlife by the end of May 2000. This study is on schedule.

7. **Fish and Wildlife.** The Bay Plan policies on fish and wildlife interrelate with the marshes and mudflats policies. As discussed in the section on the status of the marshes and mudflats study above, the staff is proposing to integrate the two studies to develop a broad, ecological approach to updating the Bay Plan. Combining work on the two studies will also permit earlier completion of the fish and wildlife study than now scheduled. Therefore, the staff recommends that the schedule for the fish and wildlife

study be revised so that the Commission will consider the merged marshes and mud flats and fish and wildlife study in the second quarter of FY 00-01 (October-December 2000) rather than the currently scheduled consideration of the study in the fourth quarter of FY 00-01 (April-June 2001) as shown in Table 1.

**Additional Studies.** Beginning in FY 00-01, if funding for staff resources is available, the Commission will initiate work on the following policy elements upon the conclusion of studies underway:

- Salt Ponds and Other Managed Wetlands;
- Ferry transportation, including ferry terminal siting and land side issues within BCDC's jurisdiction;
- Mitigation, including mitigation banking;
- Water quality, including toxic cleanup methods and strategies;
- Fresh Water Inflow, especially to consider the recommendations of CALFED; and
- Water Surface Area and Volume.

The schedule adopted by the Commission for undertaking these studies is shown in Table 1. However, the schedule for Commission consideration of the transportation, water quality, fresh water inflow, and water surface area and volume studies need to be revised as shown in Table 1 so that the Commission will not be considering more than one policy element at the same time.

The staff will continue to monitor the progress on the Bay Plan update and provide the Commission with a revised schedule for the Commission's formal approval as part of BCDC's annual work program in July 2000.

TABLE 1

San Francisco Bay Conservation and Development Commission

**BAY PLAN UPDATE SCHEDULE**

BAY PLAN SECTION	FY 98/99	FY 99/00	FY 00/01	FY 01/02	FY 02/03	FY 03/04
CARRYING OUT THE BAY PLAN						
DREDGING						
NAVIGATIONAL SAFETY						
MARSHES AND MUDFLATS						
AIRPORTS						
PUBLIC ACCESS AND WILDLIFE						
FISH AND WILDLIFE						
SALT PONDS AND MANAGED WETLANDS						
MITIGATION						
TRANSPORTATION						
WATER QUALITY						
FRESH WATER INFLOW						
WATER SURFACE AREA & VOLUME						

KEY

Commission  
ConsiderationProject Schedule  
Revised Project ScheduleCommission  
Consideration