

October 14, 2026

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105

Re: Agenda Item #8 – BPA 1-26

Dear Commissioners and BCDC Staff:

Bay Planning Coalition appreciates the opportunity to comment on the proposed Bay Plan Amendment No. 1-26. Founded in 1983, Bay Planning Coalition (BPC) is a member-supported nonprofit organization dedicated to advancing dialogue and public policy that supports the environmental and economic resilience of San Francisco Bay and surrounding communities.

BPC has long supported efforts to advance the beneficial reuse of sediment and soil in support of critical wetland restoration and sea level rise adaptation goals. BPC has been actively engaged in BCDC's Sediment for Wetland Adaptation Project (SWAP) since the process began in 2022, including participation in stakeholder discussions, engagement through BPC's Dredging & Beneficial Reuse Committee, and commenting on the Sediment and Soil Beneficial Reuse Action Plan. BPC has supported federal efforts to increase the beneficial reuse of dredged sediment throughout the Bay Area, including USACE's recent Regional Dredged Material Management Plan (RDMMP).

We have serious concerns with proposed Bay Plan Amendment 1-26. Our concern is not with the goal of increasing beneficial reuse. Rather, the Amendment would create conflicts with the long-established and highly effective LTMS program by establishing a new BCDC-specific project-level mandate that could require up to 100% beneficial reuse for maintenance dredging projects without establishing sufficiently objective standards to guide applicants and future BCDC staff for how to apply the new policy. At the same time, the Amendment does not address the principal constraints that limit beneficial reuse today—including the absence of any existing beneficial reuse sites in close proximity to dredging projects, long-term availability of new beneficial reuse sites, market competitiveness, infrastructure, and the unavoidable need to double-handle dredged sediments. All these factors combined will continue to make the incremental cost of beneficial reuse beyond the cost of aquatic disposal foreboding, and will render maritime facility maintenance dredging programs effectively incapable of accommodating any more beneficial reuse than they already do.

For these and the reasons below, we believe these amendments are premature and should not proceed unless and until there is sufficient consensus among those most deeply affected by these policy changes.

BPC's Principal Concerns and Recommendations Regarding the Proposed Amendment:

1. The Bay Plan should build on the Long-Term Management Plan (LTMS) framework using tools already available to increase beneficial reuse, not create a parallel and potentially conflicting BCDC-specific standard and analytical approach as proposed in Policy 7.
2. Any new beneficial reuse requirement must use clear, objective, and predictable criteria—including a concrete definition of site availability and an objective rationale for elevating the public trust of beneficial reuse above the public trust of maintenance dredging.
3. Stronger regulatory requirements must be paired with an assurance of long-term receiving-site capacity, infrastructure, reasonable market competition, and funding needed to make beneficial reuse an achievable capability for the maritime facilities relied on by millions of Bay Area residents for a strong local economy and readily available access to Bay waters.
4. Although beneficial reuse is and will continue to be a critical component in the regional approach to addressing sea level rise, the Bay Area maritime community should not be forced to shoulder an even greater portion of the cost through a regulatory mandate when handling and management of this material is a regional public benefit that should be supported by broader public funding and shared investment.
5. The proposed amendment would bind the Commission's discretion by establishing beneficial reuse as the preferred public-trust outcome in advance, effectively privileging one public-trust use over others (such as navigability) before the facts of a particular project are considered. BCDC should retain the ability to balance competing trust interests case by case and determine which sediment-management approach best serves the public trust and overall public interest.

Dredging and sediment management are longstanding and essential activities in the Bay. Regular dredging supports commercial navigation and goods movement, maritime and water transit, recreational boating, flood management, restoration, and other water-dependent uses. Significant policy changes to the current dredging and sediment management framework should be developed through a coordinated regional process that includes the LTMS agencies and affected stakeholders, as opposed to the unilateral approach that would be taken by implementing this policy.

The LTMS Management Plan provides a coordinated regional approach to supporting navigation, maximizing the use of dredged material as a resource, and managing sediment placement. According to the BPA 1-26 Staff Report, it has been effective: placing more than 31 million yards of sediment at multiple landscape-scale and subtidal restoration projects since 2001. The Staff Report also notes that with funding, beneficial reuse can exceed regional goals: in 2023, 73% of dredged sediment was beneficially reused.

The LTMS includes established mechanisms for evaluating beneficial reuse and other placement alternatives. Dredging projects are required to submit an analysis of feasible placement alternatives as part of the permit and episode approval process. Eligible small dredgers may satisfy this requirement through the Small Dredger Programmatic Alternatives Analysis (SDPAA), while medium and large dredgers submit an Alternatives Analysis (AA) or Integrated

Alternatives Analysis (IAA) to evaluate the feasibility of available placement options and ensure that medium and large dredgers meet their LTMS obligation to beneficially reuse at least 40% of their dredged material. This existing analysis is long established and integrated into the existing DMMO permitting processes and agreed with by all member agencies and should not need to be replicated with different considerations, as proposed in BPA 1-26's Policy 7, which could result in different outcomes for one agency that could create conflict for others.

BPC recommends that BCDC pursue increased beneficial reuse through the existing LTMS framework and the already available IAA process as the tool to do so. This approach should include consideration of adjustments to the current 40/40/20 beneficial reuse, ocean disposal, and in-Bay disposal volumes involving an allowance to increase in-Bay disposal and reduce or eliminate ocean disposal at SF-DODS, which would make San Francisco Bay maritime maintenance dredging programs more capable of beneficially reusing a greater volume of dredged material. This approach could significantly increase the volume of sediment beneficially reused without any significant fiscal impact, and keep more sediment in the Bay's system that could be beneficially reused in the future should more sites become available. A coordinated LTMS process would provide a more predictable and regionally aligned pathway for increasing beneficial reuse, with the flexibility to increase reuse volumes as additional sites and supporting infrastructure come online. Modifying BPA 1-26's Policy 7 to establish goals that rely on and defer to the LTMS process – as we propose, below - would be a worthy outcome that BPC could support.

BPC notes that beneficial reuse could be increased significantly right now if there was an immediately available funding source to compensate maritime facilities for the incremental cost of beneficially reusing dredged material beyond the cost for aquatic disposal at SF-DODS. For example, Measure AA grant funding managed by the San Francisco Bay Restoration Authority represents an existing funding source that could be used to cover the incremental cost to beneficially reuse sediments dredged in support of navigation projects beyond the current 20% in-Bay allowance. Hypothetically, assuming an annual average of medium and larger dredger maintenance volume of 3 million cubic yards (CY), and an average \$10/CY incremental cost of beneficial reuse over SF-DODS disposal, using 100% of the \$25 million annually available Measure AA funds would result in a beneficial reuse capability of 83% of all medium and large project dredged material.

In addition to these broader recommendations, BPC offers the following comments on specific findings and policies in the Proposed Bay Plan Changes (Appendix 1 to Bay Plan Amendment No. 1-26 Staff Report and Preliminary Recommendation).

COMMENTS ON PROPOSED BAY PLAN AMENDMENT CHANGES

The Bay as a Resource – Fresh Water and Sediment Flow, Policies 1-4 (Pg. 8)

"1. Diversions of fresh water and sediment ~~should~~ shall not reduce the ~~in~~flow into the Bay to the point of damaging the oxygen content, freshwater exchange, or sediment supply of the

Bay, the flushing of the Bay, or the ability of the Bay to support ~~existing~~ [habitat and](#) wildlife.

2. High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows.

3. The impact of diversions of freshwater inflow into the Bay should be monitored by the State Water Resources Control Board, which should set standards to restore historical levels (1922-1967) of fish and wildlife resources. The Bay Commission should cooperate with the State Board and others to ensure that adequate freshwater inflows to protect the Bay are made available.

[4. Flood protection and streambed maintenance projects shall fully consider and, where possible, reconnect or realign tidal creeks to wetlands to supply sediment and provide more expansive floodplains for water absorption for both creek and coastal flooding. These projects should provide substantial net benefits for Bay habitats and native species, and short-term adverse impacts may be acceptable where over time the projects create more sustainable and functional habitat and flood systems."](#)

BPC Comments:

BPC supports identifying opportunities for flood protection and streambed maintenance projects to improve sediment delivery to wetlands where doing so is compatible with the project's flood-protection and public-safety purposes. However, "where possible" is undefined. The policy should direct the Commission to consider hydraulic performance, public safety, existing development and infrastructure, property constraints, cost, and regulatory feasibility when determining whether reconnection, realignment, or floodplain expansion is possible. These considerations are particularly important for local flood-control agencies that must maintain channel capacity and protect developed communities. Additionally, the first part of Policy 3 above would not be enforceable as it would require BCDC to mandate action by the State Water Board, an independent decision making body not governed by BCDC, and that is subject to a vast array of legal and regulatory standards, many of which conflict with a full return of historic flows into the Bay in competition with many other public trust water uses.

Development of the Bay and Shoreline – Sediment Management, Policy 1 (Pg. 18-19)

~~"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. The LTMS agencies should implement a system of disposal allotments to individual dredgers to achieve this goal only if voluntary efforts are not effective in reaching the LTMS goal. In making its decision regarding disposal allocations, the Commission should confer with the LTMS agencies and consider the need for the dredging and the dredging projects, environmental impacts, regional economic impacts, efforts by the dredging community to implement and fund alternatives to in-Bay disposal, and other relevant factors. Small dredgers should be exempted from allotments, but all dredgers should comply with policies 2 through 12.~~

[Bay sediment is the basis of Bay habitats, has its own intrinsic value, and is subject to the public trust. To ensure that subtidal and intertidal habitats are available for current and](#)

future generations, sediment should be conserved to support these habitats.”

BPC Comments:

BPC is concerned with this policy change for two reasons: 1. It deletes language in the Bay Plan that makes it BCDC’s policy to confer with LTMS agencies and to balance multiple considerations including the need for dredging, environmental and economic impacts, and ‘other relevant factors’ in determining the fate of dredged material; and 2. It requires sediment to be conserved without considering feasibility. Additionally, the language requiring conservation of sediment would appear to be internally inconsistent with Policy 2 which covers the conditions under which BCDC can authorize dredging. We recommend instead, the following language:

BPC Proposed Sediment Management Policy 1

Dredging and dredged material disposal should be conducted in an environmentally and economically sound manner. In making decisions regarding disposal allocations, the Commission should confer with the LTMS agencies and consider the need for the dredging and the dredging projects, environmental impacts, regional economic impacts, efforts by the dredging community to implement and fund alternatives to in-Bay disposal, and other relevant factors.

Bay sediment, like navigation dredging, is subject to the public trust. To ensure that subtidal and intertidal habitats are available for current and future generations, sediment should be conserved to support these habitats to the extent feasible.

Development of the Bay and Shoreline – Sediment Management, Policy 4 (Pg. 19)

“4. Beneficial reuse of dredged sediment protects public trust uses and meets public trust needs, and is the preferred alternative to disposal of dredged sediment as a waste product at aquatic sites in the ocean or in the Bay. The Commission should prioritize beneficial reuse of dredged sediment over aquatic disposal of the sediment in the ocean or in-Bay disposal sites. Disposal of dredged sediment at aquatic disposal sites in the Bay or ocean should be reduced to minimize the waste and unreasonable use of dredged sediment.”

BPC Comments:

BPC supports making beneficial reuse the preferred alternative where it is feasible and appropriately funded. We do not support characterizing authorized aquatic disposal – especially in-Bay disposal, where sediment is retained in the system – categorically as “waste and unreasonable use.” Aquatic disposal remains an authorized and, in some circumstances, necessary component of the LTMS framework, including when beneficial reuse sites are unavailable, timing does not align, or incremental costs cannot reasonably be funded. This policy should recognize that balance and should be revised to state that ocean disposal should be reduced consistent with LTMS goals and the availability and feasibility of beneficial reuse.

Development of the Bay and Shoreline – Sediment Management, Policy 6 (Pg. 20)

“6. A dredging project that does not propose beneficial reuse of the project’s dredged sediment shall include an evaluation of: (1) the availability of beneficial reuse sites for placement of the project’s dredged sediment; (2) an alternatives analysis that compares the cost to transport and offload the project’s dredged sediment at available beneficial reuse sites with the cost to dump the dredged sediment at an aquatic disposal site in the Bay or ocean; and (3) an estimate of the economic benefit and a description of any other benefits of the dredging project.”

BPC Comments:

BPC recommends deleting or substantially revising Policy 6. Dredging projects already evaluate placement alternatives through the LTMS/DMMO process, including the SDPAA, AA, and IAA processes described above. BCDC should not establish a duplicative project-level alternatives analysis using different criteria. At minimum, completion of the applicable LTMS alternatives analysis should satisfy this policy. BPC also opposes requiring applicants to estimate the economic or other benefits of the dredging project for purposes of sediment placement, particularly when the term “economic benefit” is left undefined. A project’s broader economic value does not establish whether beneficial reuse is operationally feasible or whether funding is available to cover its incremental cost.

Development of the Bay and Shoreline – Sediment Management, Policy 7 (Pgs. 20-21)

“7. Dredged sediment shall be beneficially reused, and shall not be dumped as a waste at an aquatic disposal site, if beneficial reuse is reasonably capable of being done after taking into consideration:
(1) whether the sediment is suitable for beneficial reuse;
(2) whether there is an available beneficial reuse site;
(3) the cost to transport and offload the dredged sediment at a beneficial reuse site in comparison to the cost to dispose of the dredged sediment at an aquatic disposal site;
(4) the proposed dredging equipment (clamshell, excavator, or hydraulic) and offloading or disposal equipment;
(5) the cost of the dredging project and any associated capital improvements;
(6) the economic benefit and any other benefits of the dredging project and any associated capital improvements; and
(7) any agreements between or among co-applicants for the dredging project and any associated capital improvements.”

BPC Comments:

Policy 7 is the central concern in the Amendment. BPC concurs with the concerns expressed by BCDC commissioners during the Commissioner Working Group meeting on July 7 regarding the phrase “reasonably capable of being done.” This creates an open-ended standard without identifying who bears the burden, what volume of a project’s material must be reused, or what objective criteria control the determination. BPC supports a stronger beneficial reuse expectation, but the Bay Plan should specify the conditions that trigger that obligation rather than leave the result to balancing a list of undefined factors on a project-by-project basis.

BPC recommends replacing Policy 7 with a standard that places the burden on the Commission to make affirmative, objective findings before beneficial reuse is mandatory, and that limits the analysis to factors directly related to the feasibility and funding of beneficial reuse:

BPC Proposed Sediment Management Policy 7:

Dredged sediment shall be beneficially reused in accordance with the dredged material allocation standards set forth in the LTMS when the Commission determines that each of the following conditions is met:

(1) The Commission determines, based on applicable interagency testing protocols and DMMO determinations, that the sediment is suitable for the proposed beneficial reuse and meets the acceptance requirements of the receiving site;

(2) The Commission identifies at least one beneficial reuse site that is permitted, has sufficient capacity, and can accept the type and volume of sediment within the timeframe required for the proposed dredging project;

(3) The Commission determines that the applicant can transport, handle, offload, and place the dredged sediment at the identified beneficial reuse site using technically feasible methods and equipment reasonably available for the project;

(4) The Commission determines that the incremental cost of beneficial reuse, including transportation, handling, staging, offloading, equipment, mobilization, and reasonably foreseeable schedule-related costs, does not exceed an objective cost threshold established through the LTMS process and adopted through a public process; or sufficient dedicated funding is available to cover the incremental cost without materially delaying, reducing, or preventing completion of the dredging project.

If the Commission cannot make each of these findings, the Commission shall authorize aquatic disposal consistent with other applicable Bay Plan policies. The Commission shall not consider the cost, economic benefit, or other benefits of associated capital improvements, or agreements among co-applicants unrelated to sediment placement, in determining whether these conditions are met.

BPC recommends that an objective cost threshold be developed through the LTMS process with BCDC, the other LTMS agencies, dredgers, and affected stakeholders before the Amendment is adopted. The Commission should not determine cost reasonableness permit-by-permit without an adopted standard.

The policy should also reference applicable beneficial reuse targets established through the LTMS framework. This would provide clearer guidance regarding the volume of sediment an individual project may be expected to beneficially reuse while maintaining consistency with the broader regional sediment-management program.

A Bay Plan Amendment that requires the Commission to maintain consistency with the LTMS is a worthwhile goal grounded in decades of successful stakeholder coordination in which BCDC has been a leader in establishing beneficial reuse standards. BCDC's continued participation in that process is valued and Bay Plan policies should reflect that history of engagement and leadership. The new policy largely disengages BCDC as a leader from that long established and successful program by creating a separate set of standards that will inevitably conflict with standards set forth in the LTMS. These conflicts could have dire consequences for the regionally critical benefits of USACE's Dredging Program, including potentially reducing the amount of material available for beneficial reuse through reduced dredging frequency in efforts to reduce costs.

Development of the Bay and Shoreline – Sediment Management, Policy 8 (Pg. 21)

~~"8. The Commission should encourage increased efforts by soil conservation districts and public works agencies in the 50,000 square mile Bay tributary area to continuously reduce soil erosion as much as possible."~~

The Commission shall maintain a list of available beneficial reuse sites, including restoration projects and sites suitable for beneficial reuse of dredged sediment or upland soil that have been identified by local Bay Area jurisdictions, information on the permitting status, and estimated capacity of the site and the ability to accept dredged sediment and excess upland soil of each listed site. The Commission shall post the list of available beneficial reuse sites and associated information for each site on the Commission's website. Bay sediment and excess excavated soils should be managed locally and regionally to prioritize and support habitat restoration and sea level rise adaptation projects. The Commission shall encourage cities and counties in the Bay Area that are preparing subregional shoreline adaptation plans pursuant to the Regional Shoreline Adaptation Plan to identify opportunities for beneficial reuse of sediment and excess upland soil in nature-based sea level rise adaptation projects. Pilot projects to test innovative techniques for beneficial reuse such as nearshore placement and water column seeding may be authorized if the project is found to be consistent with applicable policies in the Bay Plan."

BPC Comments:

This policy is an important complement to any effort to increase beneficial reuse requirements, as the effectiveness of those requirements depends on whether viable sites are actually available to receive sediment. Maintaining a regional inventory of sites, permitting status, capacity, and material acceptance information could provide a useful planning tool, but identifying potential locations alone does not ensure that those sites become usable placement options.

An effort to establish stronger beneficial reuse requirements should be accompanied by a more active Commission role in advancing available beneficial reuse site capacity. This should include coordination with relevant agencies, assistance with permitting coordination, and efforts to identify and secure funding or other resources that can help move beneficial reuse sites from

simply identified opportunities to viable placement options. Building that capacity across the region would improve the ability of dredging projects to participate in beneficial reuse and could also reduce transportation and logistical barriers that currently limit feasibility for some projects.

Critically, inclusion of a site on BCDC's inventory should not, by itself, establish that the site is "available" for purposes of Policy 7. The policy should define an available site as one that is permitted, has confirmed capacity, can accept the specific sediment type and volume, has necessary access and offloading infrastructure, and can receive the material within the dredging project's required schedule.

Development of the Bay and Shoreline – Sediment Management, Policy 9 (Pgs. 21-22)

"9. Dredged sediment should, if feasible, be reused or disposed outside the Bay and certain waterways. Except when reused in an approved fill project, dredged material should not be dumped in the Bay and certain waterways or the ocean as a waste unless beneficial reuse is not reasonably capable of being done as determined in accordance with Sediment Management Policy 7 and the Commission makes the required findings. Dredging projects that plan to dredge outside of the environmental work window should take sediment dredged outside of the work window to a beneficial reuse site or the same volume of sediment to a beneficial reuse site within the next dredging season."

BPC Comments:

BPC recommends deleting the final sentence tying dredging outside an environmental work window to a beneficial reuse obligation. Environmental work windows address the timing of dredging to protect biological resources; sediment placement addresses a different environmental and operational question. Where the appropriate resource agencies authorize dredging outside an established work window with protective measures, BCDC should not impose an additional beneficial reuse obligation that is unrelated to the impacts the work window is intended to address. Policy 9 should also be revised as necessary to conform to BPC's proposed changes to Policy 7.

Development of the Bay and Shoreline – Sediment Management, Policy 11 (Pg. 24)

"11. Interested agencies and parties are encouraged to explore and find funding solutions for any additional costs incurred by transporting and offloading dredged sediment to beneficial reuse sites that support habitat and adaptation to rising seas, either by general funds contributed by ports and other relevant parties, dredging applicants, grant makers, financing programs, or otherwise."

BPC Comments:

BPC strongly supports development of new funding for the incremental cost of beneficial reuse. However, the Amendment creates a significant imbalance: Policy 7 would impose a mandatory project-level requirement, while Policy 11 merely encourages interested parties to seek funding for the resulting additional costs. BCDC should coordinate with the LTMS agencies, dredgers,

restoration interests, and funding agencies to establish durable funding mechanisms alongside any stronger regulatory requirement. The region should not impose substantially stronger mandates before adequate funding mechanisms and receiving-site capacity are available.

Development of the Bay and Shoreline – Sediment Management, Policy 12 (Pg. 24)

“12. The Commission should continue to participate in the Long Term Management Strategy and the Dredged Material Management Office as the basis for managing the navigation dredging program within the Bay, and work with the LTMS agencies in its periodic review and update. The Commission should ensure that coordination continues across LTMS and DMMO agencies...”

BPC Comments:

BPC strongly supports Policy 12’s recognition of the LTMS and DMMO as the basis for managing the Bay’s navigation dredging program. Policies 6 and 7 should be revised to implement that principle rather than create a separate BCDC-specific alternatives analysis and beneficial reuse standard. BPC recommends strengthening Policy 12 to state that the Commission shall manage navigation dredging in coordination with the LTMS/DMMO framework and shall avoid duplicative or inconsistent project-level requirements.

Development of the Bay and Shoreline – Sediment Management, Policy 15 (Pgs. 25-26)

“15. The Commission shall support the restoration and adaptation of tidal marshes by encouraging the development of a land-based, regional sediment and soil stockpile system to support habitat and sea level rise adaptation. The Commission shall prioritize support for sediment and soil stockpile projects that:

- (a) Are located centrally to restoration sites such that they can supply soil to multiple restoration sites;
- (b) Are located near restoration sites where adjacent Bay shallowness makes delivery of dredged sediment by barge especially challenging;
- (c) Follow a testing protocol developed by the San Francisco Bay Regional Water Quality Control Board, BCDC, and other entities as appropriate to minimize impacts to habitat;
- (d) Screen and sort material in a manner that reduces the need for repetitive testing and prevents stockpiles from developing habitat;
- (e) Prioritize areas that would minimize impacts to habitat, such as landfills, transfer facilities, ports, maintenance yards, or other industrial sites;
- (f) Have a security system to prevent unauthorized dumping of soil or other materials;
- (g) Provide available public land, in and outside of the Commission’s jurisdiction, for temporary, one-time, or long-term stockpiling of soil;
- (h) Have an approved soil management plan to accept sediment and soil from multiple sources that would keep differently sourced soils separate, or provide for appropriate mixing per regulatory specifications; and
- (i) Temporarily stockpile dredged sediment and/or upland soil at active and planned restoration sites.”

BPC Comments:

The regional stockpile system proposed in Policy 15 could help address one of the practical barriers to beneficial reuse: the mismatch between when material becomes available and when restoration projects are ready to receive it. However, many elements of the proposed system may fall largely outside BCDC's direct jurisdiction.

We recommend that the Commission prioritize coordination and assistance to help make these sites viable, including identifying potential sites, securing funding, and helping to streamline regulatory processes as part of a broader regional effort.

Development of the Bay and Shoreline – Public Trust, Finding (k) (Pg. 27)

[“k. When dredged sediment is dumped at designated in-Bay disposal sites, the sediment is discarded as a waste and dissipates into adjacent deep-water channels and shoals. When dredged sediment is dumped at the deep ocean disposal site, it is discarded as a waste and entirely removed from the Bay system. Dumping of dredged sediment at aquatic disposal sites in the Bay or ocean precludes beneficial reuse of dredged sediment to protect public trust uses and meet public trust needs and constitutes waste and an unreasonable use of this public trust resource.”](#)

BPC Comments:

BPC supports recognizing the important role sediment can play in protecting and restoring public trust resources. We oppose, however, the categorical conclusion that authorized aquatic disposal “constitutes waste and an unreasonable use” of a public trust resource. The proposed findings themselves recognize that dredging is necessary to support navigation, commerce, and recreational boating—established public trust uses. Aquatic disposal may remain a necessary and appropriate component of a regional sediment-management program when beneficial reuse is unavailable, infeasible, or unfunded.

BPC recommends striking “and constitutes waste and an unreasonable use of this public trust resource” from Finding (k). The policy misuses the concept of “waste and an unreasonable use,” which is derived from Article X, section 2 of the California Constitution and applies to the use of the State's water resources for, among other things, municipal purposes and human consumption (non-trust uses).

Development of the Bay and Shoreline – Public Trust, Policy 2 (Pg. 27)

[“2. Beneficial reuse of dredged sediment protects public trust uses and meets public trust needs, and is the preferred alternative to dumping of dredged sediment as a waste at aquatic disposal sites in the Bay or ocean where there is no associated beneficial reuse. Dredged sediment shall be beneficially reused if beneficial reuse is reasonably capable of being done as determined in accordance with Sediment Management Policy 7. Dumping of dredged sediment at aquatic disposal sites in the Bay or ocean should be reduced to minimize the waste and unreasonable use of dredged sediment.”](#)

BPC Comments:

BPC supports identifying beneficial reuse as the preferred alternative where it is feasible, but Public Trust Policy 2 should not independently restate the disputed mandate in Policy 7 or characterize authorized aquatic disposal as “waste and unreasonable use.” BPC recommends revising this policy to cross-reference a revised, objective Policy 7 and to state that aquatic disposal should be reduced consistent with LTMS goals, receiving-site availability, project feasibility, and available funding.

Of greater concern, this proposed policy impermissibly predetermines the public trust analysis that BCDC and other state trustees are required to perform as a trustee. The proposed policy states that beneficial reuse “protects public trust uses” and “meets public trust needs” and is the “preferred alternative” to aquatic disposal. This formulation is problematic because it sets forth a strict preference for one public trust use in direct conflict with competing and essential public trust uses, values, and needs—namely, commerce and navigation—all before undertaking any evidentiary or public trust analysis in light of the particular facts, affected resources, competing public benefits, and overall public interest presented by each project. It also assumes that beneficial reuse necessarily protects public trust uses and meets public trust needs, without requiring the Commission to examine the potential effects of a particular reuse proposal or compare those effects with the effects of other sediment management alternatives.

By way of background, the State of California (“State”) acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850.¹ Pursuant to statute and the common law public trust doctrine, the State (primarily administered through the State Lands Commission) holds these lands for the benefit of all people of the State for statewide public trust purposes that include, but are not limited to, commerce, navigation, fisheries, recreation, habitat preservation, and open space.²

The public trust doctrine emanates from the common law rule that the State must administer tidelands, submerged lands, and lands underlying inland navigable waters for the benefit of the people for certain public trust purposes.³ Such public trust purposes were traditionally confined to “commerce, navigation, and fisheries.”⁴ Over time, trust purposes have been recognized to include the right to hunt, bathe, and swim, as well as to preserve tidelands in their natural state.⁵ Commercial uses, including hotels, visitor-serving retail, and restaurants have also been determined to be public trust consistent.⁶

¹ *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 373–374, citing *Weber v. Board of Harbor Com’rs* (1873) 85 U.S. 57, 65–66.

² *Borax Consolidated, Ltd. v. City of Los Angeles* (1935) 296 U.S. 10, 15–16; *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521; *Marks v. Whitney* (1971) 6 Cal.3d 251, 259–260.

³ *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521; *People v. Cal. Fish Co.* (1913) 166 Cal. 576, 584.

⁴ *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 205.

⁵ *Marks v. Whitney* (1971) 6 Cal.3d 251, 259–260.

⁶ See e.g., *Martin v. Smith* (1960) 184 Cal.App.2d 571, 578 (restaurant, bar, motel, swimming pool, shops, and a parking area).

Under the public trust doctrine, a trustee’s authority to approve a project that may substantially impair or interfere with public trust uses carries with it an affirmative duty to take the public trust into account and to protect public trust uses whenever feasible.⁷ What is “feasible” in a particular instance, however, is a matter of discretion for the trustee to determine in light of the “public interest.”⁸ The public trust therefore need not be protected under every conceivable circumstance.⁹ Indeed, as the California Supreme Court recognized in its 1983 decision, *National Audubon Society v. Superior Court*:

“As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust [citation], and to preserve, so far as consistent with the public interest, the uses protected by the trust.”¹⁰

The Court held that the State Water Resources Control Board (“SWRCB”), the state agency in charge of administering the trust with regard to water rights in California, “has an affirmative duty to take the public trust into account in the planning and allocation of water [trust] resources, and to protect public trust uses whenever feasible.”¹¹ However, what is “feasible” in a particular instance is a matter of discretion for the State to determine in the “public interest.”¹² And in balancing competing public interests, the common law doctrine does not compel the State to resolve conflicts in favor of public trust values.¹³

Thus, the public trust doctrine does not categorically prohibit activities that may affect trust resources. Rather, trustee agencies can approve non-trust uses that may harm trust lands or waters where either the use does not substantially impair or interfere with trust uses or the trustee agency determines that competing public interests justify approval despite impacts to trust resources. The Bay Plan amendment would, by fiat and without any evidentiary-based public trust analysis or balancing of the public interest, subjugate a host of other public trust uses and values (e.g., navigation and commerce). While the doctrine is “inherently discretionary,” trustee agencies must balance the public trust and the public interest and exercise their discretion in light of the particular circumstances before them.

The policy’s declaration that beneficial reuse “protects public trust uses and meets public trust needs” and is the “preferred alternative” treats a conclusion that should follow from a project-specific analysis as a universally applicable premise. Although beneficial reuse can advance habitat restoration and resilience, that does not mean every beneficial reuse proposal

⁷ *Id.* at 446; *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 235.

⁸ *National Audubon, Society v. Superior Court* (1983) 33 Cal.3d 419, 446–447; see also *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 777–778.

⁹ *Monterey Coastkeeper v. Central Regional Water Quality Control Bd.* (2022) 76 Cal.App.5th 1, 21.

¹⁰ *National Audubon*, 33 Cal.3d at pp. 446–447.

¹¹ *Id.* at p. 446.

¹² *Id.* at pp. 446–447; see also *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 777–778 [“SWRCB Cases”]. [it was within the State’s “discretion and judgment” to balance all “competing interests”].

¹³ *SWRCB Cases*, 136 Cal.App.4th at pp. 777–778.

necessarily protects the public trust, or that beneficial reuse will always serve the trust better than aquatic placement or disposal for specific dredging projects. BCDC should not establish a preference that effectively resolves the balancing of trust interests before the relevant facts have been presented to the agency. The Commission should not tie its own hands by adopting a policy that limits its ability to conclude, based on the facts of a particular project, that an alternative sediment-management approach may better serve the public trust and overall public interest.

BPC remains strongly supportive of increasing beneficial reuse as an important tool for wetland restoration and sea level rise adaptation. Our concern is that BPA 1-26 moves from that shared objective to a new project-level regulatory mandate without first establishing objective standards, adequate receiving-site capacity, durable funding, or clear integration with the LTMS/DMMO framework. We encourage BCDC to revise the Amendment substantially and to continue this work through a coordinated process with the LTMS agencies and affected stakeholders.

Thank you for the opportunity to comment on BPA 1-26.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Tam', with a stylized, flowing script.

Laura Tam
Chief Executive Officer
Bay Planning Coalition
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