

San Francisco Bay Multi-Benefit Wetlands Restoration

Common Challenges in Permitting:

“Sand in the Gears”

April 27, 2018

Following the 19 January 2018 meeting of the federal and state agencies working to develop a coordinated permitting approach for multi-benefit wetlands restoration projects in the San Francisco Bay, John Bourgeois of the South Bay Salt Pond Restoration Project, at the request of Larry Goldzband of BCDC, put together a brief description of some of the common policy conflicts between agencies that have resulted in a slow-down in the permitting process.

1. Type Conversion

Large-scale restoration projects are often converting one ‘type’ of Waters of the State/U.S. to another ‘type’ (e.g., salt ponds into tidal marshes). Varying amounts of fill are often required (for features such as flood risk reduction, habitat complexity, perimeter trail improvements, etc.) to produce large areas of habitat conversion. This can result in a net loss of Waters, and therefore be interpreted by agency staff as necessitating mitigation for voluntary restoration efforts.

2. Public Access

Different agencies have different goals pertaining to public access. Some agencies ask project proponents to maximize public access, while other agencies ask us to minimize it to protect habitat values. Both perspectives have value, but the burden to resolve these conflicts often falls on the applicant to justify their position to each agency, and resolve these conflicts in an often long and iterative process. Beyond this, the landowner may be a resource agency charged specifically with protecting particular species and habitats where public access may conflict.

3. Bay Fill

The creation of Habitat Transition Zones (i.e., ecotones or horizontal levees) via the import of fill material causes conflict with Bay fill policies, which can vary by agency. For example, BCDC asks projects to use the minimum fill required to achieve the project goals, while the RWQCB might ask a project to build in more resilience to the transition zone. With little empirical data to support optimal design, these conflicts are challenging to resolve. To a lesser extent this is also true of habitat features such as islands for nesting birds. Agencies are beginning to address this issue already.

4. Single-Species Perspective

Legal requirements for a single protected species can preclude actions that are deemed beneficial to the larger system by all other agencies. In an urban estuary, multi-objective projects intended to achieve a balance between a range of habitat improvements for individual special-status species and a wide range of general habitat enhancements over a broad area. For example, Snowy Plover habitat needs can preclude tidal restoration in certain areas, and concerns over fish entrapment can prevent certain types and locations of habitat connectivity..

5. Monitoring

Existing and perhaps increasing requirements for regionally relevant monitoring are sometimes in conflict with the site-specific needs, resulting in additional monitoring burden for applicants. Regional monitoring can be expensive and difficult to find funding sources to cover the costs. Limiting mandated monitoring requirements to the minimum required for the regulatory agencies to determine that permits are in compliance would allow projects to invest more in infrastructure. Project proponents are typically unable to sustain significant monitoring programs on their own, therefore monitoring should be targeted to actionable

information. Additional monitoring to address regionally relevant issues beyond the project footprint should be shared through a regional monitoring program or similar arrangement.

6. Uncertainty

Agencies often want to see certainty in the quantification of project outputs. However, large-scale voluntary restoration projects often have some degree of uncertainty in the timing and degree of outcome (especially in light of sea level rise and varying suspended sediment concentrations). Regulatory requirements for certain outcomes can discourage experimentation, which could help advance the knowledge of the restoration community. Different agencies have different risk tolerances, and therefore it always comes down to the most conservative agency setting the bar.

7. Level of Design

Agencies often ask for detailed design. But if we spend that money doing advanced design, it is harder to change course in response to agency input. Different agencies have different tolerances for the level of design needed to acquire a permit. Also in the event that final design must be submitted for the permit authorization to be valid, this can result in 45 day or longer time delays for additional permit coordination.

8. Lack of Deference

Agencies can assign additional requirements on habitats/species/water quality/etc. beyond those required by the agency that is primarily responsible of that specific resource. For example, one agency might require additional BMP's to protect the salt marsh harvest mouse beyond what is outlined in the BiOp from the USFWS.

9. Sea-Level Rise

Some agencies have requirements to include long-term planning for expected sea-level rise (SLR). This type of planning is critical for development projects and public infrastructure projects; however, restoration projects generally have a different long-term intent than those required to include SLR in their planning. A restoration project generally seeks to establish a dynamic natural environment that would evolve over time in response to changes such as those involved in SLR. Requiring them to develop and install structures that are adapted to long-term SLR effects may in some cases undercut the primary intent of the restoration.

10. Short-Term Impacts vs. Long-Term Benefits

Agencies necessarily and appropriately require careful analysis and disclosure of construction impacts and even short-term habitat losses that must be weighed against the magnitude, timing, and certainty of long-term benefits. The long-term benefits of a project are not always evaluated when short term minimization and avoidance measures are required. This is particularly true for noise- and other short-term disturbance effects (less so for actual habitat changes like excavating a channel through the marsh to connect the slough with a pond interior).