

SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH, AGENCY AGREEMENTS, AND PERFORMANCE MEASURES

PURPOSE: To improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access infrastructure in San Francisco Bay by dedicating agency representatives to review project information and prepared permit applications for consideration as a team in the most efficient manner.

BACKGROUND: Creating two joint inter-agency restoration teams - Bay Restoration Regulatory Integration Team (BRRIT) and the Policy and Management Team (PMT) - has been agreed upon during meetings held during 2017 and 2018 convened by the Resources Legacy Fund and Dudek with representatives from the US Army Corps of Engineers (Corps), National Marine Fisheries Service (NOAA Fisheries), US Fish and Wildlife Service (USFWS), San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (DFW), and the US Environmental Protection Agency (EPA).

WHAT: Collaboration within the multi-agency teams to ensure timely action and compliance with the following federal and state permitting authorities, including but not limited to: Clean Water Act (CWA) §404, CWA §401 Water Quality Certification, McAtter-Petris Act, Endangered Species Act & Essential Fish Habitat, California Endangered Species Act, California Water Code, CDFW 1600, San Francisco Bay Basin Plan, Suisun Marsh Preservation Act, Rivers and Harbors Act, Coastal Zone Management Act, California fully protected species.

WHERE: Multi-benefit wetland restoration projects in the San Francisco Bay and along the bay shoreline of the nine Bay Area counties, excluding the Delta Primary Zone.

WHY: The San Francisco Bay has an established tidal marsh goal of 100,000 acres, as well as goals for other wetland types, and there is a recommendation to accelerate the pace and scale of tidal marsh restoration, as tidal marshes established by 2030 are more likely to provide ongoing benefits when sea level rise accelerate at mid-century. (Baylands Goals Report, 1999 and 2015). The availability of \$500 million over the next 20 years for wetlands restoration and multi-benefit projects through the passage of Measure AA, and other funding sources, will require timely results and effectiveness of the restoration investments.

WHO:

- 1) Bay Restoration Regulatory Integration Team (BRRIT): To consist of 1.5 Full Time Employee (FTE) Corps, 1 FTE NOAA Fisheries, 1 FTE USFWS, 1 FTE BCDC, 1 FTE CDFW, 1 FTE RWQCB. (Inclusion of 1 FTE from EPA is possible on an ad hoc basis.)

- 2) Policy and Management Team (PMT): To consist of representatives from EPA, Corps, NOAA Fisheries, USFWS, BCDC, RWQCB, State Water Board, CDFW, and may include other entities as needed or suggested.

FUNDING: The estimated cost for the BRRIT is shown in the attached budget, which provides for 6 agencies to be paid for by the San Francisco Bay Restoration Authority and the Coastal Conservancy, and potentially the Santa Clara Valley Water District, East Bay Regional Park District, and others. An estimated \$278,000 will be provided through in-kind matching funds, including but not limited to USACE office space and equipment, and PMT participation. The ability to utilize funding for staff may be subject to hiring constraints applicable to individual participating agencies.

AGENCY AGREEMENTS

The following federal and state agencies agree to work together to form a coordinated permitting approach for multi-benefit wetland restoration projects in the San Francisco Bay and along the shoreline of the nine Bay Area counties, excluding the Delta Primary Zone: U.S. EPA Region 9; U.S. Army Corps of Engineers (Corps), San Francisco District; U.S. Fish and Wildlife Service (USFWS); NOAA National Marine Fisheries Service (NOAA Fisheries); San Francisco Bay Regional Water Quality Control Board (RWQCB); California Department of Fish and Wildlife (DFW); and San Francisco Bay Conservation and Development Commission (BCDC), (“the Agencies”).

The Agencies will form two teams: the Bay Restoration Regulatory Integration Team (BRRIT); and the Bay Restoration Policy and Management Team (PMT). The BRRIT will consist of dedicated staff from each agency to coordinate the review of project information to process and issue permits and other decision documents in a timely fashion. The PMT will be led by agency managers and will coordinate with the BRRIT as necessary to resolve policy issues and provide direction for any elevated project decisions. Projects will be screened for inclusion on the project list for BRRIT review by San Francisco Bay Restoration Authority staff, using the eligibility criteria for San Francisco Bay Restoration Authority funding, as described in Measure AA and associated Requests for Proposals.

AGREEMENT STANDARDS: BRRIT Commitments

By January 2019, a joint BRRIT pre-application process template and application template will be agreed upon by the agencies and used by applicants. The templates will include any necessary information required by any agency to consider a pre-application and an application.

- 1) Agency members of the BRRIT shall be of sufficiently senior civil service rank so as to work directly with their own agency management and the permit applicants to effect substantive changes as needed to ensure project permitting is not stalled.
- 2) The BRRIT will hold regular quarterly meetings and use agreed upon pre-application meeting procedures, which will be readily available to applicants and followed unless mutually agreed upon by the applicant and the agency team. The pre-application procedures will be conducted as follows (see attachment for further details):
 - a. Pre-Application Meeting Step 1
 - i. Applicant will use the pre-application template to submit project information no less than 14 calendar days prior to a regularly-scheduled BRRIT pre-application meeting.
 - ii. The BRRIT will review the project information and formulate questions and/or recommendations regarding project design, and avoidance, minimization, and other potential measures that would help to expedite permitting, will identify potential interagency conflicts, collectively examine possible approaches to solutions, and be prepared to provide direction and/or to recommend such solutions in writing at the Pre-Application Meeting Step 1.
 - iii. As part of Pre-Application Meeting Step 1 (Applicant can request Pre-Application Step 1 meetings be repeated as necessary):
 1. Applicant will present project information and respond to agency questions.
 2. The BRRIT will provide recommendations that will expedite permitting, and will identify potential interagency conflicts and propose solutions. The team will also explain how proposed solutions are derived citing regulatory and statutory requirements, as necessary, to provide a fully transparent process for the applicants. The BRRIT will document discussion of conflicts and proposed solutions.
 3. The BRRIT may conduct a site visit prior to the Pre-Application Meeting Step 2 to further understand potential conflicts and solutions and to provide more meaningful direction.
 - iv. If the BRRIT finds the project as proposed is clear of potential issues and conflicts, they will recommend the applicant's next step is to submit a permit application, Step 3 of the process.
 - v. If the BRRIT identifies potential conflicts and/or solutions, including interagency conflicts and solutions that would need project revisions, the team will recommend the applicant's next step is to update project information, in response to comments received, and present the revised proposal to the BRRIT Team at Pre-Application Meeting Step 2.

- vi. If there are agency substantive issues and/or conflicts remaining that are law- or policy-driven, the BRRIT will document the issue(s) in a letter to the applicant and the PMT, citing the issue(s), the specific law(s) and/or regulation(s) with which the project is not in compliance, and provide recommendations for resolution.
- b. Pre-Application Meeting Step 2
 - i. Applicant will update project description and address identified conflicts. Applicant will submit updated project description no less than 14 calendar days prior to Pre-Application Meeting Step 2.
 - ii. Step 2 Meeting
 - 1. Applicant will present updated project information.
 - 2. Applicant and the BRRIT will resolve outstanding pre-application issues. All substantive project issues and conflicts that are not law- or policy-driven (i.e., permitting of project is not prohibited by existing laws or regulations) shall be resolved at this stage.
 - c. Application Stage Step 3
 - i. The guidance provided by BRRIT in the pre-application procedures will guide the review of project applications consistent to the maximum extent possible with applicable federal and state laws, regulations, and policies.
 - ii. If any agency representative on the BRRIT identifies that a change in guidance is warranted due to a new issue, which must be a significant and unavoidable matter of their agency's law or policy, that would result in a change in previous agency guidance, that agency representative will identify the substantive issue(s) and elevate it to the PMT representative within their specific agency. If the PMT representative confirms that a change in guidance is significant and warranted (i.e., unavoidable matter of law or policy), the BRRIT and the applicant will be notified immediately to set up a meeting to discuss potential solutions. The BRRIT team member generating the issue will lead the process to alter the application and resolve any problems.
 - iii. Application review timelines shall be in accordance with the permitting coordination timelines described in this document at the *BRRIT Performance Measures: Permitting Coordination Timelines* Sections (1) through (4)
- 3) The Corps, in concert with BRRIT, will initiate appropriate, real-time tracking of timelines and other administrative milestones starting with the pre-application process through permit application completion. This will include identifying potential conflicting requirements, and dates of significant interaction with applicant (e.g. document submittal, meetings, etc.). Information tracked will be provided to the funders and applicants on a quarterly basis.

- 4) If major decisions on permit applications would change the overall project or if permit denial is contemplated, the BRRIT will immediately set up a meeting with the applicant to discuss and will inform the PMT.
- 5) Agency members of the BRRIT shall attend pre-application meetings and project site tours as relevant to agency jurisdiction.
- 6) Agency members of the BRRIT shall make every effort to have their respective BRRIT members at USACE offices in San Francisco a minimum of 2.5 days per week. However, agency members of the BRRIT shall meet at the USACE offices in San Francisco a minimum of 5 days per month. BRRIT members will confer regularly on pre-applications and applications.
- 7) BRRIT will conduct outreach to permittees and interested parties as appropriate.

BRRIT PERFORMANCE MEASURES: Permitting Coordination Timelines

- 1) Upon completion of the pre-application process, the project applicant will submit its permit application to each Agency at the same time. The USACE will stamp the permit application with the date of receipt by the USACE, which date will be the Receipt Date. The USACE will notify the Agencies and the project applicant of the Receipt Date. Within thirty (30) calendar days of the Receipt Date, the BRRIT will coordinate their separate agency response letters notifying the project applicant of application completeness or incompleteness. If an agency letter indicates “incompleteness”, the letter will identify specific additional information needed to complete the permit application(s). The BRRIT shall provide such notification within the stated time frame at least 90% of the time.
- 2) USACE will send federal Endangered Species Act Section 7 consultation initiation request letters and Section 106 consultation initiation letters within fifteen (15) days of receiving adequate information from the project applicant to make a determination of effect and initiate consultation. The USFWS and NMFS will confirm initiation of consultation within fifteen (15) days of receiving the Corps’ initiation request letter. The BRRIT shall provide initiation requested letters within the stated time frame at least 90% of the time.
- 3) Project applications for “simple projects” (e.g. such as those requiring a Mitigated Negative Declaration level of CEQA review and that have “no effect” to federal or state threatened or endangered species) will be approved or denied (“processed”) within 120 days of the Receipt Date. The BRRIT shall process simple applications within the stated time frame at least 80% of the time.
- 4) Project applications that require an Environmental Impact Report-level of CEQA review and/or “may effect” federal or state threatened or endangered species will be processed within 210 days of the Receipt Date. The BRRIT shall process complex applications within the stated time frame at least 80% of the time.

AGREEMENT STANDARDS: PMT Commitments

- 1) Agency members of the PMT shall be senior managers with the ability to make management decisions, permit decisions, and coordinate policy changes within their agency.
- 2) The BRRIT will be evaluated by PMT, the San Francisco Bay Restoration Authority and other funders, after its first six (6) months and annually thereafter, to assess performance against the performance measures listed above.
- 3) The PMT will create a system for achieving the policy deliverables identified in the *PMT PERFORMANCE MEASURES: Policy Deliverables* Sections (1) and (2), below. The system will identify policy issues and policy conflicts, include an outline and timeline for resolving the issues presented to them by the BRRIT, and identify a process for elevating issues that require agency policy shifts.

PMT PERFORMANCE MEASURES: Policy Deliverables

- 1) Each agency will actively participate in the development of a single prioritized list of initiatives (Permit and Policy Improvement List) to increase efficiency in permit review and/or resolving policy issues that have been identified as limiting flexibility in the design and permitting of multi-benefit restoration projects (based on the attached “Sand in the Gears” document, known permit efficiencies, 2016 USACE/EPA Collaboration Memo, FAST-41 Act, etc). This list shall be developed within six months of authorization of funding by the San Francisco Bay Restoration Authority, if not earlier.
- 2) Upon establishment of the Permit and Policy Improvement List, at least one (1) initiative identified on the list (in the form of standard operating procedures, new or revised policy, memorandum of agreement, memorandum of understanding, or other agency-to-agency agreement or initiative) shall be developed and implemented within one (1) year. Thereafter, at least one (1) initiative identified from the list will be developed and implemented annually.

Figure 1. BRRIT Process Flow Chart

