SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH

Policy and Management Committee

Permit and Policy Improvement List
Updated April 2020

The Policy and Management Committee (PMC) is part of the coordinated permitting approach agreement, which includes the Bay Restoration Regulatory Integration Team (BRRIT), and whose responsibilities are described in an interagency memorandum of understanding. The PMC is tasked with creating a system to identify and resolve policy issues and conflicts, and to identify a process for elevating issues that require agency policy shifts. The permit and policy improvement list identifies priority issues identified to date and a timeline for addressing the issues in the three categories below with a commitment to implement at least one initiative annually.

1. Issues that have been addressed (initiatives completed through early 2020)
2. Issues that are being addressed during the current calendar year (initiatives currently under way, with an anticipated completion date in 2020)
3. Issues and initiatives requiring further development (no identified initiatives under way, or initial work has begun, but will not be completed until after 2020)

The prioritization categories are primarily based on the timeframes for which resolution of the issues could be achieved, consistent with the agreement. As the PMC begins to work, achieves some success, and faces anticipated challenges (e.g., collaborative decision making among agencies), this list and prioritization will be revised. New issues will be considered as they are brought to the PMT by the BRRIT and stakeholders, and the list will be revised at least annually.

POLICY ISSUES	INITIATIVES
1. Issues addressed by early 2020.	
a. **Type Conversion** To accomplish regional wetland restoration goals, it is necessary to convert one type of wetland habitat to another. For example, currently diked baylands or seasonal wetlands may be converted to tidal baylands. When wetland-to-wetland conversion occurs in the process of restoring a site, some permitting agencies require compensatory mitigation while other agencies do not. Additionally, there are inconsistent approaches as regulators analyze projects and make mitigation decisions. Regulatory decisions need to be supported by robust technical frameworks to avoid additional project costs, lack of regulatory certainty, conflicting requirements, and project delays.	A multi-agency project is underway to develop a science-based framework for assessing habitat type conversion actions in the SF Bay Region and elsewhere. This framework would facilitate consistent and more transparent decision making. EPA is leading the effort with funding and staff while the other agencies are providing staff time. The PMC's goal is to use this effort to agree on a common decision-making approach by the end of 2019. *2020 Update*: The final framework was distributed to agency partners on February 14, 2020. Pilot implementation of the final framework is planned for a project under the BRRIT's purview in 2020.

POLICY ISSUES	INITIATIVES
1. Issues addressed by early 2020, CONTINUED	
b. **Fill for Habitat** Habitat transition zones (e.g., ecotone slope levees, high tide refugia) and other habitat features, (e.g., nesting bird islands) are important features that provide sea level rise resilience. Creating these features requires fill in wetlands or open water, an activity that is limited by some agencies and that often triggers mitigation. Filling areas of existing habitat is linked to habitat conversion issue described above as it converts habitat from one type to another.	The PMC will consider multiple efforts that address this policy issue. Currently, the initiatives described here are under way and the PMC should coordinate with the agencies leading those efforts. The Water Board recently completed grant-funded work to look at policies that may lead to Basin Plan amendments. Those efforts will extend beyond 2019. In the meantime, the Water Board is evaluating its ability to address the issue using existing policies. On July 20, 2017, BCDC approved consideration of an amendment to the San Francisco Bay Plan to allow additional fill policies for habitat projects. The amendment process is now underway, supported by the Commission's Bay Fill Policies Working Group, a committee of 5 Commissioners, including Water Board, EPA, and USACE representatives. Water Board, EPA, and USACE representative participation is intended to facilitate crosswalk policy discussions between BCDC and these agencies, specifically Clean Water Act Section 401 and 404 permitting. Coordination with the PMC would assist in creating permit consistency. The Bay Plan amendment process was completed on October 3, 2019.

POLICY ISSUES	INITIATIVES
2. Issues that may be addressed during the current calendar year (initiatives currently under way).	
a. **Elevation and Resolution of Issues** The PMC has begun to develop a process for both the BRRIT and itself, and has discussed, but not yet finalized, an agreed-upon process for resolving issues elevated to the PMT from the BRRIT. This process will necessitate consideration of each agency's law, policies, and authority. A decision-making process must be identified and agreed upon by the PMC prior to elevating issues.	The PMC initiated this discussion in 2019. *2020 Update*: Informal elevation of project issues has occurred with BRRIT's first two projects, India Basin/900 Innes and Lower Walnut Creek. A BRRIT and PMC communication protocol for identifying and elevating issues has been drafted for review by the PMC and BRRIT. Protocols for elevating issues are planned to be finalized by spring 2020.
b. **Wetland Monitoring** Regulatory agencies include monitoring requirements in their permits to evaluate project success. However, there can be a lack of consistency between these monitoring requirements. The cost of monitoring requirements can be burdensome and associated funding is difficult to obtain. Large scale, long-range restoration projects have greater levels of uncertainty related to timing and successful habitat outcomes, especially in light of climate change and sediment availability. Uncertainty is difficult to address in the currently regulatory framework. Project proponents and agencies need the ability to experiment and tolerate risk consistently to address the dynamic, systemic changes that are occurring.	1. **The Wetlands Regional Monitoring Project (WRMP).** The San Francisco Estuary Partnership is working with stakeholders through an EPA grant to develop a tidal wetland regional monitoring plan for the Bay Area. The plan will include recommendations for funding and data management. The plan is expected to be completed in late 2019. *2020 Update*: SFEP has additional EPA funding to continue planning the WRMP through 2021. The scientific framework for the WRMP was completed in early 2020. Program elements that will continue to be developed through 2021 include an implementation plan that describes a funding and governance structure, and a data management plan. 2. **Fisheries Monitoring Framework.** NMFS is working to develop a fish monitoring framework for restoration projects in the greater SF Bay region. The framework will identify and provide monitoring guidance for inclusion in project-specific monitoring plans and resources for standardized monitoring methods to determine the effectiveness of restoration projects for fish. 3. **Wetland Habitat Assessment Team (WHAT).** BCDC's internal habitat and restoration science and policy working group educates new staff, discusses and evaluates projects and monitoring reports, identifies BCDC permit compliance issues, and seeks regulatory program improvements. 4. **RIPTIDES Internship Program.** RIPTIDES is a partnership between BCDC, SFSU, and the San Francisco Bay National

	Ecological Estuarine Research Reserve working with master's students to analyze the success of San Francisco Bay wetland restoration and mitigation projects and the outcomes of wetland monitoring that is required in BCDC permits.
c. Permitting inconsistencies related to State and Federal Endangered Species Acts, and Fully Protected Species (e.g., salt marsh harvest mouse, Ridgway's rail, peregrine falcon, brown pelican). Specifically, restoration projects may have long-term benefits to special-status species, but project construction and establishment can have the potential to result in significant short-term impacts. Under the State Fish and Game Code, CDFW is unable to issue permits to take or possess a fully protected species. However, CDFW may authorize the taking of a fully protected species for necessary scientific research, including efforts to recover fully protected species.	Working with the Lower Walnut Creek Restoration Project, CDFW has initiated consultation with the intent to issue a fully protected species permit if the project can demonstrate that the restoration will contribute to the recovery of the fully protected salt marsh harvest mouse. Through this effort, CDFW is developing guidance to assist other large-scale restoration projects that may cause take of fully protected species during restoration activities.
d. Develop guidance for project applicants	Restoration projects often have similar issues and, while knowledge may reside in particular project proponents or consultants, there is an opportunity to facilitate project development and permitting by completing FAQs and providing other guidance, such as typically approved management practices and example biological opinions. BRRIT staff will work to develop guidance for project proponents over the course of 2020, making it available on the BRRIT web page, with the goal of finalizing available guidance by the end of 2020, to help project proponents address simple questions that may repeatedly arise.

3. Issues and initiatives requiring further development (no identified initiatives under way, or work has begun, but is unlikely to be completed during the current calendar year).

POLICY ISSUES	**INITIATIVES**
a. **Public Access and Wildlife Compatibility** BCDC is the only regulatory resource agency that includes public access requirements in its permits. Other agencies require minimization of public access to protect habitat value. These potentially conflicting mandates create uncertainty for project applicants in designing a permittable restoration project and can result in project design delays.	In 2012, BCDC amended the Bay Plan Public Access policies to address potential conflict between protecting wildlife and encouraging public access in habitat areas. The PMT should revisit these policies and the associated report, review the current science and recreation trends, and discuss their findings in order to address this concern. BCDC will be undertaking a Bay Plan amendment process to address the larger issue of public access and rising sea levels, likely within the next 3 years.
b. Lack of collaborative decision-making among agencies. c. Upland alternatives to fill for habitat. d. Protecting single species in the context of larger, holistic restoration goals. e. Short-term impacts of wetland restoration activities vs. long-term benefits of the overall wetland restoration. f. Restoring watershed to Bay connection to improve sediment supply to baylands.	