

SAN FRANCISCO BAY RESTORATION AUTHORITY

Staff Recommendation
June 1, 2018

BAY RESTORATION REGULATORY INTEGRATION TEAM

Project No. RA-009
Project Manager: Amy Hutzel

RECOMMENDED ACTION: Authorization to disburse up to \$650,000 annually over five years and authorization to accept and disburse up to \$600,000 of additional funds annually for five years (to be adjusted annually by the Consumer Price Index), to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Services, National Marine Fisheries Service, California Department of Fish and Wildlife, San Francisco Bay Conservation and Development Commission, and San Francisco Bay Regional Water Quality Control Board to establish and operate a Bay Restoration Regulatory Integration Team.

LOCATION: All nine San Francisco Bay Area counties

MEASURE AA PROGRAM CATEGORIES: Safe, Clean Water and Pollution Prevention Program; Vital Fish, Bird and Wildlife Habitat Program; Integrated Flood Protection Program; and Shoreline Public Access Program.

EXHIBITS

Exhibit 1: [Agency Agreements and Performance Measures](#)

Exhibit 2: [Common Challenges in Permitting: Sand in the Gears](#)

Exhibit 3: [Project Letters](#)

RESOLUTION AND FINDINGS:

Staff recommends that the San Francisco Bay Restoration Authority adopt the following resolution pursuant to The San Francisco Bay Restoration Authority Act, Gov. Code §§ 66700-66706:

“The San Francisco Bay Restoration Authority hereby authorizes the disbursement of an amount not to exceed six hundred and fifty thousand dollars (\$650,000) annually for up to five years, adjusted annually by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (“CPI”), and acceptance and disbursement of an amount not to exceed six hundred thousand dollars (\$600,000) annually for up to five years, adjusted annually as measured by CPI, to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Services, National Marine Fisheries Service, California Department of Fish and Wildlife, San Francisco Bay Conservation and

Development Commission, and San Francisco Bay Regional Water Quality Control Board (agencies) to establish and operate a Bay Restoration Regulatory Integration Team (BRRIT). Prior to commencement of work on the BRRIT by each agency, the San Francisco Bay Restoration Authority shall enter into an agreement with each agency that includes a budget, agency responsibilities, performance measures, and the obligation of each agency to participate in the Policy and Management Team. The San Francisco Bay Restoration Authority shall annually evaluate the BRRIT, review the evaluation at a public board meeting, and make a determination whether to terminate the agreements with each agency.”

Staff further recommends that the Authority adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the San Francisco Bay Restoration Authority hereby finds that:

1. The proposed authorization is consistent with The San Francisco Bay Restoration Authority Act, Gov. Code §§ 66700-66706.
2. The proposed authorization is consistent with The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA).”

PROJECT SUMMARY:

Staff recommends that the San Francisco Bay Restoration Authority (Authority) authorize disbursement of funds, and the acceptance and disbursement of additional matching funds, to support the formation and operation of a Bay Restoration Regulatory Integration Team (BRRIT). The objective of the BRRIT is to improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access projects in San Francisco Bay by dedicating agency representatives to review project information for consideration as a team and process permit applications in the most efficient possible manner.

The regulatory process as it exists now is one of the most significant hurdles to accelerating the pace and scale of wetlands restoration in San Francisco Bay. Project applicants face significant uncertainties in terms of the time required to secure all necessary state and federal permits. Uncertain construction schedules due to permitting and permit-associated delays slow the overall pace of wetlands restoration. Lengthy timeframes for environmental compliance and permitting also increase project costs. Projects of all scales and complexities are impacted, but project applicants with limited resources face greater challenges in navigating the regulatory system.

In addition to uncertain schedules and permitting delays, wetland restoration projects face policy challenges due to existing laws and regulations intended to protect resources. Conversion of wetland type, short-term impacts on listed species, and conflicts between wildlife and public access are three examples of policy issues that can result in regulatory delays, the need for additional analysis, and/or changes to restoration project design. *Common Challenges in Permitting: Sand in the Gears* is attached as Exhibit 2 and further details these policy issues.

With the passage of Measure AA, the restoration community has the opportunity to plan and implement an increasing number of restoration projects in San Francisco Bay. The Baylands Ecosystem Habitat Goals Science Update stresses the urgency of this work, stating that “tidal

marshes that are established by 2030 are more likely to flourish and provide ongoing benefits when the sea-level-rise accelerates in the middle of this century. The planning, permitting, and construction of restoration projects on currently available lands must be accelerated.”

Starting in early 2017, the Bay Area Council, Silicon Valley Leadership Group, and Resources Legacy Fund began convening a group of restoration practitioners and the state and federal regulatory and resource agencies to discuss ways to improve the permitting process for multi-benefit wetlands restoration projects in San Francisco Bay. Dudek, a consultant to Resources Legacy Fund, conducted an assessment of the regulatory challenges and developed a proposal for a coordinated pre-application process. Based on this work, U.S. Environmental Protection Agency (USEPA) staff facilitated a series of meetings with the six state and federal regulatory and resource agencies: San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (DFW), U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). The agencies reached agreement on a proposal, with agreements and performance measures (Exhibit 1).

The proposed coordinated permitting approach entails two teams: the BRRIT, with dedicated staff from each agency to coordinate review of projects, process permits in a timely fashion, and identify policy issues, as well as a Policy and Management Team (PMT), to review permitting issues and provide guidance on policy shifts recommended by the BRRIT. The BRRIT staff would be supported with Authority and matching funds, while the work of the PMT members would be in-kind contributions from the agencies. USACE would provide office space for the BRRIT members, also as an in-kind contribution.

Multi-benefit wetland restoration projects that are deemed eligible for Measure AA funding by the Authority staff will be able to follow the pre-application and application processes described in Exhibit 1. The pre-application process includes a pre-application meeting in which the applicant presents project information. The BRRIT will provide recommendations for expediting permitting and identify and document potential conflicts and proposed solutions. The BRRIT will conduct site visits as necessary. If projects are clear of potential issues and conflicts, applicants can move to a permit application. If conflicts are identified by the BRRIT, an additional pre-application meeting will occur, focused on resolving outstanding issues, so that project applicants can submit their application. USACE will track timelines and milestones associated with the pre-application and application process, including identification of potential conflicting requirements. The pre-application process is intended to help ensure that when permit applications are submitted, they are complete and any regulatory issues and conflicts have been resolved, unless there is a legal or regulatory conflict. The current delays in permitting are often due to permit applications being deemed incomplete due to missing information or unresolved regulatory issues. In addition, the agencies currently are not working as a coordinated team and so project conflicts can be difficult to resolve.

The BRRIT will be evaluated by the PMT and the San Francisco Bay Restoration Authority and other funders after the first six months and annually thereafter. Performance will be measured against the following:

- The BRRIT will notify project applicants with letters of application completeness or incompleteness within 30 days of receipt of permit application, at least 90% of the time.

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- USACE will send consultation initiation request letters to USFWS and NMFS within 15 days of receipt of adequate information from the project applicant, and USFWS and NMFS will confirm initiation of consultation within 15 days of receipt of letters from USACE, at least 90% of the time.
- Project applications for “simple” projects will be processed by the BRRIT within 120 days of receipt of the application, at least 80% of the time.
- Project applications for “complex” projects will be processed within 210 days of receipt of the application, at least 80% of the time.

“Simple” projects are projects such as those requiring a Mitigated Negative Declaration under CEQA and that have “no effect” to federal or state threatened or endangered species. “Complex” projects are projects that require an Environmental Impact Report-level under CEQA and/or that “may effect” federal or state threatened or endangered species

The PMT’s performance will be measured on their ability to deliver the following:

- A single, prioritized Permit and Policy Improvement List within 6 months of funding authorization for the BRRIT.
- Development and implementation of at least one initiative from the Permit and Policy Improvement List each year.

The Silicon Valley Leadership Group, Bay Area Council, and Resources Legacy Fund convened the agencies and organizations that developed this proposal to coordinate permitting of multi-benefit wetland restoration projects. In addition, USEPA staff facilitated meetings of the regulatory and resource agencies, USACE, RWQCB, BCDC, DFW, NMFS, and USFWS, to gain consensus on the proposal. Restoration practitioners that were involved included staff from Ducks Unlimited, Audubon California, San Francisco Bay National Wildlife Refuge Complex, State Coastal Conservancy, Santa Clara Valley Water District, and East Bay Regional Park District. The proposal was presented to the San Francisco Bay Restoration Authority’s Advisory Committee at their March 9, 2018 meeting and then taken to their May 4, 2018 meeting for a vote on recommendation of the proposal. The vote was 9 people in support and 4 opposed, with 4 abstaining because they represent an agency that could be funded. Letters are attached as Exhibit 3.

PROJECT FINANCING

San Francisco Bay Restoration Authority	up to \$650,000 annually for up to five years, adjusted annually by the CPI
Others	up to \$600,000 annually for up to five years, adjusted annually by the CPI
Project Total	up to \$1,250,000 annually for up to five years, adjusted annually by the CPI

San Francisco Bay Restoration Authority staff are investigating sources of matching funds from Santa Clara Valley Water District, State Coastal Conservancy, and others. The BRRIT will not be implemented until sufficient matching funds are secured to fund the total project cost for at least the first year.

In addition to the monetary contributions above, the six state and federal regulatory and resource agencies will provide in-kind services to staff the Project Management Team as well as office space. The value of these in-kind services is estimated to be \$242,000 in the first year, increasing each year to \$347,000 in year 5. In addition, Resources Legacy Fund anticipates that its consultant, Dudek, will continue to provide technical assistance during 2019.

CONSISTENCY WITH AUTHORITY’S ENABLING LEGISLATION, THE SAN FRANCISCO BAY RESTORATION AUTHORITY ACT:

The San Francisco Bay Restoration Authority Act (Act) establishes the Authority to raise and allocate resources for the restoration, enhancement, protection, and enjoyment of wetlands and wildlife habitats in the San Francisco Bay and along its shoreline. Gov. Code § 66702(c). The Act gives the Authority the power to enter into contracts to carry out the purpose of the Act and to grant funds for eligible projects. Gov. Code §§ 66704, 66704.5. The Act makes clear that Authority grants can cover the costs of all phases of project planning and construction. Gov. Code § 66704.5(e). The BRRIT would be funded through contracts pursuant to the Authority’s explicit contracting power. The BRRIT would provide the regulatory permits that are required for eligible projects and that are typically obtained in the late planning phase of a project. The BRRIT would only be used for projects that are eligible for Measure AA funds. By expediting permitting for eligible projects, the BRRIT would help achieve restoration, enhancement, and protection of wetlands and habitats in San Francisco Bay and along its shoreline. Thus, funding the BRRIT is consistent with the Act.

CONSISTENCY WITH MEASURE AA PROGRAMS AND ACTIVITIES:

Measure AA provides that the purpose of the parcel tax is to support the “programs and priorities and purposes” of Measure AA, which are listed below. The tax revenues must be spent for those purposes in accordance with the procedures and limitations set forth in the Measure. The BRRIT is consistent with these purposes because it would support Measure AA programs by reducing delays and project costs associated with obtaining regulatory permits for projects that qualify for Measure AA grants.

Within the broader purpose of the tax to support the programs and priorities of Measure AA, the tax revenues must be spent for either “general government purposes” or “projects for the benefit of the San Francisco Bay Area.” (See Measure AA Sections 3.B.6. and 3.C.3.) The BRRIT would provide an improved regulatory permitting process for Measure AA-eligible projects. The cost of permitting is typically not a government administrative cost but rather a project-related cost that is included within the scope of a grant for a project. Funding the BRRIT is akin to the Authority paying directly for a Measure AA-eligible project-related cost rather than through a grant. Further, the BRRIT as a program could be considered a project that benefits the Bay Area

by expediting restoration and addressing policy issues that delay restoration. Thus, funding the BRRIT constitutes an expenditure of the tax revenues for projects that benefit the Bay Area.

The proposed project is expected to benefit all of Measure AA's four programs:

- The *Safe, Clean Water and Pollution Prevention Program's* purpose is to remove pollution, trash and harmful toxins from the Bay in order to provide clean water for fish, birds, wildlife and people.
- The *Vital Fish, Bird and Wildlife Habitat Program's* purpose is to significantly improve wildlife habitat that will support and increase vital populations of fish, birds, and other wildlife in and around the Bay.
- The *Integrated Flood Protection Program's* purpose is to use natural habitats to protect communities along the Bay's shoreline from the risks of severe coastal flooding caused by storms and high water levels.
- The *Shoreline Public Access Program's* purpose is to enhance the quality of life of Bay Area residents, including those with disabilities, through safer and improved public access, as part of and compatible with wildlife habitat restoration projects in and around the Bay.

CONSISTENCY WITH MEASURE AA PRIORITIZATION CRITERIA:

1. **Greatest positive impact.** The BRRIT will positively impact the pace and scale of multi-benefit wetland restoration projects throughout San Francisco Bay. Coordinated permitting should accelerate the restoration community's ability to move projects through planning and into construction and allow for a larger number of projects to move forward and apply for Measure AA funds. This effort will also serve to expand the benefit of Authority support to a greater number of projects by providing improved permitting for Measure AA-eligible projects that do not end up receiving Measure AA grants.
2. **Greatest long-term impact.** The BRRIT will significantly change the way multi-benefit wetland restoration projects in San Francisco Bay are permitted, expediting permitting by having all of the agencies review in parallel and early in a project's planning and environmental review process. In addition, the PMT will address policy issues to increase efficiencies in permitting. Both the changes in the permitting process and implementation of policy improvements will have a long-term impact on restoration of San Francisco Bay.
3. **Leveraging resources and partnerships.** "See PROJECT FINANCING section above.
4. **Economically disadvantaged communities.** While the BRRIT will process permits for Measure AA-eligible projects throughout San Francisco Bay, benefitting projects large and small, there is a strong potential that this coordinated permitting process will most benefit projects that are being implemented by local agencies or nonprofits with limited capacity, including in economically disadvantaged communities. These entities have a greater challenge in navigating the permitting process due to limited staff or limited funding for

consultants. The BRRIT will also be providing workshops and public meetings to further aid entities in applying for permits for multi-benefit wetland restoration projects.

5. **Benefits to economy.** Expediting permitting and increasing the pace of multi-benefit restoration projects will positively impact the economy.

6. **Coastal Conservancy's San Francisco Bay Area Conservancy Program.** The project is consistent with the Conservancy's San Francisco Bay Area Conservancy Program's Criteria, in that it is multijurisdictional and serves a regional constituency; can be implemented in a timely way; provides opportunities for benefits that could be lost if the project is not quickly implemented; and includes matching funds from other sources of funding or assistance.

COMPLIANCE WITH CEQA:

The California Environmental Quality Act (CEQA) requires that public entities conduct environmental review prior to approving or funding a project. The CEQA Guidelines at 14 Cal. Code Regs. § 15378(b)(5) provide that the term "project" excludes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. The BRRIT will involve only permit review and consultation activities, which are administrative activities of governments that do not directly affect the environment. Therefore, the BRRIT is not a "project" within the meaning of CEQA and funding the BRRIT does not trigger the requirement for environmental review under CEQA.

The projects described in the applications processed by the BRRIT will undergo review under CEQA before they are funded or approved.