

COASTAL CONSERVANCY

Staff Recommendation
September 6, 2018

SAN FRANCISCO BAY RESTORATION REGULATORY INTEGRATION TEAM

Project No. 18-019-01
Project Manager: Amy Hutzal

RECOMMENDED ACTION: Authorization to disburse up to \$1,250,000 to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, 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 operate the Bay Restoration Regulatory Integration Team for five years.

LOCATION: All nine San Francisco Bay Area counties

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

- Exhibit 1: [Agency Agreements and Performance Measures](#)
 - Exhibit 2: [Common Challenges in Permitting: Sand in the Gears](#)
 - Exhibit 3: [Project Letters](#)
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RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31160-31165 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed one million, two hundred and fifty thousand dollars (\$1,250,000) to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Wildlife, San Francisco Bay Conservation and Development Commission, and/or San Francisco Bay Regional Water Quality Control Board (agencies) to operate the Bay Restoration Regulatory Integration Team (BRRIT) for a five year period subject to the following conditions:

1. Prior to commencement of the BRRIT, each agency shall submit for the review and written approval of the Executive Officer of the Conservancy (Executive Officer) a detailed work program, schedule, and budget.
 2. Each agency shall participate in the Policy and Management Team.
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3. Each agency shall report annually on their ability to meet the performance measures set forth in Exhibit 1.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with Chapter 4.5 of Division 21 of the Public Resources Code, regarding the San Francisco Bay Area Conservancy Program.
 2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.”
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PROJECT SUMMARY:

Staff recommends that the Conservancy authorize disbursement of funds to operate the San Francisco Bay Restoration Regulatory Integration Team (BRRIT). The BRRIT consists of an interagency team of dedicated staff working together to coordinate agency processing of permit applications to make the permit process more efficient. The objective of the BRRIT is to accelerate the pace of wetland restoration in the Bay by improving the permitting process for multi-benefit wetland restoration projects and associated flood management and public access projects in San Francisco Bay.

The San Francisco Bay Restoration Authority, at their June 1, 2018 meeting, authorized expenditure of \$650,000 annually for the next five years to support the operation of the BRRIT (with annual increases based on the Consumer Price Index [CPI]). This represents over half of the total cost to operate the BRRIT. The Conservancy’s contribution, along with funding from two to three other public agencies, will enable the BRRIT to commence operating in a timely fashion.

The regulatory process 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, which typically includes those pursuing wetlands restoration, 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, all of which slow the pace and scale of wetlands restoration. *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, which generates \$25 million annually for 20 years for baylands restoration, 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.” In addition, Proposition 68, which passed in June of 2018, includes \$20 million to the Conservancy to match projects funded by the San Francisco Bay Restoration Authority.

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 for a coordinated permitting approach and performance measures (Exhibit 1).

The proposed coordinated permitting approach entails two interagency staff teams: the BRRIT, to coordinate review of projects, process permit applications in a timely fashion, and identify policy issues; and the Policy and Management Team (PMT), to review policy issues identified by the BRRIT and recommend policy shifts to address the issues. The agencies lack sufficient funding to carry out the coordinated permitting approach. The agencies are seeking funding to operate the BRRIT but will provide the work of the PMT members as in-kind contributions from the agencies. USACE will 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 San Francisco Bay Restoration 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, with the exception of those issues that are policy issues

that require a policy shift. 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 effectiveness of the BRRIT will be evaluated by the PMT and the San Francisco Bay Restoration Authority, Conservancy, and other funders after the first six months and annually thereafter. Performance will be measured against the following:

- Agencies will notify project applicants of application completeness or incompleteness within 30 days of agency receipt of the permit application, at least 90% of the time.
- 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 each agency within 120 days of receipt of the application, at least 80% of the time.
- Project applications for “complex” projects will be processed by each agency 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 under CEQA and/or that “may effect” federal or state threatened or endangered species.

The effectiveness of the PMT will be measured by the agencies’ ability to deliver the following:

- A single, prioritized Permit and Policy Improvement List identifying policy issues within 6 months of funding authorization for the BRRIT.
- Implementation of PMT-recommended policy shift(s), for at least one issue from the Permit and Policy Improvement List each year.

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 San Francisco Bay Restoration Authority’s Governing Board authorized funding at their June 1, 2018 meeting.

PROJECT FINANCING

Coastal Conservancy

\$250,000 annually for five years

San Francisco Bay Restoration Authority	\$650,000 annually for five years, adjusted annually by the CPI
Santa Clara Valley Water District (pending)	\$200,000 annually for five years
Other local public agencies (pending)	\$150,000 annually for five years
Project Total	\$1,250,000 annually for five years

The expected source of Conservancy funding for the project is the fiscal year 2018/19 appropriation to the Conservancy from the “California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018,” Public Resources Code Section 80000, et seq. (Proposition 68) for purposes of Chapter 8, Section 80110(b)(10), which allocates funds for projects that are eligible for grants under the San Francisco Bay Restoration Authority Act, Government Code Section 66700, et seq (Restoration Authority Act). Projects eligible for grants under the Restoration Authority Act are those that protect, restore or enhance tidal wetlands, managed ponds or natural habitats on the shoreline in the San Francisco Bay area (resource protection projects) or that provide flood protection or public access as part of a resource protection project. Government Code Section 66704.5. Funding the BRRIT is an appropriate use of Proposition 68 Chapter 8 funds because the BRRIT will expedite the permitting of projects that are eligible for Restoration Authority Act grants. Section 80110(b)(10) requires a matching grant for Conservancy grants under this subsection, which is met by the San Francisco Bay Restoration Authority’s contribution of \$650,000 annually for the BRRIT.

San Francisco Bay Restoration Authority and Conservancy staff are investigating sources of matching funds from Santa Clara Valley Water District, East Bay Regional Park District, and other local public agencies in the San Francisco Bay Area. The BRRIT will not be implemented until sufficient 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 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 CONSERVANCY’S ENABLING LEGISLATION:

The proposed project would be undertaken pursuant to Chapter 4.5 of the Conservancy’s enabling legislation, Public Resource Code (PRC) Sections 31160-31165, which provides that the Conservancy may award grants in the nine-county San Francisco Bay Area to help achieve the goals of the San Francisco Bay Area Conservancy Program.

Pursuant to PRC Section 31162(b), the Conservancy may undertake projects and award grants to help achieve the restoration and enhancement of natural habitats. The purpose of the BRRIT is to accelerate the permitting and implementation of multi-benefit wetland restoration projects in and around San Francisco Bay.

Pursuant to PRC Section 31163(b), the Conservancy is authorized to support interagency actions in the San Francisco Bay Area for the purpose of achieving the goals of the San Francisco Bay Area Conservancy Program. This project involves interagency coordination to improve the regulatory process for multi-benefit wetland restoration projects and thereby accelerate the pace of such projects.

This project is appropriate for prioritization under the selection criteria set forth in Section 31163(c) in that: (1) it is supported by adopted local or regional plans such as The San Francisco Estuary Project's 2016 Estuary Blueprint, which calls for sustaining and improving the Estuary's habitats and bolstering the resilience of Estuary ecosystems, shorelines, and communities to climate change; (2) the BRRIT will benefit projects throughout the entire nine-county Bay Area; (3) the BRRIT is anticipated to be fully funded and established by early 2019; (4) the BRRIT will provide an opportunity to accelerate restoration and provide ecosystem and shoreline resilience benefits that could be lost if not quickly implemented, due to sea level rise; and (5) Conservancy funds would be leveraged at a 1:4 ratio.

CONSISTENCY WITH CONSERVANCY'S 2018-2022 STRATEGIC PLAN GOALS & OBJECTIVES:

Consistent with **Goal 8, Objective B**, the BRRIT will accelerate the development of adaptation projects to address sea level rise in San Francisco Bay that incorporate nature-based, multi-benefit measures.

Consistent with **Goal 12, Objective C**, the BRRIT will aid in the completion of plans for enhancement of tidal wetlands, managed wetlands, seasonal wetlands, upland habitat and subtidal habitat in and along the shoreline of San Francisco Bay.

Consistent with **Goal 15, Objective B**, the BRRIT is a regional collaborative that furthers Conservancy goals and objectives and supports the work of partner organizations.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on October 2, 2014, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Promotion and implementation of state plans and policies:** The BRRIT will accelerate projects that help implement the following plans:

CA Climate Adaptation Strategy/Safeguarding California: Reducing Climate Risk Plan (2009, updated July 2014). The plan identifies “Actions Needed For Safeguarding Ocean and Coastal Ecosystems and Resources”, including “Support Pilot Projects for Innovative Shoreline Management Techniques” and “Continue to Study and Support Investment in Cost Effective Green Infrastructure to Reduce Flood Risk and Stormwater Runoff and to Maximize Associated Co-Benefits”. The plan also identifies “Actions Needed to Safeguard Biodiversity and Habitats, including “Promote Nature-Based Solutions for Adapting to Climate Risks” and “Create and maintain partnerships that support biodiversity conservation in a changing climate”.

California Water Action Plan (2014). The BRRIT helps achieve Goal #4, Protect and Restore Important Ecosystems as San Francisco Bay restoration is one of 10 “large-scale habitat projects along the California coast in strategic coastal estuaries to restore ecological health and natural system connectivity, which will ... help defend against sea level rise”. In addition, the BRRIT supports Goal #8, Increase Flood Protection, which calls for flood protection projects that achieve multiple benefits including through floodplain restoration.

California @ 50 Million: The Environmental Goals and Policy Report (2013 Draft). Key Action #3 of the “Preserve and Steward State Lands and Natural Resources” calls for building resilience in natural systems and specifically points out that wetlands “provide important carbon sequestration opportunities for the state.”

State Wildlife Action Plan (2015). The project will further the following two objectives in the Bay-Delta and Central Coast Conservation Strategies section: “Restore 60,000 acres of salt-marsh habitat; acquire, protect, enhance, or restore salt-marsh habitat in the Bay Delta,” and “Support for the Coastal Conservancy and others to implement established priorities and conservation goals in San Francisco Bay” and the following Conservation Action: “Develop, fund, and implement conservation actions, land acquisition, and management plans as part of... the South San Francisco Bay Salt Pond Restoration Project, the Invasive Spartina Project, the San Francisco Baylands Ecosystem Habitat Goals Update, and the San Francisco Bay Subtidal Habitat Goals Project”.

4. **Support of the public:** See attached letters from the six state and federal regulatory and resource agencies, San Francisco Estuary Institute, Bay Area Council, Silicon Valley Leadership Group, South Bay Salt Pond Restoration Project, Sonoma Land Trust, SPUR, Port of San Francisco, Santa Clara Valley Water District, and Bay Planning Coalition.
5. **Location:** The BRRIT will benefit projects in and around San Francisco Bay.
6. **Need:** Conservancy funding is critical to allowing for the formation and operation of the BRRIT for the next five years.
7. **Greater-than-local interest:** 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. Both the changes in the permitting process and implementation of policy improvements will have a long-term, regional impact on restoration of San Francisco Bay.
8. **Sea level rise vulnerability:** Due to their location, all tidal wetland restoration projects can be vulnerable to sea-level rise impacts. However, once the marsh plain of a restored wetland

is colonized by vegetation, marshes become efficient sediment traps. The sooner that restoration projects are implemented, the more likely they are to keep up with sea level rise.

Additional Criteria

9. **Urgency:** The Baylands Ecosystem Habitat Goals Science Update stresses the urgency of restoration work in San Francisco Bay, 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.”
10. **Resolution of more than one issue:** The BRRIT will review and accelerate permitting for multi-benefit wetland restoration projects and associated coastal flood risk management and public access and recreation elements of restoration projects.
11. **Leverage:** See the “Project Financing” section above.
12. **Conflict resolution:** The PMT is charged with developing a prioritized Permit and Policy Improvement List and implementing a policy shift for at least one policy issue from the Permit and Policy Improvement List each year, in order to resolve ongoing policy issues that limit implementation of wetland restoration.
13. **Innovation:** 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.
14. **Readiness:** As soon as all of the necessary funds are secured, agreements will be executed with the six state and federal regulatory and resource agencies, who are already preparing to hire or assign staff. The goal is to have the BRRIT established by January of 2019.
15. **Realization of prior Conservancy goals:** Conservancy-supported projects, such as the South Bay Salt Ponds Restoration Project, Hamilton and Bel Marin Keys Restoration, Napa-Sonoma Marshes, Yosemite Slough, and many other large and small restoration projects in San Francisco Bay, will benefit from a coordinated, multi-agency effort to address both permitting timeframes and policy issues that limit the pace and scale of wetlands restoration.
16. **Cooperation:** The development of this proposal has been a year-long collaborative effort involving staff from all six state and federal regulatory and resource agencies, US EPA, Bay Area Council, Silicon Valley Leadership Group, Resources Legacy Fund, San Francisco Bay Restoration Authority, and multiple wetland restoration project proponents, including the Conservancy.

CONSISTENCY WITH SAN FRANCISCO BAY PLAN:

The BRRIT will be focused on reviewing permit applications for multi-benefit wetland restoration projects in San Francisco, and BCDC staff will evaluate each project’s consistency with the San Francisco Bay Plan (Reprinted March 2012), including the following policies:

Part III: The Bay as a Resource

Fish, Other Aquatic Organisms and Wildlife (p. 16)

- To assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.

Water Quality (p.19)

- The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.

Water Surface Area and Volume (p. 20)

- Water circulation in the Bay should be maintained, and improved as much as possible.

Tidal Marshes and Mudflats (p. 23-24)

- Where a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats.
- Where feasible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife.
- Any ecosystem restoration project should include clear and specific long-term and short-term biological and physical goals, and success criteria, and a monitoring program to assess the sustainability of the project.

Part IV: Development of the Bay and Shoreline

Public Access (pp. 67-68)

In addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided.

Public access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife is sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided.

CEQA COMPLIANCE:

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 and the PMT will involve only permit review and consultation activities, which are administrative activities of governments that do not directly affect the environment. Therefore, the proposed coordinated permitting approach, entailing operation of the BRRIT and PMT, 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.