

COASTAL CONSERVANCY

Staff Recommendation
December 11, 2003

SAN FRANCISCO BAY PLAN IMPLEMENTATION ASSISTANCE

File No. 03-152
Project Manager: Nadine Hitchcock

RECOMMENDED ACTION: Authorization to accept \$30,170 from the San Francisco Bay Conservation and Development Commission to assist the Commission with implementation of the Bay Plan, and further authorization to disburse an amount not to exceed \$30,170 to the Richardson Bay Regional Agency for fish and wildlife habitat enhancement.

LOCATION: Richardson Bay, Marin County (Exhibit 1)

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

Exhibit 1: Project Location and Site Map

Exhibit 2: Request for Assistance from the San Francisco Bay Conservation and Development Commission

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes acceptance from the San Francisco Bay Conservation and Development Commission of thirty thousand one hundred seventy dollars (\$30,170) to assist the Commission with implementation of the San Francisco Bay Plan, in accordance with a permit which was the mechanism for obtaining the funds; and further authorizes disbursement of these funds to the Richardson Bay Regional Agency (Agency) to carry out habitat enhancement in Richardson Bay.

The authorization to disburse funds to the Agency is subject to the condition that prior to disbursement of any Conservancy funds, the Agency shall submit for the review and written approval of the Executive Officer of the Conservancy:

1. A work program, budget and schedule for the project.
2. The names and qualifications of any contractors that the Agency intends to employ to carry out the project.

3. Evidence that the Agency has obtained all applicable permits and approvals for the project.”

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 Public Resources Code Sections 31160-31164 regarding the San Francisco Bay Area Conservancy Program.
2. The proposed Richardson Bay project is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.”

PROJECT SUMMARY:

Staff recommends that the Conservancy authorize acceptance from the San Francisco Bay Conservation and Development Commission of \$30,170, derived from a payment required by a certain development permit issued by the Commission, to assist the Commission with implementation of the San Francisco Bay Plan. Staff further recommends that the Conservancy authorize disbursement of these funds to the Richardson Bay Regional Agency (Agency) to carry out habitat enhancement in Richardson Bay.

The Commission has requested Conservancy assistance with administering some \$2.3 million which it has collected pursuant to development permit conditions. A current interpretation of the Commission’s authority calls into question its ability to disburse these funds itself (Exhibit 2). The Commission has determined the public access and natural resource enhancement purposes, along with project proponents, that would be consistent with the associated permit conditions. According to Commission staff, the terms under which the funds were collected would preclude use of any portion to cover Conservancy staff costs. Under the circumstances, Conservancy staff continues to work with Commission staff to clarify its administrative authority.

Meanwhile, Conservancy staff recommends that the Conservancy administer a small portion of the subject funds for one urgent project, Richardson Bay habitat enhancement. The Commission had selected this project, managed by the Richardson Bay Regional Agency, for use of a portion of the mitigation funds provided by Caltrans to offset construction impacts from seismic retrofitting of the Richmond–San Rafael Bridge. When a question arose regarding the Commission’s authority to disburse the funds as intended, the Agency was left without the resources to continue the enhancement project.

The Richardson Bay project entails removing and properly disposing of marine debris that has settled along the shoreline and in shallow areas of the bay. The debris, consisting of items such as fishing nets, derelict boats, and portions of boats, is hazardous to fish and wildlife. For example, shorebirds and waterfowl become entangled in the netting and derelict boats may leave behind a variety of pollutants, including oil and lead. The owners responsible for the debris are often impossible to identify, so the Richardson Bay Regional Agency takes on the task of cleanup. During the last decade, the Agency has largely eliminated the vessels and other debris that had accumulated for some years. Now, the Agency is engaged in removing newly arrived materials before they can do significant damage to fish and wildlife habitat.

The Agency is a joint powers authority among the County of Marin and the cities of Belvedere, Tiburon, Sausalito, and Mill Valley that was set up to coordinate Richardson Bay activities. As the constituent agencies provide only a skeleton budget for staff, the Agency assembles funding from other sources for special projects, such as debris removal. It then uses its own staff and vessel, as well as contractors, to carry out the work.

Site Description: Richardson Bay is an approximately 5.5-square-mile cove within the west-central portion of San Francisco Bay near the Golden Gate Bridge (Exhibit 1). Communities along the Richardson Bay shoreline include Sausalito and Tiburon. The bay's protected waters, mudflats and saltmarshes provide a haven for migratory and resident shorebirds and waterfowl. Much of the bay has been designated as the Mt. Tamalpais Waterfowl Refuge and the Richardson Bay Audubon Center and Wildlife Sanctuary is located at the northeast end of the bay. Unfortunately, winds and currents drive marine debris from San Francisco Bay into Richardson Bay, reducing habitat value and presenting hazards to fish and wildlife.

Project History: The proposed transfer of Commission funds to the Conservancy is the result of a request from the Commission for help from the Conservancy in administering funds that it has collected from permit applicants to pay for various activities to offset the impacts of permitted projects (Exhibit 2). After disbursing some of the funds to grantees, the Commission was informed by the Department of General Services that it does not have the authority to make grants. Soliciting bids and overseeing contracts is not an alternative for the Commission because it lacks sufficient staff.

The Commission has kept the funds that it has collected segregated by permit and has held them in an interest-bearing account in the State Treasury's Special Deposit Fund. The project purposes and locations of the projects to be undertaken with funds collected are specified in the original permits, some dating back to 1997. In many cases, the Commission staff has identified grantees to carry out the projects, as well as additional funding sources. In almost every case, the projects are closely related to natural resource enhancement or public access endeavors in which the Conservancy is already engaged.

The Commission originally began funding Richardson Bay fill and marine debris removal as the result of its solicitation for Central Bay proposals to offset the impacts of Bay fill during construction of Richmond–San Rafael Bridge seismic retrofitting by Caltrans. In June 1999, the Commission decided to allocate to Marin County projects \$170,000 of the \$750,000 plus interest accrued that it was holding from Caltrans. The remaining funds from Caltrans were allocated to projects on the Richmond shoreline. The Richardson Bay Regional Agency, a joint powers authority, has administered the Richardson Bay project funds. Over the past 8 years, the Agency has used funding from the U.S. Department of Housing and Urban Development, the State Department of Boating and Waterways, and the Commission to remove the many derelict vessels that had accumulated in the bay, as well as newly arrived boats and debris. The U.S. Army Corps of Engineers does not provide assistance because the bay is not used for commercial navigation. (Additional information about past and proposed funding is provided in the "Project Financing" section below.)

To date, the Commission has reimbursed the County for approximately \$140,000 of costs incurred for cleaning up marine debris in Richardson Bay. Staff recommends that the Conservancy assist the Commission and accomplish shoreline habitat enhancement by accepting the Commission funds and authorizing disbursement of \$30,170, the remaining amount for Richardson Bay.

PROJECT FINANCING:

Richardson Bay Habitat Enhancement Project

Proposed Coastal Conservancy (from the Commission)	\$ 30,170
To-date from the Commission	140,000
To-date from U.S. Dept. of Housing and Urban Dev.	250,000
To date from the Dept. of Boating and Waterways	<u>353,000</u>
Total Project Cost (1995 through 2004)	\$773,170

Staff anticipates depositing the Commission funds in the Conservancy's San Francisco Bay Area Conservancy Program account in a subaccount established to contain funds derived from sources other than Legislative appropriations and federal sources (Public Resources Code Section 31164(b)(2)(B)). The funds would be segregated from other funds in the account.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project is consistent with the provisions of Chapter 4.5 of Division 21 of the Public Resources Code, Sections 31160-31164, which states that the Conservancy may award grants in the nine-county San Francisco Bay area that help to achieve various goals. Section 31162(b) authorizes the Conservancy to award grants "(t)o protect, restore, and enhance natural habitats...of regional importance." Consistent with that section, the proposed project would restore and enhance fish and wildlife habitat in Richardson Bay that has been degraded by accumulation of marine debris. Section 31162(c) further authorizes the Conservancy "(t)o assist in the implementation of the policies and programs of...the San Francisco Bay Plan. . . ." Consistent with that section, the proposed project would implement provisions of the Bay Plan regarding removal of fill and protection of fish and wildlife and mudflats. Consistency with the Bay Plan is discussed further below in the section of this staff report dedicated to that topic.

Consistent with Section 31163(a), the Conservancy and its local and regional partners have identified resource goals for the San Francisco Bay area. One of the products of the Conservancy's coordination with others to identify resource goals is the Baylands Ecosystem Habitat Goals report, prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. For the Central Bay subregion, which includes Richardson Bay, the Goals report states in part that "(t)he overall goal...is to protect and restore tidal marsh, seasonal wetlands, beaches, dunes, and islands . . . Shallow subtidal habitats (including eelgrass beds) should be protected and enhanced." The proposed project would restore tidal marsh, beaches, and shallow subtidal habitats by removing marine debris that is hazardous to fish and wildlife.

Section 31163(b) states that "(t)he conservancy shall participate in and support interagency actions . . . in the San Francisco Bay area for the purpose of implementing subdivision (a). . . ." Consistent with this section, the proposed project would be undertaken at the request of the Commission and the Agency.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 10 Objective A**, the proposed project would result in enhancing up to 5.5 square miles of wetlands, mudflats, and shallow submerged habitat.

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, 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. **Support of the public:** One of the principal reasons that the County of Marin created the Agency was to provide one entity to coordinate among the various jurisdictions around Richardson Bay to accomplish cleanup of marine debris. The Commission, which consists of representatives of many local, regional, and state agencies, has selected the proposed project for implementation.
4. **Location:** The proposed project would be located within the Commission's jurisdiction, on the shoreline and offshore within important San Francisco Bay fish and wildlife habitat.
5. **Need:** The Commission needs the Conservancy's assistance with administering the project funds because its authority to disburse the funds to accomplish the purpose for which the were collected is currently in dispute. The Agency needs the Conservancy's funding assistance to continue debris removal this winter.
6. **Greater-than-local interest:** The proposed project is of regional interest because it would result in restoring saltmarsh and shallow submerged habitat, so much of which has been lost to or degraded by agricultural and urban development.

Additional Criteria

7. **Urgency:** The Agency needs funding to remove the derelict vessels that typically accumulate during the winter. The vessels need to be removed before they leak contaminants into the bay. The Agency reports that it will not have funds remaining from the Department of Boating and Waterways for this purpose.
9. **Leverage:** See the "Project Financing" section above.
12. **Readiness:** The Agency has experience with removal of marine debris. Its staff is ready to proceed as soon as funding is available
13. **Realization of prior Conservancy goals:** The proposed project would be consistent with the Conservancy's goals to protect and restore wetlands and other San Francisco Bay habitat.
14. **Return to Conservancy:** See the "Project Financing" section above.
15. **Cooperation:** The proposed project would be undertaken at the request of the Commission, to assist it with the administrative problem described above.

CONSISTENCY WITH SAN FRANCISCO BAY PLAN:

The San Francisco Bay Plan policies concerning fish and wildlife are as follows:

1. The benefits of fish and wildlife in the Bay should be insured for present and future generations of Californians. Therefore, to the greatest extent feasible, the remaining marshes and mudflats around the Bay, the remaining water volume and surface area of the Bay, and adequate freshwater inflow into the Bay should be maintained.
2. Specific habitats that are needed to prevent the extinction of any species, or to maintain or increase any species that would provide substantial public benefits, should be protected, whether in the Bay or on the shoreline behind dikes. . . .

Consistent with these Bay Plan policies, the proposed project would 1) maintain remaining Richardson Bay marshes and mudflats by removing marine debris that is disturbing the natural process, and 2) protect habitat that is needed for the many San Francisco Bay plant and animal species that are rare and endangered.

Additionally, in its action on the permit from which these funds were derived, the Commission determined that payment and use of these funds as proposed was necessary in order to find the permitted development consistent with Bay Plan Policies. Acceptance and disbursement of the funds for implementation of the Richardson Bay enhancement project will ensure that the required mitigation is provided.

COMPLIANCE WITH CEQA:

The proposed project entails removal of marine debris, including abandoned and sunken vessels, that left in place would threaten the fish and wildlife habitat of Richardson Bay. Maintenance of wildlife habitat areas to protect fish and wildlife resources and minor actions to prevent, minimize, or eliminate the release or threat of release of hazardous substances are categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under 14 Cal. Code of Regulations Sections 15301 and 15330, respectively. Upon approval, staff will file a Notice of Exemption for this project.