San Francisco Bay Restoration Authority

Governing Board

MEETING AGENDA

Wednesday, April 24, 2013
1:00 p.m. to 3:00 p.m.

Meeting Location:
MetroCenter
101 8th Street, Conference Room 171
Oakland, California 94607

For additional information, please contact:
Clerk of the Governing Board, (510) 464-7900

Agenda and attachments available at:
www.sfbayrestore.org

The Governing Board may take action on any item on this agenda.

1. **Call to Order**
   Sam Schuchat, Executive Officer, California State Coastal Conservancy

2. **Roll Call**

3. **Public Comment**

4. **Announcements**

5. **Approval of Summary Minutes of January 23, 2013**
   Action
   Attachment: Summary Minutes for January 23, 2013

6. **Reports from the Chair – Sam Schuchat**
   A. Reappointments to the Governing Board
   B. Allowable Activities
   Attachment: Moy memo dated 4/15/13

7. **Legislation for Designation and Placement of Regional Ballot Measure**
   Information/Discussion
   Sam Schuchat
   Attachment: SB 279 (Hancock)

8. Outreach by Governing Board and Advisory Committee
Information/Discussion
Reports from Governing Board Members

9. Preparation for 2014 Ballot Measure
Information/Discussion
Barry Barnes, TBWB

10. Advisory Committee: Reappointment of Original Appointees
Action
Sam Schuchat
Attachment: Denninger Memo dated 4/17/12

11. Adjournment

Agenda submitted by the Clerk of the Governing Board:
April 17, 2013

Agenda posted:
April 17, 2013

San Francisco Bay Restoration Authority

Governing Board

DRAFT SUMMARY MINUTES

Wednesday, January 23, 2013
1:00 p.m. to 3:00 p.m.

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1. Call to Order

Sam Schuchat, Chair, called the meeting to order at approximately 1:00 p.m.

2. Roll Call

Frederick Castro, Clerk, reported that seven members were present. A quorum of the Governing Board was present.

Present were Sam Schuchat, Keith Caldwell, Dave Cortese, Rosanne Foust, John Gioia, Dave Pine, John Sutter.

Schuchat introduced Dave Pine, Supervisor, County of San Mateo, who replaced Phil Ting as West Bay representative.

Staff members present were Kenneth Moy (ABAG); Judy Kelly and Karen McDowell (San Francisco Estuary Partnership).

3. Public Comment

Beth Huning, San Francisco Bay Joint Venture, announced that the San Francisco Bay/Estuary has been designated a "Wetland of International Importance" under the Convention on Wetlands, also known as the Ramsar Convention.

Stephen Knight, Save The Bay, noted that the work plans of the Silicon Valley Leadership Group and the Bay Area Council show their engagement with issues that overlap with the interests of the Restoration Authority.

There were no other public comments.

4. Announcements

There were no announcements.

5. Approval of Summary Minutes of November 14, 2012

A motion to approve the summary minutes of the Governing Board meeting on November 14, 2012, was made by Gioia and seconded by Sutter. The motion passed unanimously.

6. Governing Board Members

A. Appreciation for Former Governing Board Member Phil Ting

Moy read a certificate of appreciation for Ting.

B. Status of Appointment of Successor by ABAG and Possible Introduction of New Governing Board Member

Moy reported that Pine was appointed by the Association of Bay Area Government's Executive Board as the West Bay representative for the balance of the current term and for the additional term that ends in April 2017. The current term of the remaining Board members ends April 2013. Castro will send notice to Board members requesting letters of interest for reappointment.

7. Advisory Committee

A. Appointment of New Members

Foust, on behalf of the Subcommittee on the Advisory Committee, recommended the appointment of Larry Goldzband, Executive Director, San Francisco Bay Conservation and Development Commission; Richard Mitchell, Director of Planning and Building,

City of Richmond; and Sarah Rose, Chief Executive Officer, California League of Conservation Voters to the Advisory Committee.

Members discussed the composition of the Advisory Committee.

A motion to approve the recommendation to appoint Goldzband, Mitchell, and Rose, to the Advisory Committee was made by Foust and seconded by Caldwell. The motion passed unanimously.

B. January and February Orientations

Schuchat reported that new member orientations were held on January 9 and February 6.

8. Legislation for Designation and Placement of Regional Ballot Measure

Schuchat reported that staff have been seeking input and feedback from county officials and multi-county special districts about the clarifying legislation on multi-county ballot measures, including designation of regional measure status and coordination of county registrars.

Members discussed the process and costs related to multi-county ballot measures.

A motion to authorize the Chair to introduce legislation regarding clarifying issues around multi-county ballot measures was made by Gioia and seconded by Sutter. The motion passed unanimously.

9. Outreach by Governing Board

Schuchat reported on outreach activities by Governing Board members, including developing lists of contacts and informational materials.

Members discussed developing informational materials, seeking support of elected officials, and work related to voter outreach.

10. Preparation for Next Voter Survey for 2014 Ballot Measure

A. Scope, Costs, Fundraising, and Timeline

Members discussed polling and costs related to polling.

B. Controlled Committee

Members discussed work related to developing a ballot measure and work related to the conduct of an election.

C. Direct Staff to Consult with Polling Committee

Members referred the preparation for next voter survey to the Polling Committee.

11. Input on Objectives and Scheduling of Future Wetland Tours

Huning and Caroline Warner, San Francisco Bay Joint Venture, and members discussed the objectives, participation and scheduling of wetland tours.

12. Adjournment

The Governing Board meeting adjourned at about 2:35 p.m.

The next Governing Board meeting is on April 24, 2013.

Submitted by the Clerk of the Governing Board:
April 15, 2013

Approved by the Governing Board:
TBD

To: Governing Board Members
San Francisco Bay Restoration Authority

Fr: Kenneth Moy
Association of Bay Area Governments

Dt: April 15, 2013

Re: SFBRA Ballot Measure Activities

For new and returning Governing Board members and because questions have arisen over the past year, I have attached a memorandum dated January 11, 2011 advising staff of the Association of Bay Area Governments (ABAG) on the scope of legally permissible activities that they can undertake in supporting the San Francisco Bay Restoration Authority (SFBRA) in its quest to place a revenue measure on the ballot. The same legal guidelines apply to all other actions undertaken at the direction of the Governing Board of SFBRA. These strictures do not apply to actions undertaken by private entities without the active support of the SFBRA, or the ABAG or Coastal Conservancy staff. To date, I am not aware of any activities undertaken by the Governing Board or staff that violate the legal guidelines. Once SFBRA decides on a revenue measure or once campaign activities commence, the SFBRA should review its activities to ensure continuing compliance.

Mailing Address: P.O. Box 2050 Oakland, California 94604-2050 (510) 464-7900 Fax: (510) 464-7985 info@abag.ca.gov
Location: Joseph P. Bort MetroCenter 101 Eighth Street Oakland, California 94607-4756

To: Judy Kelly
Fr: Kenneth Moy
Dt: January 11, 2011
Re: SFBRA: ABAG Staff Support for Ballot Measure

MEMO

Summary: Decided cases and the opinions of the Office of the Attorney General provide some guidance on activities that ABAG can undertake to support the San Francisco Bay Restoration Authority's efforts to place a funding measure on the ballot. This memorandum identifies those activities for which the guidance is clear. All other activities should be cleared with this office.

Background and Analysis: ABAG and the Conservancy have agreed to provide the SFBRA with staff support. At this time, the SFBRA is developing a regional measure to implement a regional revenue mechanism to fund wetlands restoration projects. With support from the staff of ABAG and the Conservancy, SFBRA anticipates placing such a measure on the ballot in November 2012.

ABAG as a local government entity is prohibited from expending public resources to advocate a particular vote on a measure or candidate before the electorate. This prohibition stems from the holdings made in the seminal case of *Stanson v. Mott*[1] which deemed that such expenditures violate the "fundamental precept of this nation's democratic electoral process . . . that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." In the intervening decades, the holding in *Stanton* has evolved through decided cases and the opinions rendered by the Office of the Attorney General of the State of California.

You have asked for guidance on what activities can legally be undertaken to support the SFBRA. In reaching the conclusions set forth in this memorandum, I have relied primarily on a case decided in 1988 and an Attorney General's opinion issued in 2005.[2]

One must apply two step analysis[3] to determine whether a proposed activity is prohibited:

- Are 'public resources' being expended?

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[1] (1976) 17 Cal.3d 206 [130 Cal.Rptr. 697, 551 P.2d 1]

[2] *League of Women Voters Of California et al. v. Countywide Criminal Justice Coordination Committee, et al.* (1988, Second Appellate District, Division One) 203 Cal. App. 3d 529; 250 Cal. Rptr. 161; 1988 Cal. App. LEXIS 722 and 88 Ops. Cal. Atty. Gen. 46, 2005 Cal. AG LEXIS 7, respectively.

[3] This memorandum does not address a frequent threshold issue raised under Stanton: whether the public entity has the authority to undertake the activity under review. I have reviewed ABAG's joint powers agreement and bylaws and have concluded that it has the authority to undertake all the activities sanctioned under this memorandum.

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- Do the activities constitute 'advocacy' or 'campaigning'?

If the answer to both questions is'yes', the activity is prohibited. For the purposes of this memorandum, ABAG should consider any effort made by a staff member or any effort using ABAG resources (office space, equipment or supplies) as an 'expenditure of public resources'. Thus, the critical question is whether the proposed activity constitutes 'advocacy' or 'campaigning'.

This memorandum describes activities which are clearly sanctioned and clearly prohibited as guidance to staff. Activities that do not fall within these categories should be brought to my attention for further analysis.

A. Sanctioned Activities

1. Develop and Draft a Proposed Ballot Measure, including:
   a. research public perception of the need for the proposed measure;
   b. research and identify possible uses (restoration projects, public access, co-benefits projects, etc.); and
   c. research and identify possible funding mechanisms (sales tax, parcel tax or assessment).

2. Formulate Strategies for Placing a Measure on the Ballot, including:
   a. strategy for specifying uses of funds by type of project, geography, co-benefits or allocation principles;
   b. feasibility of specific characteristics of the funding mechanism including, amounts to be raised, payers, duration, and type;
   c. surveys and polling of public support for the ballot measure, including types of projects and specific funding mechanisms.[4]; and
   d. strategy to qualify the measure, including costs of placing the measure on the ballot.

3. 'Neutral' or 'Educational' Activities after Ballot Measure Qualifies, including:
   a. Governing Board adoption of a resolution of support disseminated in the same manner as all other actions of the Governing Board; and
   b. General dissemination of information regarding SFBRA, San Francisco Bay, benefits of wetlands restoration, proposed projects and the like <u>but only</u> *if* such information does not include any language that by content or tone advocates for (or against) passage of the ballot measure.

[4] These types of surveys and polls should be kept separate and distinct from surveys and polls designed to support a campaign, including development of 'messages' or 'themes'. For example, the first polling conducted by FM3 focused solely on the public's reaction to possible ballot measures. This survey, without more, cannot be used to develop a campaign in support of the measure.

B. Prohibited Activities

1. Research or data gathering for the purpose of developing, or which can be used only to develop, campaign materials, including polls and surveys of the public response(s) to facets of a campaign.

2. Recruiting or organizing people or entities to campaign, or to support a campaign, for the ballot measure.

3. Raising funds for a campaign.

4. Creation of 'traditional' campaign materials such as buttons, bumper stickers and door hangers regarding the ballot measure.

5. Dissemination of 'information' about SFBRA, San Francisco Bay, benefits of wetlands restoration, proposed projects and the like which includes language that can be interpreted to advocate, directly or by implication, for a particular position or vote on the ballot measure.

With respect to activities prohibited under item 5, the Political Reform Act states: "A communication 'expressly advocates' the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."[5] The use of such words in any communication that references the ballot measure is prohibited.

More subtle language can also be prohibited. For example: after describing or referencing the ballot measure, one should not use the statement "Your support is needed to restore critical habitat." However, one can state "Funds raised by the ballot measure will be used to restore critical habitat." The former advocates, the latter informs. In close cases, please consult with counsel.

cc: Governing Board
Ezra Rapport

[5] Govt. Code Section 18225(b)(2).

NOTE: Version current as of April 16, 2013

AMENDED IN SENATE APRIL 9, 2013

AMENDED IN SENATE MARCH 21, 2013

SENATE BILL No. 279

Introduced by Senator Hancock

February 14, 2013

An act to amend Section 66704.05 of the Government Code, relating to the San Francisco Bay Restoration Authority.

LEGISLATIVE COUNSEL'S DIGEST

SB 279, as amended, Hancock. San Francisco Bay Restoration Authority.

Existing law establishes the San Francisco Bay Restoration Authority to raise and allocate resources for the restoration, enhancement, protection, and enjoyment of wetlands and wildlife habitat in the San Francisco Bay and along its shoreline. Existing law authorizes the authority to levy a benefit assessment, special tax, or property-related fee consistent with the California Constitution, as specified. Existing law requires the board of supervisors of each affected county, when the authority proposes a measure to levy a ~~benefit assessment,~~ special tax~~, or property-related fee~~ for submission to the voters, to call a special election on the measure and place the measure on the ballot of the next regularly scheduled statewide election.

This bill would specify that a measure proposed by the authority must be submitted to the voters of the authority in accordance with the provisions of the Elections Code applicable to districts, *as specified*. This bill would require the authority to file with the board of supervisors of each affected county a resolution requesting consolidation. This bill would require the legal counsel for the authority to prepare, subject to review and revision by a specified county counsel, an impartial analysis

of the measure. This bill would require the elections officials of those affected counties to mutually agree to use the same letter designation for the measure and would require the measure to appear on the ballot before all county, city, and other local measures.

By imposing new duties or higher levels of service on local elections officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 66704.05 of the Government Code is amended to read:

66704.05. (a) If the authority proposes to levy a ~~benefit assessment,~~ special tax~~, or property-related fee~~ pursuant to subdivision (a) of Section 66704, the board of supervisors of the county or counties in which the ~~assessment, tax, or fee~~ *special tax* is proposed to be levied shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measure shall be submitted to the voters in the appropriate counties, consistent with the requirements of Article XIII C or XIII D of the California Constitution, as applicable.

(b) The authority is a ~~district for purposes~~ *district, as defined in Section 317* of the Elections Code. Except as otherwise provided in this section, a measure proposed by the authority that requires voter approval shall be submitted to the voters of the authority in accordance with the provisions of the Elections Code applicable to districts, *including the provisions of Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code*.

(c) The authority shall file with the board of supervisors of each county in which the measure shall appear on the ballot a resolution of the authority requesting consolidation, and setting forth the

exact form of the ballot question, in accordance with Section 10403 of the Elections Code.

(d) The authority shall transmit a copy of the measure to the legal counsel for the authority, who shall prepare~~, subject to review and revision by the county counsel of the county that contains the largest number of registered voters of the authority,~~ an impartial analysis of the measure in accordance with Section 9313 of the Elections Code. *The impartial analysis prepared by the legal counsel for the authority shall be subject to review and revision by the county counsel of the county that contains the largest population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters.* If there is no legal counsel for the authority, the authority shall transmit a copy of the measure to the county counsel of the county that contains the largest ~~number of registered voters of the authority~~ *population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters,* and the county counsel shall prepare the impartial analysis.

(e) Each county included in the measure shall use the exact ballot question, impartial analysis, and ballot language provided by the authority. If two or more counties included in the measure are required to prepare a translation of ballot materials into the same language other than English, the county that contains the largest ~~number of registered voters~~ *population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters* shall prepare the translation and that translation shall be used by the other county or counties, as applicable.

(f) Notwithstanding Section 13116 of the Elections Code, if a measure proposed by the authority pursuant to this article is submitted to the voters of the authority in two or more counties, the elections officials of those counties shall mutually agree to use the same letter designation for the measure and the measure shall appear on the ballot before all county, city, and other local measures.

(g) The county clerk of each county shall report the results of the special election to the authority.

~~(h) If a voter files a petition for a writ of mandate or an injunction regarding a measure proposed by the authority, venue~~

~~for the proceeding shall be exclusively in the county that contains the largest number of registered voters of the authority.~~

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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San Francisco Bay Restoration Authority

MEMORANDUM

DATE: April 17, 2013

TO: Governing Board
San Francisco Bay Restoration Authority

FROM: Melanie Denninger
Project Specialist
State Coastal Conservancy

SUBJECT: Reappointment of Advisory Committee Members Originally Appointed October 2009 through October 2012

Attachment 1: Roster of Advisory Committee Members Appointed October 2009 through October 2012

In late 2009 and early 2010, the Governing Board appointed the first 22 members of its Advisory Committee. The appointments were for three-year terms, which have now expired. A few of the original appointees resigned or retired and were replaced by the Governing Board prior to the sets of new appointments made in November 2012 and January 2013. All of the original appointees and their replacements have been valuable assets to the Restoration Authority.

Staff recommends that the Governing Board reappoint for indefinite terms the following eleven original appointees or their replacements who have indicated that they are available for reappointment to the Advisory Committee (see also attached roster):

Steve Abbors, Mid-Peninsula Regional Open Space District
John Coleman, Bay Planning Coalition
Grant Davis, Sonoma County Water Agency
Beth Huning, San Francisco Bay Joint Venture
Jerry Kent, East Bay Regional Park District (retired)
David Lewis, Save San Francisco Bay Association
Sally Lieber, Consultant
Cynthia Murray, North Bay Leadership Council
Bruce Raful, Raful & Associates
Bob Spencer, Economic Consultant
Laura Thompson, San Francisco Bay Trail Project/Association of Bay Area Governments

If additional prior appointees indicate interest in continuing on the Advisory Committee, staff expects to recommend their reappointment at a future meeting.

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San Francisco Bay Restoration Authority

Roster of Advisory Committee Members Appointed Oct. 2009 through Oct. 2012

Appointee	*Affiliation*	*Status*	*Notes/Availability for Reappointment*
Steve Abbors	Mid-Peninsula Regional Open Space District	Current	Available
Josh Arce	Brightline Defense Project	Current	Availability TBD
Dion Aroner	AJE Partners	Current	Availability TBD
Cindy Chavez	Working Partnerships USA	Current	Availability TBD
John Coleman	Bay Planning Coalition	Current	Available Replaced Ellen Johnck
Patrick Congdon	Santa Clara County Open Space Authority	Retired	Replaced by Andrea Mackenzie
Grant Davis	Sonoma County Water Agency	Current	Available
Steve Goldbeck	San Francisco Bay Conservation and Development Commission	Replaced	Replaced Will Travis; Replaced by Larry Goldzband
Beth Huning	SF Bay Joint Venture	Current	Available
Ellen Johnck	Bay Planning Coalition	Resigned	Replaced by John Coleman
Jerry Kent	East Bay Regional Park District (Retired)	Current	Available
David Lewis	Save San Francisco Bay Association	Current	Available
Sally Lieber	Consultant	Current	Available
Cynthia Murray	North Bay Leadership Council	Current	Available
Steve Ngo	SF City College Trustee	Resigned	
Rahul Prakash	Entrepreneur	Current	Not Available
Bruce Raful	Raful & Associates	Current	Available
Curt Riffle	The David and Lucille Packard Fdtn.	Current	Not Available
John Rizzo	SF City College Trustee	Current	Availability TBD
Bob Spencer	Economic consultant	Current	Available
Mendel Stewart	SF Bay National Wildlife Refuge	Left area	Replaced by Anne Morkill
Laura Thompson	SF Bay Trail Project/ABAG	Current	Available
Will Travis	SF Bay Conservation & Development Commission	Resigned	Replaced by Steve Goldbeck and later by Larry Goldzband
Kate White	San Francisco Foundation	Current	Availability TBD

Article of interest provided by John Sutter

3-29-13

Poll finds little interest in paying to fix storm-battered coastal areas

By Seth Borenstein
Associated Press

WASHINGTON — More than 4 out of 5 Americans want to prepare now for rising seas and stronger storms from climate change, a new national survey says. But most are unwilling to keep spending money to restore and protect stricken beaches.

The poll by Stanford University released Thursday found that only 1 in 3 people favored the government spending millions to construct big sea walls, replenish beaches or pay people to leave the coast.

This was the first time a large national poll looked at how Americans feel about adapting to the changes brought on by global warming, said survey director Jon Krosnick, a professor of political science and psychology at Stanford.

The more indirect options the majority preferred were making sure new buildings were stronger and reducing future coastal development.

New building codes rated the highest with 62 percent of those surveyed favoring it.

Three in 5 people want those who are directly affected by rising seas to pay for protection, rather than all taxpayers.

Krosnick said the low favorability of sea walls and sand replenishment "reflect the public's fatalistic sense that it's more realistic to just give up the beach than to try to save it when other storms in the future will just wash it away again."

The nationally representative survey of 1,174 Americans conducted online by GfK Custom Research has a margin of error of plus or minus 4.9 percentage points.

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