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**MEMORANDUM**

**VIA EMAIL**

**To:** Governing Board,  
San Francisco Bay Restoration Authority

**From:** Tom Willis and James Harrison

**Date:** April 16, 2014

**Re:** Draft Resolutions Calling Special Election and Approving Parcel Tax Measure  
for Voter Approval (Our File No.: 2683-1)

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Please find attached the initial drafts of resolutions (1) calling for a special election for November 4, 2014, and (2) approving the parcel tax measure to be placed on the ballot for voter approval. These drafts are for discussion purposes only as counsel and staff are continuing to refine and review the resolutions and ballot measure.

Although we understand the Governing Board has not yet made final decisions about some aspects of the proposed parcel tax and measure, we have, for discussion purposes, assumed a nine dollar parcel tax levied for ten years, from 2015 through 2025. The draft also assumes that all parcels of real property will be taxed at the same rate (\$9) regardless of the size, use or state of development of the parcel. Finally, the draft assumes no specific exemptions from the parcel tax.

Following is a list of decisions the Board must make concerning the contours of the proposed parcel tax. These points of decision are marked in bold and bracketed where they appear in the text of the resolutions and ballot measure.

1. **Rate.** The draft currently assumes a nine dollar annual tax.

2. Tax Rate Adjustments. The current draft leaves the nine dollar rate unchanged for the entire tax period. An alternative option would be to include annual adjustments based on some benchmark for inflation or changes to costs of living.

3. Tax Period. The draft assumes the tax will be collected for ten years, from 2015 through 2025, and then will sunset.

4. Uniformity of Rate. The draft assumes the tax rate will be the same for all parcels regardless of the size or use (commercial, residential, agricultural, etc.) of parcels or whether parcels are developed or undeveloped.

5. Geographic Coverage of Tax. The current draft would apply the tax to the entire nine-county jurisdiction of the Authority. The Authority's controlling law, however, permits it to levy the tax on a smaller geographic area, subject to two-thirds voter approval of the voters in the area in which the tax would be levied.

6. Specific Exemptions. The current draft does not provide any specific exemptions from the parcel tax. There are several options with respect to exemptions: (a) provide no exemptions (as the current draft does); (b) provide specific exemptions, such as for low-income individuals or low-income seniors; or (c) retain authority to provide exemptions in the future.

7. Administration of Tax. The current draft assumes that each county tax collector will have ultimate authority to administer the tax and make any discretionary decisions. Another option would be to have the Authority retain such authority.

In addition, the Authority must decide whether the full text of the measure should be included in the ballot pamphlet. The pamphlet will consist of the ballot question, impartial analysis and arguments for and against the measure. In addition, the Authority has the option of either including the text of the measure or not.

**RESOLUTION NO. 2014-\_\_\_**

**CALLING A SPECIAL ELECTION TO BE HELD  
FOR THE  
SAN FRANCISCO BAY RESTORATION AUTHORITY ON NOVEMBER 4, 2014;  
REQUESTING SERVICES OF REGISTRAR OF VOTERS;  
REQUESTING CONSOLIDATION OF ELECTIONS; AND SPECIFYING  
CERTAIN PROCEDURES FOR THE CONSOLIDATION ELECTION**

WHEREAS, the San Francisco Bay Restoration Authority (“Authority”), a regional governmental entity, is authorized pursuant to Government Code section 66704 to levy a parcel tax, subject to two-thirds voter approval; and

WHEREAS, pursuant to Government Code sections 66702 and 66704, the Authority is authorized to levy a parcel tax, subject to two-thirds voter approval, in the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco (the “San Francisco Bay Area”); and

WHEREAS, pursuant to Government Code section 66704.05, when the Authority proposes to levy a parcel tax, the board of supervisors of the counties and city and county in which the parcel tax is proposed, are required to call a special election on the measure;

**NOW THEREFORE, THE SAN FRANCISCO BAY RESTORATION AUTHORITY  
GOVERNING BOARD HEREBY RESOLVES, DETERMINES AND ORDERS AS  
FOLLOWS:**

FIRST: A special election is hereby called within said Authority, which election is to be consolidated with the general election to be held on November 4, 2014. As required by Elections Code sections 13247 and 10403, the abbreviated form of the measure as it shall appear on the ballot is as follows:

**San Francisco Bay Clean Water, Pollution Prevention and  
Habitat Restoration Program.**

To protect and restore San Francisco Bay to benefit future generations by reducing trash, pollution and harmful toxins, improving water quality, restoring habitat for fish, birds and wildlife, protecting communities from floods and increasing shoreline public access, shall the San Francisco Bay Restoration Authority levy an annual parcel tax of nine dollars per year for ten years with citizen oversight, audits, and all funds staying local?

The measure shall be voted on within the jurisdiction of the Authority, which pursuant to Government Code sections 66702 and 66704, comprises the San Francisco Bay Area.

SECOND: The Registrar of Voters of each county and city and county in the San Francisco Bay Area is requested to give notice of said election in accordance with law and to perform all other acts which are required for the holding and conducting of said election.

THIRD: The Board of Supervisors of each county and city and county within the San Francisco Bay Area is hereby requested to order the consolidation of the Authority's special election with the other elections to be held on November 4, 2014, and to provide the election precincts, polling places, and voting booths which shall in each county and city and county be the same, and that there shall be only one set of election officers in each of said precincts; and to further provide that the question set forth above shall be set forth in each form of ballot to be used at said election. Said Board of Supervisors is further requested to order the Registrar of Voters to: (a) set forth on all sample ballots relating to said consolidation election, to be mailed to the qualified electors of the Authority, the question set forth above and (b) provide absentee voter ballots for said consolidation election for use by qualified electors of said Authority who are entitled thereto, in the manner provided by law.

FOURTH: Pursuant to Government Code section 66704.05(e), each county and city and county within the San Francisco Bay Area shall use the exact ballot question and ballot language provided by the Authority, and the impartial analysis provided by the Authority following review by the Santa Clara County Counsel. If two or more counties or city and county are required to prepare a translation of ballot materials into a different language, the county or city and county that contains the largest population among those counties or city and county that are required to prepare a translation of ballot materials into the same language shall prepare the translation and that translation shall be used by the other counties or city and county, as applicable.

FIFTH: Pursuant to Government Code section 66704.05, the Registrar of Voters of each county and city and county within the San Francisco Bay Area shall mutually agree to use the same letter designation for the measure.

SIXTH: Each Registrar of Voters of each county or city and county within the San Francisco Bay Area is hereby authorized and requested to canvass, or cause to be canvassed, as provided by law, the returns of said special election with respect to the total votes cast for and against said question and to certify such canvass of the votes cast to the Governing Board of the Authority.

SEVENTH: The clerk of this Board is hereby authorized and directed to certify to the due adoption of the resolution and to transmit a copy hereof so certified with each Registrar of Voters within the San Francisco Bay Area.

EIGHTH: Exhibit A to Resolution No. 2014-\_\_\_ shall comprise the full text of the ballot measure.

NINTH: The Authority recognizes that each county and city and county will incur additional costs because of the consolidation of the election on this measure with the November 4, 2014 election and agrees to reimburse each county and city and county for the costs specified in Government Code section 66704.05(h). The Vice Chair of the Authority is hereby authorized and directed to expend the necessary funds to pay those costs.

**PASSED AND ADOPTED** by the Governing Board of the San Francisco Bay Restoration Authority at its meeting on May \_\_, 2014, by the following vote:

AYES: Governing Board Members \_\_\_\_\_

NOES: Governing Board Members \_\_\_\_\_

ABSENT: Governing Board Members \_\_\_\_\_

ABSTAIN: Governing Board Members \_\_\_\_\_

\_\_\_\_\_  
Clerk, Governing Board

I, \_\_\_\_\_, Clerk of the Governing Board of the San Francisco Bay Restoration Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the Governing Board of the San Francisco Bay Restoration Authority at its meeting of May \_\_, 2014, which Resolution is on file in the office of this regional governmental entity.

(00219717-5)

**RESOLUTION NO. 2014-\_\_\_**

**BALLOT MEASURE FOR VOTER APPROVAL  
OF A SPECIAL PARCEL TAX TO FUND  
THE SAN FRANCISCO BAY  
CLEAN WATER, POLLUTION PREVENTION AND HABITAT RESTORATION  
EXPENDITURE PLAN**

WHEREAS, the San Francisco Bay is the region's greatest natural resource and its central feature and contributes significantly to California's economic health and vitality. The Bay is a hub of interconnected open-spaces, watersheds, natural habitats, scenic areas, agricultural lands, and regional trails;

WHEREAS, the San Francisco Bay and its wetlands, waterways and shoreline are a significant part of the State's coastal resources and a healthy Bay not only enhances the quality of life for all Bay Area residents but is essential to support the state's human and wildlife populations;

WHEREAS, the San Francisco Bay must be protected and restored so that current and future generations may use and enjoy it;

WHEREAS, the restoration, preservation, and maintenance of the San Francisco Bay and its wetlands, improvement of Bay water quality, provision of public access to the Bay shoreline, and enhancement of shoreline recreational amenities for the growing population of the San Francisco Bay Area are immediate state and regional priorities;

WHEREAS, wetland restoration in the San Francisco Bay is necessary to address the growing danger that global warming and rises in sea level pose to the economic well-being, public health, natural resources, and environment of California. Tidal wetlands can prevent flooding and adapt to rising sea levels;

WHEREAS, the protection and restoration of the San Francisco Bay require efficient and effective use of public funds, leveraging of local funds with state and federal resources, and investment of significant resources over a sustained period for habitat restoration on shoreline parcels, parks, and recreational facilities, and public access to natural areas;

WHEREAS, in 2008, the State established the San Francisco Bay Restoration Authority (the "Authority") for the purpose of assisting in the restoration, enhancement, protection and enjoyment of the wetlands and wildlife in the San Francisco Bay and shoreline, including raising funds for programs that would protect and restore the Bay;

WHEREAS, the Authority is a regional governmental entity comprising the nine counties that touch the San Francisco Bay, including the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma, and the City and County of San Francisco (the "San Francisco Bay Area");

WHEREAS, after years of study, the Authority has adopted the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Expenditure Plan in order to fund programs that will:

- Reduce trash, pollution and harmful toxins;
- Improve water quality;
- Restore habitat for fish, birds and wildlife;
- Protect communities from floods; and
- Increase shoreline access for public enjoyment.

WHEREAS, the State has authorized the Authority to levy a special parcel tax, subject to two-thirds voter approval, within the San Francisco Bay Area to fund these programs. A minimal parcel tax on real property of only **[\$9]** a year will ensure these essential programs are funded and that the San Francisco Bay will be protected and restored for the use and enjoyment of current and future generations. Such a levy will generate approximately **[\$15,000,000]** a year to fund Bay restoration; and

WHEREAS, the proceeds from the parcel tax will be spent only on San Francisco Bay Area projects that improve the Bay, and cannot be taken away by the State. The measure also requires citizen oversight, transparency, independent audits of all money collected and spent, and strict caps on the amount that may be spent on project management and administration.

**NOW THEREFORE, THE SAN FRANCISCO BAY RESTORATION AUTHORITY GOVERNING BOARD HEREBY RESOLVES, DETERMINES AND ORDERS AS FOLLOWS:**

**Section 1. Approval of Ballot Measure.**

Pursuant to Government Code sections 50075 through 50077.5 and the San Francisco Bay Restoration Authority Act (commencing with section 66700 of the Government Code), the Authority hereby approves the placement of the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure on the November 4, 2014 election ballot within the San Francisco Bay Area. A full copy of the measure is attached hereto as Exhibit A.

**Section 2. Tax Imposed and Rate.**

Subject to two-thirds approval of the voters voting on the measure, the special parcel tax that is the subject of this Resolution shall be levied in the amount and in accordance with the terms and procedures set forth in Exhibit A, for a **[ten-year year period commencing July 1, 2015 and ending June 30, 2025]**. The parcel tax shall be levied at an annual rate of **[nine dollars (\$9) per parcel]** of taxable real property wholly or partially **[within the San Francisco Bay Area]**. The proceeds from the parcel tax shall be used solely for the purpose of supporting the priorities of the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Expenditure Plan (the "Plan") and shall be spent on projects that are in the nine counties comprising the Authority. The Expenditure Plan is attached to Exhibit A.

**Section 3. Method of Collection.**

Subject to two-thirds approval of the voters voting on the measure, the special parcel tax that is the subject of this Resolution shall be collected by the Tax Collector of each county and city and county within [the San Francisco Bay Area] in accordance with the terms and procedures set forth in Exhibit A.

**Section 4. Accountability.**

The special parcel tax that is the subject of this Resolution shall be subject to the transparency, independent audit, and accountability measures set forth in Exhibit A, including requirements that: (a) the proceeds of the parcel tax be used solely for the priorities set forth in the Plan; (b) the proceeds of the parcel tax be deposited in a special account; (c) the funds be spent only on projects in the San Francisco Bay Area and cannot be taken by the State; (d) an independent, annual audit be conducted of all funds collected and allocated under the measure; and (e) an annual report be prepared showing both the amounts of funds collected and expended and the status of any project required or authorized to be funded as identified in Exhibit A.

**Section 5. Additional Action.**

The Chair or, if there is not a sitting Chair, the Vice Chair of the Governing Board of the Authority, or any of his or her designees, is hereby authorized and directed to make any changes to the text of the measure set forth in Exhibit A, to the abbreviated form of the measure, to any ballot materials including the impartial analysis, or to the text of this Resolution or Resolution No. 2014-\_\_ (calling the special election), as may be convenient or necessary to comply with the intent of this Resolution and Resolution No. 2014-\_\_ to place the ballot measure on the November 4, 2014 ballot, the requirements of elections officials, or the requirements of the law.

**Section 6. CEQA.**

Pursuant to the State California Environmental Quality Act (CEQA) Guidelines section 15378(b)(4), adoption of this resolution to place the parcel tax, a government funding mechanism, on the ballot for voter approval is not a project subject to the requirements of CEQA. Prior to commencement of any projects under the Plan, any necessary environmental review required by CEQA shall be completed. Staff of the Authority is instructed to send such notices as CEQA requires to each county and city and county and to the Association of Bay Area Governments.

**PASSED AND ADOPTED** by the Governing Board of the San Francisco Bay Restoration Authority at its meeting on May \_\_, 2014, by the following vote:

AYES: Governing Board Members \_\_\_\_\_

NOES: Governing Board Members \_\_\_\_\_

ABSENT: Governing Board Members \_\_\_\_\_

ABSTAIN: Governing Board Members \_\_\_\_\_

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Clerk, Governing Board

I, \_\_\_\_\_, Clerk of the Governing Board of the San Francisco Bay Restoration Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the Governing Board of the San Francisco Bay Restoration Authority at its meeting of May \_\_\_\_, 2014, which Resolution is on file in the office of this regional governmental entity.

## EXHIBIT A

### THE SAN FRANCISCO BAY CLEAN WATER, POLLUTION PREVENTION AND HABITAT RESTORATION MEASURE

#### Section 1. Title.

This Act shall be known as the “San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure.”

#### Section 2. Findings and Purpose.

A. The San Francisco Bay is our region’s most important natural asset and must be preserved and protected for the use and enjoyment of current and future generations.

B. In 2008, the State established the San Francisco Bay Restoration Authority for the purpose of raising funds and overseeing projects to preserve and protect the San Francisco Bay for our future. After years of study, the Authority has adopted the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Expenditure Plan in order to fund programs that will:

- Reduce trash, pollution and harmful toxins in the Bay;
- Improve water quality;
- Restore habitat for fish, birds and wildlife;
- Protect communities from floods; and
- Increase shoreline access for public enjoyment.

C. The State has authorized the San Francisco Bay Area Restoration Authority to levy a special parcel tax, subject to two-thirds voter approval, to fund these programs. A minimal parcel tax on real property of only **[nine dollars (\$9)]** a year will ensure these essential programs are funded and our Bay will be protected and restored for current use and the use and enjoyment of the Bay by future generations. Such a levy will generate approximately **[\$15,000,000]** a year to fund specific preservation and restoration projects.

D. The revenues generated by this measure can only be spent on qualified San Francisco Bay Area projects that improve the Bay, and the measure prohibits funds from being spent elsewhere or taken by the State. The measure also requires transparency, independent audits of all money collected and spent, and citizen oversight, and it imposes strict caps on the amount that can be spent on project management and administration.

#### Section 3. Definitions.

A. “Authority” means the San Francisco Bay Restoration Authority, established by the San Francisco Bay Restoration Authority Act (Gov. Code, §§ 66700 et seq.).

B. “Bay Restoration Advisory Committee” means the advisory committee established pursuant to Government Code section 66703.7 to assist and advise the Governing Board of the Authority.

C. “San Francisco Bay Area” means the area within the State Coastal Conservancy’s San Francisco Bay Area Conservation Program created pursuant to Chapter 4.5 (commencing with Section 31160) of Division 21 of the Public Resources Code and includes the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

D. “Parcel” means a parcel of real property having a separate assessor’s parcel number as shown on the last equalized assessment roll of each county and city and county within the San Francisco Bay Area.

E. “Parcel Tax” means the annual tax levied pursuant to this measure.

F. “Plan” means the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Expenditure Plan, approved by the Governing Board of the Authority on \_\_\_\_\_, 2014.

G. “Tax Collectors” means the tax collectors of each county and city and county in the San Francisco Bay Area.

#### **Section 4. Funding of San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Expenditure Plan.**

Subject to two-thirds approval of the voters voting on this measure, the Authority hereby establishes a **[ten-year]** Parcel Tax the proceeds of which shall be used solely for the purpose of supporting the priorities of the Plan. The Plan is set forth in Exhibit 1. The special parcel tax shall be instituted as follows:

A. The Parcel Tax shall be levied at a rate of **[nine dollars (\$9)] [per parcel]** of taxable real property wholly or partially within **[the San Francisco Bay Area]**. The tax shall be levied for a total of **[ten (10) years, commencing effective July 1, 2015 and ending June 30, 2025]**.

B. The Parcel Tax shall be assessed upon each parcel of real property wholly or partially located within **[the San Francisco Bay Area]**, and shall be collected by the Tax Collectors at the same time as, and along with, and will be subject to the same penalties as general, *ad valorem* taxes collected by the Tax Collectors. The Parcel Tax and any penalty shall bear interest at the same rate as the rate for unpaid *ad valorem* property taxes until paid. Any Parcel Tax levied shall become a lien upon the properties against which taxes are assessed and collectible as herein provided. The Parcel Tax shall appear as a separate item on the tax bill.

C. **[With respect to all general property tax matters within their respective jurisdictions, the Tax Collectors or other appropriate county tax official shall make final determinations on any request for relief from the Parcel Tax.]**

## **Section 5. Mandatory Accountability, Transparency and Public Oversight.**

In order to ensure accountability, transparency and public oversight of all funds collected and allocated under this measure and to comply with state law, all of the following shall apply:

- A. The specific purpose of the Parcel Tax shall be to fund only the priorities set forth in the Plan.
- B. The proceeds of the Parcel Tax shall be applied only to those specific purposes set forth in the Plan, and shall be spent only in accordance with the procedures and limitations set forth in the Plan.
- C. A special, separate account shall be created by the Authority into which all proceeds from the Parcel Tax must be deposited;
- D. Not more than (5) percent of the funds generated by the special Parcel Tax per year may be used to pay for the Authority's general government purposes, including the costs of project management and administration. Any unused funds may be carried over for use in subsequent years.
- E. All funds generated by the Parcel Tax, except as set forth in subsection D above, shall be spent on projects within the San Francisco Bay Area, and shall not be taken by the State.
- F. The Authority shall commission an independent, outside annual audit of all revenues deposited in, and all expenditures made from, the special account;
- G. The Governing Board of the Authority shall prepare an annual written report showing (i) the amount of the funds collected and expended from the proceeds of the special taxes and (ii) the status of any projects or programs required or authorized to be funded from the proceeds of the special taxes, as identified above. The report shall comply with all provisions of Government Code section 50075.3, shall be posted on the Authority's website, and shall be submitted to the Bay Restoration Advisory Committee for review and comment.
- H. The Bay Restoration Advisory Committee shall provide advice to the Authority on all aspects of its procedures, the Expenditure Plan, and projects authorized to be funded.

## **Section 6. Establishment of Appropriation Limit.**

Pursuant to the provision of Article XIII-B of the California Constitution, the appropriation limit of the Authority shall be set by the total amount of parcel tax revenues received by the Authority in the first year such parcel tax is levied and collected. Any future increases in the appropriation limit shall be approved by a majority vote of the voters therein.

**Section 7. Amendments and Severability.**

A. The Governing Board of the Authority shall be empowered to amend this measure by majority vote of its members to further the purposes of this measure, to conform the provision of this measure to applicable state law, to modify the methods of collection, or to assign the duties of public officials under this measure.

B. If any part of this measure is held to be invalid for any reason, such decision shall not affect the remaining portions of this measure and the Governing Board of the Authority hereby declares that it would have passed the remainder of this Ordinance as if such invalid portion were not included.

**APPENDIX 1**

**[ATTACH FINAL EXPENDITURE PLAN IN FULL]**

(00219716-4)