SAN FRANCISCO BAY RESTORATION AUTHORITY

Staff Recommendation
June 30, 2023

DEER ISLAND TIDAL BASIN WETLANDS RESTORATION PROJECT: FINAL DESIGNS AND PERMITTING

Project No. RA-004
Project Manager: Vanessa Aczon

RECOMMENDED ACTION: Authorize amendment of the grant to Marin County Flood Control District authorized on April 11, 2018 for preparation of designs, environmental documentation, and permit applications for the Deer Island Tidal Basin Wetlands Restoration Project; to expand the scope of the work to include preparation of final detailed construction documents for a portion of the Project consisting of 77 acres of tidal baylands and creation of 5,500 linear feet ecotone levees at Deer Island, Novato, Marin County; and adoption of findings under the California Environmental Quality Act.

LOCATION: Novato, Marin, Measure AA Region: North Bay

MEASURE AA PROGRAM CATEGORY: Vital Fish, Bird and Wildlife Habitat Program and the Integrated Flood Protection Program; Shoreline Public Access Program

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EXHIBITS

Exhibit 1: Project Location and Site Map

Exhibit 2: Deer Island Tidal Basin Wetlands Restoration Project (April 11, 2018 Authority Staff Recommendation)

Exhibit 3: Project Designs

Exhibit 4: Deer Island Basin Complex Tidal Wetland Restoration Project Final Initial Study and Mitigated Negative Declaration

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RESOLUTION AND FINDINGS

Staff recommends that the San Francisco Bay Restoration Authority adopt the following resolution and findings:

Resolution:

The San Francisco Bay Restoration Authority hereby authorizes amendment of the grant to Marin County Flood Control District authorized on April 11, 2018 for preparation of designs,

environmental documentation, and permit applications for the Deer Island Tidal Basin Wetlands Restoration Project, to expand the scope of the work to include preparation of final construction designs for a portion of the Project consisting of restoration of 77 acres of tidal baylands and creation of 5,500 linear feet ecotone levees at Deer Island, Novato, Marin County. All conditions of the Authority's April 11, 2018 authorization apply to this amendment.

Findings:

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

1. The proposed authorization is consistent with The San Francisco Bay Restoration Authority Act, Gov. Code Sections 66700-66706.
2. The proposed authorization is consistent with The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA).
3. The San Francisco Bay Restoration Authority has reviewed and considered the *Deer Island Basin Complex Tidal Wetland Restoration Project Final Initial Study and Mitigated Negative Declaration* (Final IS/MND*)* adopted by the Marin County Flood Control District on June 6, 2023 pursuant to the California Environmental Quality Act and attached to the accompanying staff recommendation as Exhibit 3. The San Francisco Bay Restoration Authority finds that the Deer Island Basin Complex Tidal Wetland Restoration Project (Project), as designed and mitigated, avoids, reduces, or mitigates the potentially significant environmental effects of the Project to a less-than-significant level, and that there is no substantial evidence based on the record as a whole that the Project will have a significant effect on the environment.

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends that the San Francisco Bay Restoration Authority (Authority) authorize an amendment to the existing grant agreement to Marin County Flood Control District (MCFCD) in connection with the Deer Island Tidal Basin Wetlands Restoration Project (restoration project or project). The project consists of restoration of approximately 264 acres of diked, subsided, and degraded historic tidal marsh, including 71 acres of tidal wetland, open water, transitional, and upland habitats within the Bird Ponds, 6 acres in the Farmers Basin, and 187 acres of aquatic habitat in Deer Island Basin South, to full tidal natural conditions, and the creation of 11,900 linear feet of adjacent ecotone levees in the Deer Island Tidal Basin in the lower Novato Creek watershed (Exhibit 1). The existing grant was authorized on April 11, 2018 for preparation of designs, environmental documentation, and permit applications for the project. The proposed amendment is to expand the scope of the planning grant to include preparation of final construction documents for a portion of the project, consisting of 77 acres of the Bird Ponds and Farmers Basin, and the creation of 5,500 linear feet ecotone levees.

The project goals and funding need are described in detail in the April 11, 2018 staff recommendation (Exhibit 2). MCFCD has completed the designs, environmental document, and

permit applications for which the existing grant was authorized, and is ready to prepare the final detailed construction documents needed to seek bids for construction for the Bird Ponds and Farmers Basin portion of the project. The previously authorized grant amount of $630,000 is sufficient to also fund the preparation of these final detailed construction documents. Authority authorization to expand the scope of work is necessary because funding the final construction documents requires consideration of the environmental effects of the project pursuant to the California Environmental Quality Act (CEQA).

Over the past five years, much progress has occurred on the project. As the project will serve as a multi-benefit project by combining urban flood protection with shoreline and habitat restoration, MCFCD has consulted with the San Francisco Bay Restoration Regulatory Integration Team (BRRIT) since 2021 to receive regulatory and resource agency input on the project for preparation of permitting applications. This included site tours with key regulators, and two pre-application meetings in March 2021 and 2022. Permit applications will be submitted in July 2023.

MCFCD has prepared several design basis memos and held extensive meetings with key stakeholders, including San Francisco Estuary Institute, Novato Sanitary District (NSD), California Department of Fish & Wildlife, BRRIT, and two California Native American Tribes, and incorporated ideas and input from those meetings and modeling reports into the project design. Current construction documents are at 50% design. Since the April 11, 2018 grant authorization, the project changed from restoration of 194 acres and 4,500 linear feet of ecotone levees to restoration of 264 acres and 11,900 linear feet of ecotone levees. Additionally, MCFCD has adopted a phased approach to the project, focusing first on the design and permitting of the Bird Ponds and Farmers Basin portion of the project, to then be followed by the Deer Island Basin South. The phased approach to the project was adopted due to actual consultant costs being higher than the expected costs of the project. MCFCD intends to have the 77 acres of the Bird Ponds and Farmers Basin portion of the project to be shovel ready by 2024 and aims to begin construction activities by 2025 or early 2026. Restoration plans for Deer Island Basin South are currently on hold as MCFCD along with several agencies and stakeholders have recently begun a larger Novato Baylands Strategy planning effort in which they hope to develop a comprehensive phased approach to restoring the larger Baylands, including the Deer Island Basin South.

In addition to the considerable work that has occurred, MCFCD has developed several project approaches, including development of a phased implementation approach that is dependent on NSD's plan for relocation or reconstruction of their pipeline that bisects Deer Island, and development of a detailed hydraulic model of the Novato Creek system that helped inform design elements. MCFCD has further worked with BRRIT to consider beneficially reusing sediment that has been deposited in Novato Creek to jumpstart channel expansion within the Novato Creek corridor and to buildup ecotone slopes along the Bird Ponds. By reusing sediment from the aggraded creek, the project would avoid the option of mining the existing levees for their sediment and save many mature trees along the Novato Creek corridor. Furthermore, MCFCD had developed a public access memo working with key stakeholders and Marin County Open Space District.

The project received two time extensions from the Authority due to the COVID-19 global pandemic, delays in final contract negotiations with the selected contractor, and geotechnical issues associated with project design.

Site Description: The project site is described in detail in the April 11, 2018 staff recommendation.

PROJECT FINANCING

San Francisco Bay Restoration Authority (April 11, 2018 Authorization)	$630,000
Project Total	**$630,000**

MCFCD will contribute in-kind staff time totaling an estimated $244,000 in fully-burdened costs to oversee and administer the project. In completing the original grant tasks of preparation of designs, an environmental document and permit applications, MCFCD used $520,000 of the grant agreement. MCFCD will complete the final detailed construction documents with the remaining $110,000.

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

The project is consistent with the San Francisco Bay Restoration Act as described in the April 11, 2018 staff recommendation.

CONSISTENCY WITH MEASURE AA PROGRAMS AND ACTIVITIES:

The project is consistent with Measure AA programs and activities, as described in the April 11, 2018 staff recommendation.

CONSISTENCY WITH MEASURE AA PRIORITIZATION CRITERIA:

The project is consistent with the Measure AA Prioritization Criteria, as described in the April 11, 2018 staff recommendation.

CONSISTENCY WITH AUTHORITY'S INTERIM TRIBAL CONSULTATION POLICY:

The project is consistent with the Authority's Interim Tribal Consultation Policy as MCFCD has met and been in consultation with two California Native American Tribes (Tribes). This included in-person, and virtual meetings, and a site tour with one of the Tribes at Deer Island. A consultation with one of the Tribes resulted in a project design modification. MCFCD is

committed to working with the two Tribes, and no other concerns have been raised since the consultation.

COMPLIANCE WITH CEQA:

To comply with the California Environmental Quality Act (CEQA), the Marin County Flood Control District prepared the *Deer Island Basin Complex Tidal Wetland Restoration Project Final Initial Study and Mitigated Negative Declaration* (Final IS/MND) to evaluate the potential environmental impacts of the Deer Island Basin Complex Tidal Wetland Restoration Project (project). The Marin County Flood Control District adopted the Final IS/MND, approved the project, and adopted the mitigation reporting and monitoring program (MMRP) within the Final IS/MND on June 6, 2023.

The Final IS/MND indicates that the project will have potentially significant effects in the areas of Air Quality, Biological Resources, Cultural Resources, Greenhouse Gas Emissions, and Tribal Cultural Resources. Set forth below is a summary of the potentially significant impacts of the project, and the mitigation measures that have been incorporated into the project to assure that these potential impacts will be eliminated or reduced to less than significant levels:

a. **Air Quality:** The project would generate construction-related emissions that will create fugitive dust, thus elevating local levels of suspended particulate matter that could conflict with or obstruct implementation of the applicable air quality plan.

   The most recent air quality plan is the 2017 Bay Area Clean Air Plan (CAP). The CAP includes individual control measures that describe specific actions to reduce emissions of air pollutants and greenhouse gasses. Without mitigation measures, emissions associated with the project could conflict with CAP. The project would be consistent with CAP; however, with implementation of mitigation measures. Additionally, the project would also not hinder implementation of CAP. The implementation of Mitigation Measure (MM) AQ-1 will reduce emissions of fugitive dust and equipment exhaust by requiring the watering of all exposed active construction areas, coverage of loose materials that will be transported off-site, removal of visible mud or dirt track-out onto adjacent public roads by wet power vacuum street sweepers, limiting speeds on unpaved roads, construction of paved roads and sidewalks that will be completed as soon as possible, minimizing equipment idle times, proper maintenance of construction equipment, and a visible sign posted with MCFCD's contact information to inform the public on who to contact regarding dust complaints.

b. **Biological Resources**: The 326.6-acre project site contains four upland habitat types and seven habitat types associated with aquatic features that consists of varying plant and wildlife species. Within and/or near the project site habitats, four special-status plants, three special-status wildlife (California threatened species, legally protected by the Federal Endangered Species Act and/or the California Endangered Species Act), and other special-status and non-special status avian species were identified. Wetland restoration-related construction activities may have potential direct or indirect impacts on these identified species, but with the implementation of Mitigation Measures BIO-1

through BIO-11, potentially significant impacts will be reduced to less-than-significant levels.

Special-Status Plants

Construction-related activities could directly or indirectly impact the four identified special-status plant species if they occur in the project site. To reduce these impacts, two biological impact mitigation measures will be implemented:(a) MM BIO-1, which requires implementation of a qualified botanist to conduct appropriately timed plant surveys, adherence to the Department of Fish and Wildlife protocol (CDFW); and establishment of appropriate buffer areas around special-status plants if found within the project construction disturbance area and (b) MM BIO-2, which requires implementation of best management practices for biological resources, and includes Worker Environmental Awareness Training to all field management and personnel, wildlife-friendly netting equipment, and limiting speeds within the project site.

Special-Status Wildlife

Due to excavation and placement of dredged material and sediment during construction of the project, one of the three wildlife species may directly or indirectly be impacted through habitat modification or direct disturbance to the individual species. Through implementation of Mitigation Measures BIO-2 (worker training) and BIO-3, which require avoidance of restoration and infrastructure activities during extreme high tides, usage of low ground pressure equipment, and staging of all construction equipment and materials on existing roadways and away from suitable species habitats would reduce impacts to a less-than-significant level. Furthermore, construction activities may render the project site temporarily unsuitable during breeding and non-breeding seasons for two avian species due to increased levels of noise and human presence, ground disturbance, and heavy equipment operation. Applying Mitigation Measures BIO-2 and BIO-4 for these impacts includes environmental trainings to personnel, providing general protection measures, avoiding construction activities during the avian breeding season (February 1-August 31)conducting surveys to identify active nests, and if active nests and/or species are identified and cannot be avoided, implementing a 500-foot buffer area around the detected nest and/or species.

Other Special-Status and Non-Special-Status Avian Species

Construction-related activities will occur on terrestrial and aquatic habitats in the project area that provide nesting, roosting, and foraging opportunities for a variety of species. Through a combination of environmental training to construction personnel (BIO-2), general protection protocols, along with the implementation of Mitigation Measures BIO-6 (turtle relocation plan), BIO-7 (in-water work window), BIO-8 (fish protection measures), and BIO-9 (bat protection measures), any potential impacts will be reduced to less-than-significant levels.

Sensitive Natural Community

Up to seven trees may need to be removed where the primary tidal channel will be excavated. Since the project site contains Oak woodland areas, primarily dominated by valley oak, and is classified by the Manual California Vegetation as a S3 natural sensitive community, the removal of up to seven native trees is potentially significant. Through the incorporation of MM BIO-10, which would require replacement of trees at a specific ratio, and monitoring of the trees post-construction, impacts would be reduced to a less-than-significant level. Furthermore, trees will be sourced from the Novato Creek Watershed if possible, and obtained from a nursery that implements best management practices to reduce the chances of pest and pathogen contamination.

Federally Protected Wetlands

As a result, from restoration activities, temporary and permanent impacts to federal-protected wetlands and waters would occur in the project site, which would be potentially significant. However, such impacts would be offset by the substantial long-term benefits of an improved ecosystem and flood resilient area. To ensure the success of this project, MM BIO-11, which requires the development and implementation of a monitoring plan for vegetation and geomorphology would reduce the impacts to less-than-significant levels on wetlands and waters.

c. **Cultural Resources**: Construction activities, such as breaching and degrading, could disturb archaeological resources potentially located at the project site. Unless mitigated, ground-disturbing construction activities, particularly within the historic-era levees identified on the project site, could result in the inadvertent discovery of previously unknown archeological resources. Such a discovery could represent a substantial adverse change in the significance of a historical and/or unique archeological resource. This potential impact will be reduced to less-than-significant by implementing Mitigation Measures CUL-1 and CUL-2 which require worker training, and construction monitoring plans and reporting from an archeologist in coordination with California Native American Tribes that are traditionally and culturally affiliated with the project site. In addition to the mitigation measures, there will be compliance with the City of Novato Municipal Code Sections 4-7.3(b), 4.7.5, and 4.6-6, as more fully described in the Final IS/MND (pageVI-43).

d. **Greenhouse Gas Emissions**: Construction activities would generate greenhouse gas emissions (GHG) on the project site due to the use of heavy-duty off-road equipment, and off-site from trucks transporting equipment and materials to the project site, which would conflict with the City of Novato's Climate Change Action Plan (CCAP).

   The CCAP sets GHG reduction targets and describes measures that are primarily aimed at reducing energy use, water use, and waste reduction in building and commercial developments. While the project does not include any structures, CCAP's measure 13 would be applicable to the project, as it requires the reduction of idling time for heavy

duty trucks beyond what is required by the California Air Resources Board. With implementation of MM AQ-1, which requires the minimizing of idling times for equipment or reducing the maximum idling time to 5 minutes, the project would be consistent with the applicable CCAP measure, and the impact would be considered less-than-significant with mitigation incorporated.

e. Tribal Cultural Resources: While it has been determined through background research, consultations with California Native American Tribes, and a field survey, that no Tribal cultural resources have been identified in the project site, ground-disturbing construction activities have the potential to impact previously unrecorded Tribal archeological resources, which could be potentially significant. The potentially significant impact would be reduced to a less-than-significant level with implementation of Mitigation Measures CUL-1, CUL-2, and TRI-1, which requires worker training, construction monitoring, and inspections and recommendations from an archeologist and California Native American Tribes. In addition to the mitigation measures, there will be compliance with PRC Section 5097.98, California health and Safety Code Section 7050.5 and the City of Novato's Municipal Code, as more fully described in the Final IS/MND (page VI-91).

Staff has independently evaluated the Final IS/MND and MMRP and concurs that there is no substantial evidence that the proposed project will have a significant effect on the environment. Staff therefore recommends that the Authority find that the project as mitigated avoids, reduces, or mitigates the possible significant environmental effects to less-than-significant and that there is no substantial evidence that the project will have a significant effect on the environment. Upon approval of the project, staff will file a Notice of Determination.