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MEMORANDUM

DATE: April 7, 2017

TO: Governing Board
San Francisco Bay Restoration Authority

FROM: Sam Schuchat, Executive Officer; Matt Gerhart, Program Manager; Jessica Davenport, Project Manager
San Francisco Bay Restoration Authority

SUBJECT: Amendments to the Grant Program Guidelines

Staff requests feedback from the Governing Board on proposed amendments to the Grant Program Guidelines.

Background

The San Francisco Bay Restoration Authority (Authority) adopted the Grant Program Guidelines (Grant Guidelines) in April 2016 in anticipation of the June 2016 vote on The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA). The Guidelines were a summary of the requirements of the San Francisco Bay Restoration Authority Act (Restoration Act) and the proposed Measure AA, as well as some explanation of how the Authority will apply them.

Since that time, Measure AA passed, a new Advisory Committee (AC) was appointed, and several new Authority Governing Board members were appointed. In addition, the Authority signed a joint powers agreement with the State Coastal Conservancy and the Association of Bay Area Governments to obtain staff services, including support in administering the grant program. The Authority has received many questions from the public that are not answered by the Grant Guidelines, including about project eligibility criteria, prioritization factors, and success criteria.

The Governing Board directed the staff to solicit input from the AC and the public, and to propose amendments to the Grant Guidelines. Given the short time frame, the AC was only able to provide comments via an ad hoc subcommittee formed for that purpose (see Item 9A), but other members of the AC also provided individual comments. In addition, several members of the public provided comments. The comment letters are included in Attachment 1.

Proposed Approach to the Amendments

Staff has prepared amendments to the Grant Guidelines based on the comments. Many of the comments received were suggested edits and additions to the eligibility and prioritization criteria. Changing or adding to these criteria to the Grant Guidelines could be considered improperly amending the Restoration Act or Measure AA. The fact that eligibility criteria and prioritization factors were included in a close-to-verbatim form, but were not explicitly cited as quotations from Restoration Act and Measure AA may have led to this misunderstanding. Therefore, in the proposed Grant Guidelines amendments, we have provided the relevant citations of the Restoration Act and Measure AA, along with explanations of how these requirements will be applied, based on information from scientific reports, regional plans, and best professional judgment. The following section presents the five most critical categories of comments and staff's proposed responses.

Key Issues

Comments received covered a wide range of issues. Some of the most critical include:

- Lack of clarity regarding eligible project locations;
- Environmental justice;
- The priority given to implementation projects versus planning projects;
- The appropriate use of the project list;
- The need for success criteria, monitoring and evaluation.

Staff proposes to address these issue as described below.

1. Eligible Project Locations

The AC subcommittee and several commenters requested a definition of the “Bay shoreline” and “natural habitats” as a means of clarifying which areas near the Bay are eligible locations for funding. In response to these comments, the proposed amendment to the Grant Guidelines clarifies eligible project locations.

According to Measure AA, to be eligible for funding, projects must be located “along the Bay shorelines” within one of the nine Bay Area counties. In addition, Measure AA states, “The shorelines include the shorelines of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, and most of the Northern Contra Costa County Shoreline to the edge of the Delta Primary Zone.” Thus, the geographic extent of the shoreline is clear.

The question is how far from the shoreline a project may be located. The AC subcommittee recommended stating that eligible projects are those located “within the baylands or within creeks or rivers subject to tidal flow (head of tide).” “Baylands” is the technical term adopted by the science community within *Baylands Ecosystem Habitat Goals* (1999) to refer to the areas adjacent to the Bay that are of primary ecological importance to it. The *Goals Report* defines these as “the lands that lie between the maximum and minimum elevations of the tides over multiyear cycles, including those areas that would be covered by the tides in the absence of levees or other unnatural structures.” Additionally, the 2015 science update to the goals report

(*Baylands Ecosystem Habitat Goals Update, or BEHGU*) recognizes the importance of transition zones moving inland above the extent of high tide, as well as the need to plan ahead for the effects of sea level rise. The explanation of “along the Bay shorelines” in the proposed amendment to the Grant Guidelines uses the definitions from the *Goals Report* and the *BEHGU* and includes these important lands adjacent to the Bay.

The AC subcommittee and other commenters requested greater clarity as to which “natural habitat” restoration, protection or enhancement projects would qualify for the grant program. (The Restoration Act calls for funding projects that “restore, protect, or enhance tidal wetlands, managed ponds, or natural habitats” (Section 66704(b)).) The proposed amendment to the Grant Guidelines defines “natural habitats” as those consistent with existing guidance on baylands, riparian and subtidal habitats, such as the *BEHGU* and *San Francisco Subtidal Habitat Goals Report* (2010); these can include habitats that have been modified by human activity but still provide tangible wildlife support and/or ecological value.

In conclusion, in Appendix B: Definitions and Clarifications of Eligibility Criteria, Section 1C, staff recommends adding the following statement:

“To be eligible, projects must be located within the nine Bay Area counties along the shorelines of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, and most of the Northern Contra Costa County Shoreline to the edge of, but not including, the Delta Primary Zone, that are in areas consistent with guidance provided in the *Baylands Goals Science Update* (2015) and *Subtidal Habitat Goals Report* (2010), including:

- In subtidal areas (lying below mean low tide), within a reasonable distance of the shoreline;
- In baylands, i.e., areas that lie between the maximum and minimum elevations of the tides over multiyear cycles, including those areas that would be covered by the tides in the absence of levees or other unnatural structures, including the portion of creeks or rivers located below the head of tide; or
- On uplands adjacent to potential or actual tidal wetlands that can provide transitional habitat and/or marsh migration space, as well as areas that are needed to enhance the project’s resilience to projected sea level rise.

2. Environmental Justice

The AC subcommittee provided several comments related to environment justice. California’s environmental justice statute (California Government Code Section 65040.12) defines the term “environmental justice” to mean “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

Measure AA provides that the Authority will give priority to projects that meet eleven criteria, including the criterion that a project “benefit economically disadvantaged communities.” The AC subcommittee suggested including additional prioritization criteria related to benefiting “communities most vulnerable to the impacts of sea level rise” and “populations with a high percentage of non-white or Latino residents where the primary language spoken is not English, comprised mostly of renters and/or a high percentage of residents over the age of 65.” Adding these criteria to the Grant Guidelines could be considered improperly amending Measure AA.

However, the comments can be considered as suggestions regarding how this criterion should be applied.

As a means of addressing the need for environmental justice in implementing the grant program, in Appendix C: Definitions and Clarifications of Prioritization Criteria, Section 2D, Benefits to Economically Disadvantaged Communities, staff recommends adding the following statement:

“The Authority intends this criterion to mean the project will provide tangible benefits to these communities, which may be judged on the basis of elements such as the direct involvement and support of local community groups, a demonstrated track record working within communities, use of proven strategies to increase relevance of messaging and outreach, ability to alleviate multiple stressors within communities, including, but not limited to, addressing the need for additional recreational amenities, resilience to climate change, reductions in pollution burdens, greater civic engagement, and enhanced leadership development opportunities.”

Staff recommends that the Board ask the Advisory Committee to review this proposed approach and determine whether they would like to work with the Restoration Authority’s staff to develop additional or alternative guidance on how the Authority will define projects that “benefit economically disadvantaged communities.” The Board may also wish to ask Advisory Committee to propose a broader environmental justice policy for the Authority.

3. Prioritization of Planning vs. Implementation Projects

The AC subcommittee and others suggested that project readiness and urgency, two of the prioritization criteria required by the Restoration Act, be interpreted to apply to any phase of a project, including planning, design, permitting, construction, operation or other project phases.

The Restoration Act states that the Authority will “give priority to projects that, to the greatest extent possible, meet the selection criteria of and are consistent with the State Coastal Conservancy’s San Francisco Bay Area Conservancy program (in accordance with subdivision (c) of Section 31163 of the Public Resources Code).” Two of these criteria relating to readiness and urgency are:

- “Can be implemented in a timely way;” and
- “Provide opportunities for benefits that could be lost if the project is not quickly implemented.”

In Appendix C: Definitions and Clarifications of Prioritization Criteria, Section 1A, San Francisco Bay Area Conservancy’s Selection Criteria, to provide greater clarity regarding how the Authority’s prioritization criteria will be applied to planning versus implementation projects, staff recommends adding the following statement:

“The Authority interprets ‘can be implemented in a timely way’ to mean that projects are demonstrably at a stage where they will be able to proceed upon the receipt of funding, considering factors such as site control, landowner agreement, support of the public, design constraints, permitting considerations, and security of match funding. For initial planning or design phases, these factors may be judged relative to the eventual implementation phase.

Similarly, the project’s ability to provide ‘opportunities for benefits that could be lost’ may be interpreted in the context of a project’s full implementation.”

4. Appropriate Use of the Project List

The AC subcommittee and several other commenters asked that the Authority clarify the purpose of the “Potential Project List” described in Section II.D of the Grant Guidelines and specifically to delete the sentence giving priority to projects on the list.

As context, it should be noted that the Restoration Act states, “The Authority will give priority to projects that, to the greatest extent possible, meet the selection criteria of and are consistent with... the San Francisco Bay Joint Venture Implementation Strategy Updated List of Ongoing and Potential Wetland Habitat Projects.” Based on this, staff proposes that the Authority require project proponents to consult with the Joint Venture prior to applying for funding to assess and characterize their consistency with it.

Staff of both the Joint Venture and Restoration Authority have requested information from Bay restoration project proponents over the last several years and have developed two separate lists.¹ The “Potential Project List” referenced in the Grant Guidelines is the one developed by Restoration Authority staff, not the Joint Venture’s list.

In Part II, Section D, Potential Project List and Map, staff recommends revising the explanation of the Authority’s project list to state:

~~“Included as Appendix F is~~ The Authority has produced and placed on its website a potential project list and map, showing the types of projects that could potentially be supported with grant funds from Measure AA to be expended in accordance with these grant guidelines. This list of projects that are potentially eligible for Authority funding will be referenced in the development of solicitations, and the presence of projects on the list will be an additional criterion utilized during the evaluation of applications. Projects are not required to be on the list in order to secure funding, but those that are on the list, having been scoped for potential eligibility prior to their proponents’ applications, will be prioritized for funding, while also taking into account all of the other selection criteria used to help inform the Authority and its staff of the number, timing and funding needs of the projects that may apply for funding. The Authority’s project list will help guide the development of requests for proposals, as well as their timing. However, neither the presence nor the absence of a project on the Authority’s list will have any bearing on its prioritization for funding.”

Maintaining an annually updated project list will be helpful in a number of ways. For example, the Authority’s project list will help staff understand what complementary projects have been proposed in various geographic regions and when they are likely to be ready for funding. This information will in turn help the Authority meet its goals for regional distribution of funds.

¹ There is a great deal of overlap between the two lists, but only the Authority’s list is designed to focus on projects that meet the eligibility criteria of the Restoration Act and Measure AA, whereas the Joint Venture’s list covers a broader range of locations and habitat types. Staff of the two organizations have recently begun coordinating to make the process more efficient for project proponents.

5. Success Criteria, Monitoring and Evaluation.

The AC subcommittee and several other commenters advised that the Grant Guidelines address success criteria, monitoring and evaluation. Measure AA states, “The Authority shall give priority to projects that... Incorporate monitoring, maintenance and stewardship to develop the most efficient and effective strategies for restoration and achievement of intended benefits.” In this context it is important to note that, the Restoration Act requires prioritizing project that are consistent with San Francisco Bay Policies, which in turn require that projects have goals, success criteria and a monitoring program. Staff has included the Bay Policies most relevant to the grant program in Appendix D. In addition, it is important to remember that restoration projects in San Francisco Bay invariably must get permits from a variety of regulatory entities who also usually impose monitoring requirements.

In Part IV, Section E. Project Monitoring and Reporting, staff recommends revising the text as follows:

“All grant applications must include a monitoring and reporting component that explains how the effectiveness of the project will be measured and reported. The monitoring and reporting component of projects will vary depending on the nature of the project and may include regional monitoring approaches as appropriate. The grant application evaluation will assess the robustness of the proposed monitoring program. In addition, Authority staff will work with grantees to develop appropriate monitoring and reporting templates and procedures.”

“All projects must complete a final report, including a lessons-learned summary report fully and clearly describing lessons learned under all phases of the project including design, construction and monitoring. Lessons learned must focus on project trouble areas and issues to be addressed as a guide to future projects to avoid these issues to the extent possible.”

In Appendix C: Definitions and Clarifications of Prioritization Criteria, Section 2F, Monitoring, staff recommends adding: “The Authority will interpret this criterion to mean it will prioritize projects that commit to the regular assessment and reporting of project outcomes and include meaningful ways of sharing their results with the broader community.”

Recommendation

The staff has proposed amendments that incorporate input from the AC subcommittee, other AC members, and the public, and reflect best professional judgment on how the requirements of the Restoration Act and Measure AA will be applied to the grant program. Staff expects to further refine these amendments based on further Board and Advisory Committee input and return with a proposed version for adoption in June.

Attachments

1. Summary of Staff Recommendations on Amending the Grant Program Guidelines
2. Comment Letters
3. Draft Amendments to the Grant Program Guidelines (Redline Version)
4. Draft Amendments to the Grant Program Guidelines (Clean Version)