

SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH FINAL STRAWMAN 4/24/18

PURPOSE: To improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access infrastructure in San Francisco Bay by dedicating agency representatives to review project information and prepared permit applications for consideration as a team in the most efficient manner.

BACKGROUND: Creating two joint inter-agency restoration teams- “Bay Restoration Regulatory Integration Team (BRRIT)” and the “Bay Restoration Policy and Management Team (BRPMT)”- has been conceptually agreed upon during meetings hosted by Resources Legacy Fund/Dudek (March 24, October 24) and in personal communications between Rick Bottoms, US Army Corps Regulatory Chief, and representatives from the following agencies: National Marine Fisheries Service (NOAA Fisheries), US Fish and Wildlife Service, Bay Conservation and Development Commission, San Francisco Regional Water Quality Control Board, CA Department of Fish and Wildlife, and the US Environmental Protection Agency.

WHAT: Collaboration within the multi-agency teams to ensure timely action and compliance with the following federal and state permitting authorities, including but not limited to: Clean Water Act (CWA) §404, CWA §401 Water Quality Certification, McAttee-Petris Act, Endangered Species Act & Essential Fish Habitat, California Endangered Species Act, California Water Code, CDFW 1600, San Francisco Bay Basin Plan, Suisun Marsh Preservation Act, Rivers and Harbors Act, Coastal Zone Management Act, California fully protected species.

WHERE: Multi-benefit wetland restoration projects in the San Francisco Bay and along the bay shoreline of the nine Bay Area counties, excluding the Delta Primary Zone.

WHY: The San Francisco Bay has an established tidal marsh restoration goal of 100,000 acres as well as goals for other wetland types (Baylands Goals Report, 1999 and 2015). The availability of \$500 million over the next 20 years for wetlands restoration and multi-benefit projects through the passage of Measure AA, and other funding sources, will require timely results and effectiveness of the restoration investments.

WHO:

- 1) “Bay Restoration Regulatory Integration Team”: To consist of 1.5 FTE USACE, 1 FTE NOAA Fisheries, 1 FTE USFWS, 1 FTE BCDC, 1 FTE CDFW, 1 FTE RWQCB. (Inclusion of 1 FTE from EPA is possible on an ad hoc basis.)
- 2) “Bay Restoration Policy and Management Team”: To consist of representatives from EPA, USACE, NOAA Fisheries, USFWS, BCDC, RWQCB, State Water Board, CDFW, and may include other entities as needed or suggested.

FUNDING: The estimated cost for the BRRIT is ~\$1.305m/year for 6 agencies to be paid for by the San Francisco Bay Restoration Authority and the Coastal Conservancy, and potentially the Santa Clara Valley Water District and East Bay Regional Park District. An estimated \$278,000 will be provided through in-kind matching funds, including but not limited to USACE office space and equipment, and BRPMT participation. The ability to utilize funding for staff may be subject to hiring constraints applicable to individual participating agencies.

HOW:**Bay Restoration Regulatory Integration Team (BRRIT):**

- The USACE San Francisco District will provide office space for the BRRIT members from each agency. To facilitate regular coordination, agencies are encouraged to have their dedicated staff co-located at USACE for a minimum of the same 2-3 days/week. USACE would oversee the team staff.
- BRRIT would coordinate review of project information to process and issue permits and other decision documents in a timely fashion. BRRIT will meet frequently with and without applicants to review project progress, resulting in a collaborative, integrative review and approval/disapproval process.
- Pre-application meeting once a month (as necessary). (cross-reference with Dudek proposal)
- Site visits and tours as necessary to understand the proposed project, to be organized the with the permit applicant and attended by the BRRIT, ideally as a group.
- BRRIT would provide public outreach including quarterly information sessions on topics relevant to the application process, brownbags, etc...
- BRRIT will align project with the regional monitoring program concurrently being developed, and coordinated with Measure AA and the participating agency mandates.
- Data entry and measures of success tracking as determined by each agency and the interagency process
- BRRIT members will be delegated varying levels of permitting authority by their respective agencies, and will inform project applicants of their agencies' permitting processes and decision-making levels as early as possible in the pre-application process.
- BRRIT will identify issues that require intra-agency and inter-agency policy discussions whose purposes will be to make more clear application requirements and lead to expedited decisions.
- BRRIT may upgrade permit decisions to the BRPMT under agreed-upon procedures.

Bay Restoration Policy and Management Team (BRPMT):

- Review permitting issues raised by the BRRIT that may require policy shifts or upper management direction. To the extent possible, directly address issues and as necessary prepare any issues for further action by other decision-makers.
- Review and provide direction for project decisions that are elevated from the BRRIT
- Management and execution of inter-agency agreements and monthly to quarterly billing for the BRRIT.

PERFORMANCE MEASURES: Baseline information to measure success is necessary for quantitative and/or qualitative analysis. Useful performance measures will be established as part of the management system to measure success improving the permitting process over time.

The following federal and state agencies agree to work together to form a coordinated permitting approach for multi-benefit wetland restoration projects in the San Francisco Bay and along the shoreline of the nine Bay Area counties, excluding the Delta Primary Zone: U.S. EPA Region 9; U.S. Army Corps of Engineers (Corps), San Francisco District; U.S. Fish and Wildlife Service; NOAA National Marine Fisheries Service; San Francisco Bay Regional Water Quality Control Board; California Department of Fish and Wildlife; and San Francisco Bay Conservation and Development Commission, (“the Agencies”). The *San Francisco Bay Coordinated Permitting Approach Final Strawman*, dated January 9, 2018 is attached.

The Agencies will form two teams: the Bay Restoration Regulatory Integration Team (BRRIT); and the Bay Restoration Policy and Management Team (BRPMT). The BRRIT will consist of dedicated staff from each agency to coordinate the review of project information to process and issue permits and other decision documents in a timely fashion. The BRPMT will be led by agency managers and will coordinate with the BRRIT as necessary to resolve policy issues and provide direction for any elevated project decisions. Specific project eligibility for BRRIT review will be established as part of agency funding agreements. Projects will be screened for BRRIT review using the eligibility criteria for San Francisco Bay Restoration Authority funding, as described in Measure AA and associated Requests for Proposals.

AGREEMENT STANDARDS: BRRIT Commitments

By January 2019, a joint pre-application template and application template will be agreed upon by the agencies and used by applicants. The templates will include any necessary information required by any agency to consider a pre-application and an application.

- 1) Agency members of the BRRIT shall be of sufficiently senior civil service rank so as to work directly with their own agency management and the permit applicants to effect substantive changes as needed to ensure project permitting is not stalled.
- 2) The BRRIT will use agreed upon pre-application meeting procedures, which will be readily available to applicants and followed unless mutually agreed upon by the applicant and the agency team. The pre-application procedures will be conducted as follows (see attachment for further details):
 - a. Pre-Application Meeting Step 1
 - i. Applicant will use the pre-application template to submit project information no less than 14 calendar days prior to its first meeting with the BRRIT- a pre-application meeting.
 - ii. The BRRIT will review the project information and formulate questions and/or recommendations regarding project design, and avoidance, minimization, and other

potential measures that would help to expedite permitting, will identify potential interagency conflicts, collectively examine possible approaches to solutions, and be prepared to provide direction and/or to recommend such solutions in writing at the Pre-Application Meeting Step 1.

- iii. As part of Pre-Application Meeting Step 1 (Applicant can request Pre-Application Step 1 meetings be repeated as necessary):
 - 1. Applicant will present project information and respond to agency questions.
 - 2. The BRRIT will provide recommendations that will expedite permitting, and will identify potential interagency conflicts and propose solutions. The team will also explain how proposed solutions are derived citing regulatory and statutory requirements, as necessary, to provide a fully transparent process for the applicants. The BRRIT will document discussion of conflicts and proposed solutions.
 - 3. The BRRIT may conduct a site visit prior to the Pre-Application Meeting Step 2 to further understand potential conflicts and solutions and to provide more meaningful direction.
 - iv. If the BRRIT finds the project as proposed is clear of potential issues and conflicts, they will recommend the applicant's next step is to submit a permit application, Step 3 of the process.
 - v. If the BRRIT identifies potential conflicts and/or solutions, including interagency conflicts and solutions that would require project revisions, the team will recommend the applicant's next step is to update project information, in response to comments received, and present the revised proposal to the BRRIT Team at Pre-Application Meeting Step 2.
 - vi. If there are agency substantive issues and/or conflicts remaining that are law- or policy-driven, the BRRIT will document the issue(s) in a letter to the applicant and the BRPMT, citing the issue(s), the specific law(s) and/or regulation(s) with which the project is not in compliance, and provide recommendations for resolution.
- b. Pre-Application Meeting Step 2
- i. Applicant will update project description and address identified conflicts. Applicant will submit updated project description no less than 14 calendar days prior to Pre-Application Meeting Step 2.
 - ii. Step 2 Meeting
 - 1. Applicant will present updated project information.

2. Applicant and the BRRIT will resolve outstanding pre-application issues. All substantive project issues and conflicts that are not law- or policy-driven (i.e., permitting of project is not prohibited by existing laws or regulations) shall be resolved at this stage.
- c. Application Stage Step 3
- i. The guidance provided by BRRIT in the pre-application procedures will guide the review of project applications consistent to the maximum extent possible with applicable federal and state laws, regulations, and policies.
 - ii. If any agency representative on the BRRIT identifies that a change in guidance is warranted due to a new issue, which must be a significant and unavoidable matter of law or policy, that would result in a change in previous agency guidance, that agency representative will identify the substantive issue(s) and elevate it to the BRPMT representative within their specific agency. If the BRPMT representative confirms that a change in guidance is significant and warranted (i.e., unavoidable matter of law or policy), the BRRIT and the applicant will be notified immediately to set up a meeting to discuss potential solutions. The BRRIT team member generating the issue will lead the process to alter the application and resolve any problems.
 - iii. Application review timelines shall be in accordance with the permitting coordination timelines described in this document at the *BRRIT Performance Measures: Permitting Coordination Timelines* Section (1) through (4)
- 3) The Corps, in concert with BRRIT, will initiate appropriate, real-time tracking of timelines and other administrative milestones starting with the pre-application process through permit application completion. This will include identifying potential conflicting requirements, and dates of significant interaction with applicant (e.g. document submittal, meetings, etc.). Information tracked will be provided to the funders and applicants on a quarterly basis.
 - 4) If major decisions on permit applications would change the overall project or if permit denial is contemplated, the BRRIT will immediately set up a meeting with the applicant to discuss.
 - 5) Agency members of the BRRIT shall attend pre-application meetings and project site tours as relevant to agency jurisdiction.
 - 6) Agency members of the BRRIT shall make every effort to have their respective BRRIT members at USACE offices in San Francisco a minimum of 2.5 days per week. However, agency members of the BRRIT shall meet at the USACE offices in San Francisco a

minimum of 5 days per month. BRRIT members will confer regularly on pre-applications and applications.

- 7) BRRIT will conduct outreach to permittees and interested parties as appropriate.

BRRIT PERFORMANCE MEASURES: Permitting Coordination Timelines

- 1) Upon completion of the pre-application process, the project applicant will submit its permit application. Within thirty (30) calendar days of receipt of permit applications, the BRRIT will coordinate their separate agency response letters notifying the project applicant of application completeness or incompleteness. If an agency letter indicates “incompleteness”, the letter will identify specific additional information needed to complete the permit application(s). The BRRIT shall provide such notification within the stated time frame at least 90% of the time.
- 2) USACE will send federal Endangered Species Act Section 7 consultation initiation request letters and Section 106 consultation initiation letters within fifteen (15) days of receiving adequate information from the project applicant to make a determination of effect and initiate consultation. The USFWS and NMFS will confirm initiation of consultation within fifteen (15) days of receiving the Corps’ initiation request letter. The BRRIT shall provide initiation requested letters within the stated time frame at least 90% of the time.
- 3) Project applications for “simple projects” (e.g. such as those requiring a Mitigated Negative Declaration level of CEQA review and that have “no effect” to federal or state threatened or endangered species) will be processed within 120 days of receiving an application. The BRRIT shall process simple applications within the stated time frame at least 80% of the time. The application processing timeframe does not include projects with unresolved law- or policy-driven issues that were identified and documented by the BRRIT in the pre-application stage.
- 4) Project applications that require an Environmental Impact Report-level of CEQA review and/or “may effect” federal or state threatened or endangered species will be processed within 210 days of receiving an application. The BRRIT shall process complex applications within the stated time frame at least 80% of the time. The application processing timeframe does not include projects with unresolved law- or policy-driven issues that were identified and documented by the BRRIT in the pre-application stage.

AGREEMENT STANDARDS: BRPMT Commitments

- 1) Agency members of the BRPMT shall be senior managers with the ability to make management decisions, permit decisions, and effect policy changes.

- 2) The BRRIT will be evaluated by BRPMT, the San Francisco Bay Restoration Authority and other funders, after its first six (6) months and annually thereafter, to assess performance against the performance measures listed above.
- 3) A common management system will be developed and utilized to ensure achievement of objectives and to provide for continued improvement. The management system will ensure identification and elevation of issues that require agency policy shifts or interagency policy. Conflicting policy issues will be tracked in writing. The BRPMT will outline a plan for resolving issues presented to them by the BRRIT, including a timeline for resolution as described in this document at the *BRPMT PERFORMANCE MEASURES: Policy Deliverables* Section, (1) and (2).

BRPMT PERFORMANCE MEASURES: Policy Deliverables

- 1) Each agency will actively participate in the development of a single prioritized list of initiatives (Permit and Policy Improvement List) to increase efficiency in permit review and/or resolving policy issues that have been identified as limiting flexibility in the design and permitting of multi-benefit restoration projects (based on the attached “Sand in the Gears” document, known permit efficiencies, etc). This list shall be developed within six months of funding and establishing the BRRIT, if not earlier.
- 2) Upon establishment of the Permit and Policy Improvement List, at least one (1) initiative identified on the list (in the form of standard operating procedures, new or revised policy, memorandum of agreement, memorandum of understanding, or other agency-to-agency agreement or initiative) shall be developed and implemented within one (1) year. Thereafter, at least one (1) initiative identified from the list will be developed and implemented annually.

① Pre-Application

issues?

all good!

② Application Mtg.
(b. page 2)

③ Application Stage
(c. page 3)

30 days
- letter of completeness

Complete

incomplete

"Simple"
↓ 120 days

"not simple"
↓ 210 days

⊛ Permits!

Permit Coordination Budget

4/23/2018

Funded Positions	FTE	Position(s) and/or GS level	Year 1	Year 2	Year 3	Year 4	Year 5
US Army Corps of Engineers	1	GS-12	\$ 191,788	\$ 198,205	\$ 204,578	\$ 210,996	\$ 237,307
US Army Corps of Engineers	0.5	GS-13	\$ 129,247	\$ 133,383	\$ 137,651	\$ 142,055	\$ 146,601
US Fish and Wildlife Service	1	GS-12	\$ 179,503	\$ 183,991	\$ 188,479	\$ 192,967	\$ 197,455
National Marine Fisheries Service	1	ZP-III	\$ 206,319	\$ 212,509	\$ 218,884	\$ 225,450	\$ 232,214
CA Department of Fish and Wildlife	0.5		\$ 100,000	\$ 105,000	\$ 110,000	\$ 115,000	\$ 120,000
SF Bay Regional Water Quality Control Board	1		\$ 200,000	\$ 205,000	\$ 210,000	\$ 215,000	\$ 220,000
SF Bay Conservation and Development Commission	1		\$ 200,000	\$ 205,000	\$ 210,000	\$ 215,000	\$ 220,000
Other Direct Costs (e.g. travel)							
US Army Corps of Engineers			\$ 3,750	\$ 3,750	\$ 3,750	\$ 3,750	\$ 3,750
US Fish and Wildlife Service			\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
National Marine Fisheries Service			\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
CA Department of Fish and Wildlife			\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
SF Bay Regional Water Quality Control Board			\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
SF Bay Conservation and Development Commission			\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
Funded Total			\$ 1,228,107	\$ 1,264,338	\$ 1,300,842	\$ 1,337,718	\$ 1,394,827
In-Kind Services							
US Army Corps of Engineers	0.2	GS-14	\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000
US Fish and Wildlife Service	0.1	GS-14	\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000
National Marine Fisheries Service	0.1	ZP-IV	\$ 28,110	\$ 28,953	\$ 29,822	\$ 30,717	\$ 31,638
CA Department of Fish and Wildlife	0.1		\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000
SF Bay Regional Water Quality Control Board	0.1		\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000
SF Bay Conservation and Development Commission	0.1	CPA III or SES	\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000
US EPA	0.5	GS-14	\$ 100,000	\$ 105,000	\$ 110,000	\$ 115,000	\$ 120,000
In-Kind Services							
Corps Office Space, Computers, Phones, etc.			\$ 50,000	\$ 55,000	\$ 60,000	\$ 65,000	\$ 70,000
in-Kind Subtotal			\$ 278,110	\$ 313,953	\$ 349,822	\$ 385,717	\$ 421,638
TOTAL			\$ 1,506,217	\$ 1,578,291	\$ 1,650,664	\$ 1,723,435	\$ 1,816,465

San Francisco Bay Multi-Benefit Wetlands Restoration Permitting

“Sand in the Gears”

April 27, 2018

Following the 19 January 2018 meeting of the federal and state agencies working to develop a coordinated permitting approach for multi-benefit wetlands restoration projects in the San Francisco Bay, John Bourgeois of the South Bay Salt Pond Restoration Project, at the request of Larry Goldzband of BCDC, put together a brief description of some of the common policy conflicts between agencies that have resulted in a slow-down in the permitting process.

1. Type Conversion

Large-scale restoration projects are often converting one ‘type’ of Waters of the State/U.S. to another ‘type’ (e.g., salt ponds into tidal marshes). Varying amounts of fill are often required (for features such as flood risk reduction, habitat complexity, perimeter trail improvements, etc.) to produce large areas of habitat conversion. This can result in a net loss of Waters, and therefore be interpreted by agency staff as necessitating mitigation for voluntary restoration efforts.

2. Public Access

Different agencies have different goals pertaining to public access. Some agencies ask project proponents to maximize public access, while other agencies ask us to minimize it to protect habitat values. Both perspectives have value, but the burden to resolve these conflicts often falls on the applicant to justify their position to each agency, and resolve these conflicts in an often long and iterative process. Beyond this, the landowner may be a resource agency charged specifically with protecting particular species and habitats where public access may conflict.

3. Bay Fill

The creation of Habitat Transition Zones (i.e., ecotones or horizontal levees) via the import of fill material causes conflict with Bay fill policies, which can vary by agency. For example, BCDC asks projects to use the minimum fill required to achieve the project goals, while the RWQCB might ask a project to build in more resilience to the transition zone. With little empirical data to support optimal design, these conflicts are challenging to resolve. To a lesser extent this is also true of habitat features such as islands for nesting birds. Agencies are beginning to address this issue already.

4. Single-Species Perspective

Legal requirements for a single protected species can preclude actions that are deemed beneficial to the larger system by all other agencies. In an urban estuary, multi-objective projects intended to achieve a balance between a range of habitat improvements for individual special-status species and a wide range of general habitat enhancements over a broad area. For example, Snowy Plover habitat needs can preclude tidal restoration in certain areas, and concerns over fish entrapment can prevent certain types and locations of habitat connectivity..

5. Monitoring

Existing and perhaps increasing requirements for regionally relevant monitoring are sometimes in conflict with the site-specific needs, resulting in additional monitoring burden for applicants. Regional monitoring can be expensive and difficult to find funding sources to cover the costs. Limiting mandated monitoring requirements to the minimum required for the regulatory agencies to determine that permits are in compliance would allow projects to invest more in infrastructure. Project proponents are typically unable to sustain significant monitoring programs on their own, therefore monitoring should be targeted to actionable information. Additional monitoring to address regionally relevant issues beyond the project footprint should be shared through a regional monitoring program or similar arrangement.

6. Uncertainty

Agencies often want to see certainty in the quantification of project outputs. However, large-scale voluntary restoration projects often have some degree of uncertainty in the timing and degree of outcome (especially in light of sea level rise and varying suspended sediment concentrations). Regulatory requirements for certain outcomes can discourage experimentation, which could help advance the knowledge of the restoration community. Different agencies have different risk tolerances, and therefore it always comes down to the most conservative agency setting the bar.

7. Level of Design

Agencies often ask for detailed design. But if we spend that money doing advanced design, it is harder to change course in response to agency input. Different agencies have different tolerances for the level of design needed to acquire a permit. Also in the event that final design must be submitted for the permit authorization to be valid, this can result in 45 day or longer time delays for additional permit coordination.

8. Lack of Deference

Agencies can assign additional requirements on habitats/species/water quality/etc. beyond those required by the agency that is primarily responsible of that specific resource. For example, one agency might require additional BMP's to protect the salt marsh harvest mouse beyond what is outlined in the BiOp from the USFWS.

9. Sea-Level Rise

Some agencies have requirements to include long-term planning for expected sea-level rise (SLR). This type of planning is critical for development projects and public infrastructure projects; however, restoration projects generally have a different long-term intent than those required to include SLR in their planning. A restoration project generally seeks to establish a dynamic natural environment that would evolve over time in response to changes such as those involved in SLR. Requiring them to develop and install structures that are adapted to long-term SLR effects may in some cases undercut the primary intent of the restoration.

10. Short-Term Impacts vs. Long-Term Benefits

Agencies necessarily and appropriately require careful analysis and disclosure of construction impacts and even short-term habitat losses that must be weighed against the magnitude, timing, and certainty of long-term benefits. The long-term benefits of a project are not always evaluated when short term minimization and avoidance measures are required. This is particularly true for noise- and other short-term disturbance effects (less so for actual habitat changes like excavating a channel through the marsh to connect the slough with a pond interior).