

**SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH**  
**Policy and Management Committee**  
**Permit and Policy Improvement List**  
**Updated April 2021**

The Policy and Management Committee (PMC) is part of the coordinated permitting approach agreement, which includes the Bay Restoration Regulatory Integration Team (BRRIT), and whose responsibilities are described in an interagency memorandum of understanding. The PMC is tasked with creating a system to identify and resolve policy issues and conflicts, and to identify a process for elevating issues that require agency policy shifts. The permit and policy improvement list identifies priority issues identified to date and a timeline for addressing the issues in the four categories below with a commitment to implement at least one initiative annually.

1. Issues that are being addressed during the current calendar year (initiatives currently underway, with an anticipated completion date in 2021).
2. Issues that are being addressed in the next one to three years (initiatives currently under way, with an anticipated completion date that may extend beyond 2021)
3. Issues and initiatives requiring further development (no identified initiatives under way, or initial work has begun, but will not be completed until after 2021)
4. Accomplishments

The prioritization categories are primarily based on the timeframes for which resolution of the issues could be achieved, consistent with the agreement. As the PMC begins to work, achieves some success, and faces anticipated challenges (e.g., collaborative decision making among agencies), this list and prioritization will be revised. New issues will be considered as they are brought to the PMC by the BRRIT and stakeholders, and the list will be revised at least annually.

POLICY ISSUES	INITIATIVES
<b>1. Issues to be addressed in 2021</b>	
<p><b><u>a. Fill for Habitat</u></b>  Habitat transition zones (e.g., ecotone slope levees, high tide refugia) and other habitat features, (e.g., nesting bird islands) are important features that provide sea level rise resilience. Creating these features requires fill in wetlands or open water, an activity that is limited by some agencies and that often triggers mitigation. Filling areas of existing habitat is linked to habitat conversion issue described above as it converts habitat from one type to another.</p>	<p>The PMC will consider multiple efforts that address this policy issue. Currently, the initiatives described here are under way and the PMC should coordinate with the agencies leading those efforts.</p> <p>The Water Board recently completed grant-funded work to look at policies that may lead to Basin Plan amendments. Those efforts will extend beyond 2019. In the meantime, the Water Board is evaluating its ability to address the issue using existing policies.</p> <p>The Commission’s Bay Fill Policies Working Group, a committee of 5 Commissioners, including Water Board, EPA, and USACE representatives, continues to meet and discuss future BCDC policy updates. Additionally, the Commission initiated the rulemaking process on December 17, 2020 to consider amending the Commission’s Regulations to incorporate a number of changes, including adding an administrative regulation for fill for habitat restoration.</p> <p>Water Board, EPA, and USACE representative participation is intended to facilitate crosswalk policy discussions between BCDC and these agencies, specifically Clean Water Act Section 401 and 404 permitting. Coordination with the PMC would assist in creating permit consistency. The Bay Plan amendment process was completed on October 3, 2019.</p>
<p><b>b. Develop guidance for project applicants</b></p>	<p>Restoration projects often have similar issues and, while knowledge may reside in particular project proponents or consultants, there is an opportunity to facilitate project development and permitting by completing FAQs and providing other guidance, such as typically approved management practices. The BRRIT is developing guidance for project proponents and will make it available on the BRRIT web page, with the goal of finalizing available guidance by the end of 2020, to help project proponents address simple questions that may repeatedly arise. Resources and tools for applicants will include a recommended checklist of items and information needed for a complete application; FAQs; a flow chart; and a link to the Environmental Conservation Online System</p>

	<p>(ECOS) to view example Biological Opinions. The BRRIT will continue to provide additional resources and tools as they become available.</p>
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POLICY ISSUES	INITIATIVES
<b>2. Issues that may be addressed during the current calendar year</b> (initiatives currently under way).	
<p><b>a. Wetland Monitoring</b> Regulatory agencies include monitoring requirements in their permits to evaluate project success. However, there can be a lack of consistency between these monitoring requirements. The cost of monitoring requirements can be burdensome and associated funding is difficult to obtain. Large scale, long-range restoration projects have greater levels of uncertainty related to timing and successful habitat outcomes, especially in light of climate change and sediment availability. Uncertainty is difficult to address in the currently regulatory framework. Project proponents and agencies need the ability to experiment and tolerate risk consistently to address the dynamic, systemic changes that are occurring.</p>	<p><b>1. The Wetlands Regional Monitoring Project (WRMP).</b> The San Francisco Estuary Partnership developed a tidal wetland regional monitoring plan for the Bay Area that will help local, regional, state, and federal authorities evaluate the effectiveness of efforts to sustain healthy aquatic habitats and resources. Using an EPA grant and stakeholder input, the plan was completed in April 2020.</p> <p>2021 Update: SFEP will continue to develop an implementation plan that describes a funding and governance structure, and a data management plan. SFEP hosted two agency-focused workshops to introduce the WRMP to regional, state, and federal agencies. Additional workshops in 2021 will include the restoration practitioner and planning communities.</p> <p><b>2. Fisheries Monitoring Framework.</b> NMFS is working to develop a fish monitoring framework for restoration projects in the greater SF Bay region. The framework will identify and provide monitoring guidance for inclusion in project-specific monitoring plans and resources for standardized monitoring methods to determine the effectiveness of restoration projects for fish.</p> <p><b>3. Wetland Habitat Assessment Team (WHAT).</b> BCDC’s internal habitat and restoration science and policy working group educates new staff, discusses and evaluates projects and monitoring reports, identifies BCDC permit compliance issues, and seeks regulatory program improvements.</p>

<p>b. Permitting inconsistencies related to State and Federal Endangered Species Acts, and Fully Protected Species (e.g., salt marsh harvest mouse, Ridgway’s rail, peregrine falcon, brown pelican). Specifically, restoration projects may have long-term benefits to special-status species, but project construction and establishment can have the potential to result in significant short-term impacts. Under the State Fish and Game Code, CDFW is unable to issue permits to take or possess a fully protected species. However, CDFW may authorize the taking of a fully protected species for necessary scientific research, including efforts to recover fully protected species.</p>	<p>For restoration project that can demonstrate a contribution to the recovery of fully protected species CDFW can provide take authorization through a fully protected species MOU.</p> <p>CDFW will provide guidance through the BRRIT to assist large-scale restoration projects incorporate recovery actions to facilitate permitting.</p>

**3. Issues and initiatives requiring further development** (no identified initiatives under way, or work has begun, but is unlikely to be completed during the current calendar year).

POLICY ISSUES	INITIATIVES
<ul style="list-style-type: none"> <li>a. <b>Siting public access within multi-benefit habitat restoration projects on a case-by-case basis.</b> The policies regarding this issue were last updated 20 years ago and could be revisited/updated.</li> <li>b. <b>Lack of collaborative decision-making among agencies.</b> Applicants are looking to the agencies to provide coordinated, singular-direction guidance.</li> <li>c. <b>Upland alternatives to fill for habitat.</b></li> <li>d. <b>Protecting single species in the context of larger, holistic restoration goals.</b> Applicants are concerned that larger restoration goals might not be achieved because of the presence of a single listed species on a project site.</li> <li>e. <b>Short-term impacts of wetland restoration activities vs. long-term benefits of the overall wetland restoration.</b> Could the agencies provide guidance regarding how to consider short-term impacts in the context of long-term project benefits?</li> <li>f. <b>Restoring watershed to Bay connection to improve sediment supply to baylands.</b> The agencies could develop guidance for applicants to ensure consideration is given to this issue when planning projects.</li> <li>g. <b>Improving Consultations with other non-BRRIT agencies – i.e. SHPO, Tribes, State Lands Commission.</b> Federal and state agencies could develop procedures for more efficient and coordinated outreach.</li> <li>h. <b>Piling removal guidance for applicants.</b> The agencies could develop guidance for applicants regarding considerations and best practices for pile removal.</li> </ul>	

<p>i. <b>Sustainable Conservation’s programmatic efforts.</b> Agencies could assist with the development of programmatic biological opinions and permits.</p>	
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**4. Accomplishments List** Issues and initiatives resolved by the PMC.

<b><u>POLICY ISSUES</u></b>	<b>RESOLUTION</b>
<p><b><u>Elevation and Resolution of Issues</u></b> The BRRIT and the PMC needed an agreed-upon process for resolving issues elevated to the PMC from the BRRIT during the BRRIT review process. This process necessitates consideration of each agency’s law, policies, and authority. A decision-making process needed to be identified and agreed upon by the PMC prior to elevating issues.</p>	<p>The PMC initiated this discussion in 2019.</p> <p>In 2020, formal elevation of project issues occurred with BRRIT’s first two projects, India Basin/900 Innes and Lower Walnut Creek. A BRRIT and PMC communication protocol for identifying and elevating issues was developed by the PMC and BRRIT. Protocols for elevating issues were finalized in fall 2020.</p>

<p><b>Type Conversion</b></p> <p>To accomplish regional wetland restoration goals, it is necessary to convert one type of wetland habitat to another. For example, currently diked baylands or seasonal wetlands may be converted to tidal baylands. When wetland-to-wetland conversion occurs in the process of restoring a site, some permitting agencies require compensatory mitigation while other agencies do not. Additionally, there are inconsistent approaches as regulators analyze projects and make mitigation decisions. Regulatory decisions need to be supported by robust technical frameworks to avoid additional project costs, lack of regulatory certainty, conflicting requirements, and project delays.</p>	<p>EPA developed a multi-agency, science-based framework for assessing habitat type conversion actions in the SF Bay Region and elsewhere. This framework facilitates consistent and more transparent decision making. EPA is leading the effort with funding and staff while the other BRRIT agencies are providing staff time. The PMC’s goal is to use this effort to agree on a common decision-making approach to type conversion associated with restoration projects.</p> <p>The final framework was distributed to agency partners on February 14, 2020. Pilot implementation is currently underway for McInnis Marsh, a BRRIT assigned project. We expect conclusion of that effort in Spring 2021, at which point BRRIT and EPA staff will make recommendations to the PMC on next steps.</p>
<p><b>Fill for Habitat</b></p> <p>The Commission’s Bay Plan limited fill for habitat restoration to a minor amount of fill. The Commission recognized the need for transition zones (e.g., ecotone slope levees, high tide refugia) and other habitat features, (e.g., nesting bird islands) for sea level rise resilience for restoration projects. Creating these features requires fill in wetlands or open water, an activity that is limited by some agencies and that often triggers mitigation. The Commission initiated the Bay Plan Amendment process on July 20, 2017.</p>	<p>On December 27, 2019, Commission’s San Francisco Bay Plan was amended to add policies to a variety of policy sections and allow greater amounts of fill for habitat restoration and pilot projects.</p>