

## SAN FRANCISCO BAY RESTORATION AUTHORITY GRANTEE GUIDANCE

### Restoration and Acquisition Grants - Grantee's Subsequent Use of Property as Mitigation

April 9, 2021

This Guide is intended to assist a San Francisco Bay Restoration Authority (Authority) grantee with the process for seeking Authority approval of the grantee's proposal to allow a mitigation project (a project intended to compensate for adverse changes to the environment elsewhere) on real property that the grantee has acquired or restored with an Authority grant. Such proposals can arise when a developer, local government, or other entity asks to undertake, or provide funding to enable the grantee to undertake, a restoration project on the grantee's property for the purpose of mitigating the impacts of that entity's development project. The Authority's grant agreement typically includes a provision that prohibits the grantee from agreeing to such a proposal without written authorization from the Authority. This Guide addresses the process for seeking authorization pursuant to that grant agreement provision.

1. Early Consultation. The grantee should consult with the Authority project manager early in the process, as the grantee begins to consider whether to allow its property to be used for a project that is intended to mitigate the impacts of development elsewhere. Early consultation will ensure that the grantee is aware of the considerations relevant to the Authority's review.
2. Grantee Proposal. Once the details of the proposed mitigation are known, the grantee should submit its proposal in writing to the project manager for the Executive Officer's consideration. The proposal should include:
  - a. An identification of the Authority's mitigation prohibition (within the grant agreement, Offer to Dedicate (OTD), deed restriction, restoration plan, etc.) and any use limitations on the property.
  - b. A request for approval to use the property for mitigation.
  - c. A description of the proposed mitigation and attachment of the regulatory requirement (permit, etc.) underlying the need for mitigation.
  - d. A detailed description of the adverse environmental changes elsewhere for which the mitigation is intended to provide an offset or compensation.
  - d. A description of any additional requirements for use of the property for mitigation.
  - e. A detailed analysis of whether the mitigation results in an overall public benefit.
  - f. An analysis of the proposed or required remedy if the mitigation objectives fail on the property.

- g. An analysis of how the proposed mitigation use complies with grantee's own mitigation policy, if any.
3. Review by the Authority. The review by the Authority will include the following inquiries (and, therefore, the grantee should address these issues fully):
- a. What is the benefit of the proposed mitigation to the real property or to the resources of the property? Is the benefit from the proposed mitigation quantifiable or measurable?
  - b. Does the Authority's grant "subsidize" the mitigation in any manner? For an Authority-funded acquisition project, does the mitigation requirement include a fee for the use of the grantee's land in addition or as part of the mitigation requirement? For Authority-funded restoration projects, does the restoration already completed or anticipated on the property enable the mitigation (for example, if the Authority funded wetland restoration and the mitigation calls for the creation of habitat for a wetland species, will the mitigation fee take into account the already-funded wetland creation)?
  - c. Does the mitigation requirement advance or impede the Authority's programmatic goals for the property?
  - d. What is the nature of the adverse environmental impact elsewhere that the mitigation is intended to offset? Is there perceived or actual controversy surrounding the project generating the mitigation requirement (origins of the mitigation requirement) in the community or does the project raise a significant public policy issue?
  - e. Is the grantee capable institutionally (capacity plus actual experience-driven application) to implement the mitigation requirement on the property? Alternatively, is the mitigator (the entity needing mitigation) or its contractor capable of implementing the mitigation requirement on the property?
  - g. What is the predicted success of the mitigation and who determines success (if a CEQA mitigation measure, the grantee should provide the mitigation reporting document which identifies a public agency responsible for ensuring the implementation and success of the mitigation measure).
  - h. What is the remedy/who is responsible if the mitigation fails?
  - i. What is the balance between the benefit of the mitigation as value-added to the property/project against the nature, extent, and implications of the environmental harm elsewhere which the mitigation is intended to offset?