

Delivering Regulatory Agency Collaboration through BRRIT for multi-benefit restoration projects

Luisa Valiela, EPA Region 9, San Francisco Bay Program Lead



Bay Restoration Regulatory Integration Team (BRRIT) Basics

PURPOSE: Improve permitting process for multi-benefit tidal restoration projects along shoreline of the San Francisco Bay

WHO: Seven state and federal regulatory agencies Policy & Management Committee (PMC) representatives of each agency responsible for policy improvements:

<https://www.sfbayrestore.org/sites/default/files/2023-12/2023%20PMC%20Policy%20Improvement%20List.pdf>

5 years of funding: 2019 – 2024 = \$6M

Agency agreements set to expire end of 2024



<https://www.sfbayrestore.org/san-francisco-bay-restoration-regulatory-integration-team-brrit>



Bay Area Project Progress with BRRIT

- Project proponents engage BRRIT during a pre-application phase
- Six recent restoration 'permitting tools' available

Federal options
Statewide Restoration Programmatic BO (USFWS)
Expedited Letter of Concurrence (NMFS)

CA State options
Statewide Restoration General Order (Water Resources Control Board)
Small Habitat Restoration Permit (Water Resources Control Board)
Restoration Management Permit (CA Dept. Fish & Wildlife)
CEQA Statutory Exemption for Restoration Projects (CDFW concurrence)

By the Numbers

31 Projects

17 in pre-application

5 applications in process

9 projects permitted

Tracking of permitting tools:

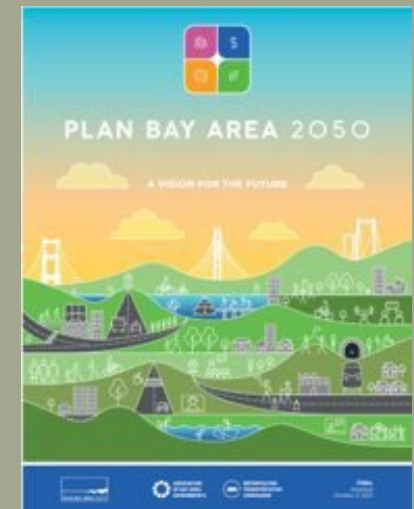
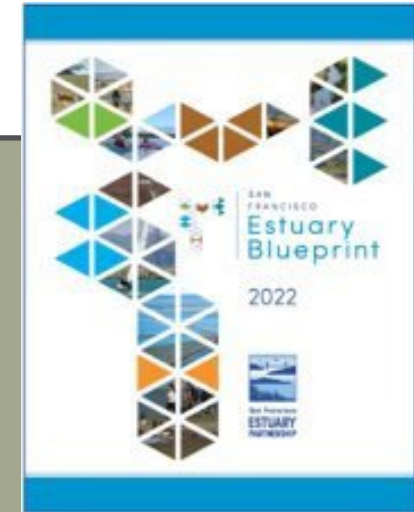
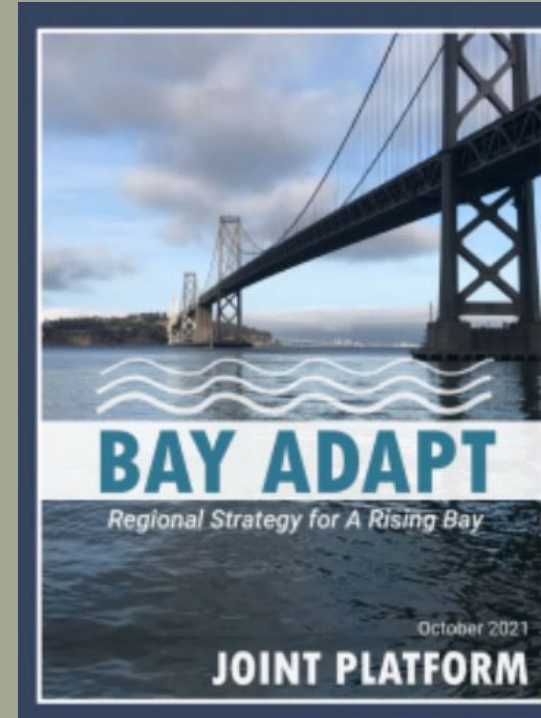
8 projects using at least one tool

15 projects identified by BRRIT as eligible for one or more permitting tool

8 projects identified by BRRIT as not eligible for a recent expedited permitting tool

Why Nature-Based Solutions (NbS) in the Bay Area?

- Restored tidal wetlands are the region's most cost-effective first line of defense against sea level rise
- Regional Guidance
 - Plan Bay Area 2050, Estuary Blueprint, Bay Adapt Joint Platform
- State Agency- the Bay Conservation and Development Commission- leading regional planning efforts
- Recent statewide legislation (SB272) requiring sea level rise planning by local governments

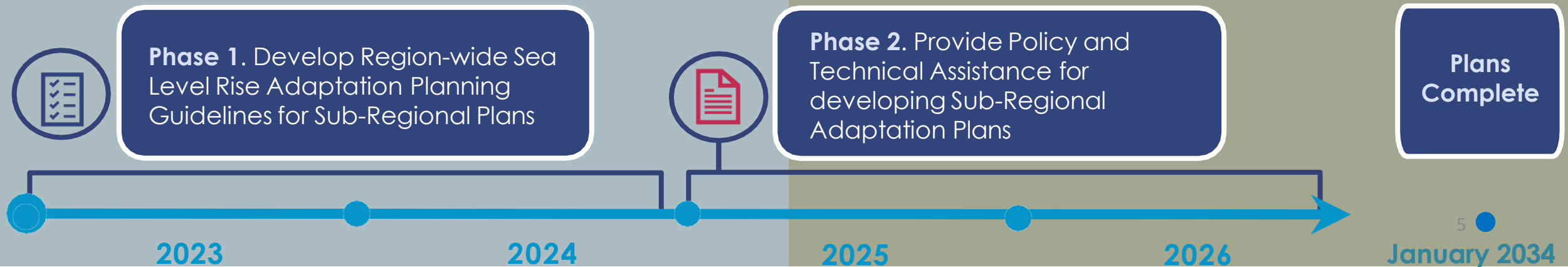


SB 272: Sea Level Rise Planning and Adaptation (Laird 2023)

- Requires local governments to develop “sub-regional shoreline resiliency plans” by January 2034
- Requires two state agencies (BCDC and Coastal Commission) to develop guidelines by end of 2024 for local governments to use
- Requires BCDC to approve plans based on consistency with guidelines
- Prioritizes state funding towards approved plans for implementation



Aerial view of the Oakland Alameda San Leandro Estuary. Photo by BCDC.



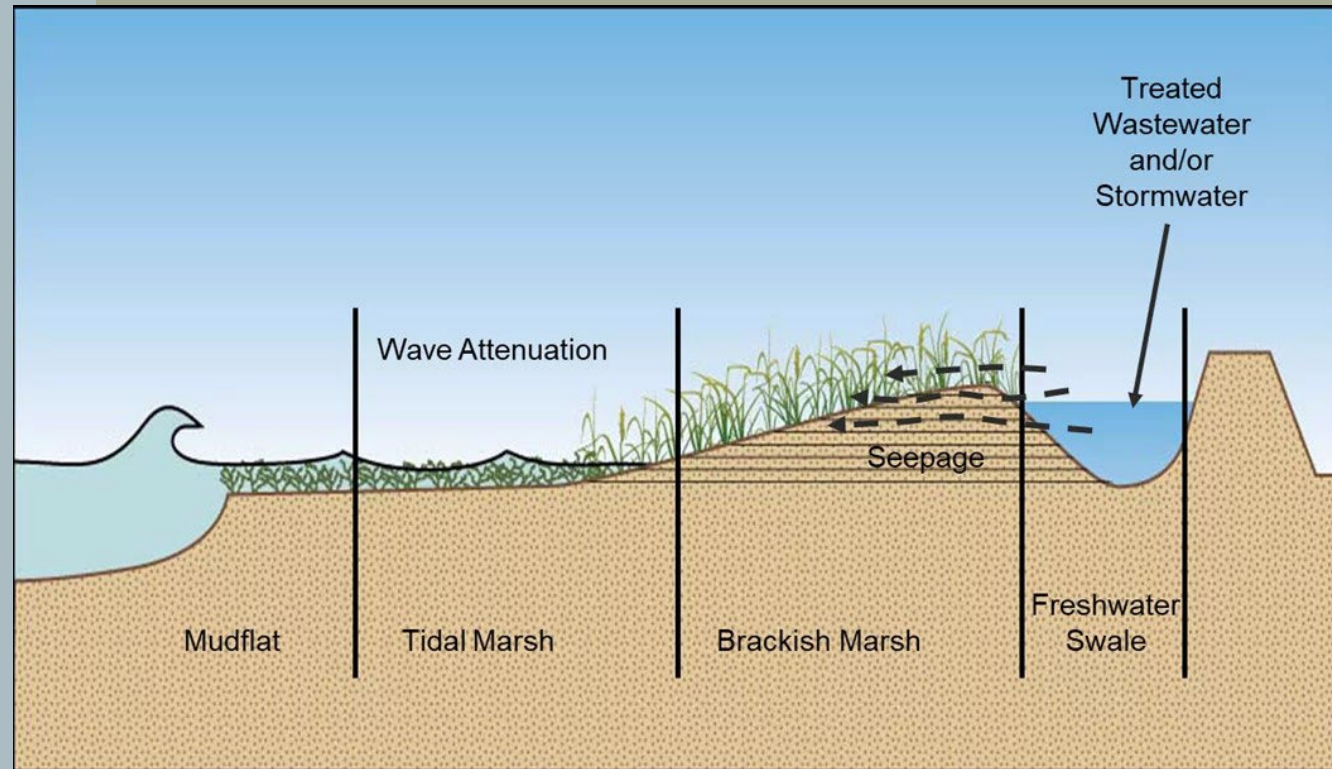
Need to Address Permitting Challenges

Wetland Restoration projects needed accelerated permitting timeframes to ensure viable habitat before additional SLR challenges- led to forming the BRRIT

Multi-benefit projects like “Horizontal Levees” have additional permitting hurdles (e.g. fill under CWA 404, flood protection, etc..)

San Francisco Estuary Partnership developed the Regulatory Pathways White Paper – finalizing Spring 2024:

<https://www.sfestuary.org/regulatory-pathways-for-nbs/>



How BRRIT/PMC Addresses Permitting

Hurdles

Permit Policy Improvement List: <https://www.sfbayrestore.org/policy-and-management-committee>

T & E Species: USFWS, NMFS, and CDFW now align their required species conservation measures to avoid conflicts between agencies in their authorizations, e.g. species surveys, timing of seasonal work windows, etc..

Fill for Habitat: PMC subgroup evaluating permitting complexities to improve evaluation of fill impacts; Water Board evaluating need for Basin Plan Amendment to clarify options for compensating for unavoidable impacts within the context of shoreline adaption project and SLR

Public Access: during pre-application phase, public access is discussed to be designed to avoid and minimize impacts to sensitive species and habitats



How BRRIT/PMC Addresses Permitting Hurdles, cont'd

BRRIT comments: continual improvement to ensure agency comments are clear and concise and avoid perceived conflicts

Scientific equipment: working with project proponents to simplify permitting that may be required for installation of scientific measurement devices as part of required monitoring

BRRIT offers guidance on new restoration permitting tools:

Palo Alto Horizontal Levee Pilot Project used USFWS PBO and ELOC and plans to obtain an RMP

Restore Hayward Marsh Project used SERP

BRRIT/PMC Issue Resolution: Elevation of issues from BRRIT to PMC for discussion, resolution, and identification if policy/legislative fixes are the only alternative



Thank you! Please ask us questions!



CONTACT INFO

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ASSOCIATION OF
RAMAYTUSH OHLONE



Draft 5 Amy Hosa & Linda Yamane

Perspective

~ We have ALWAYS been here ~

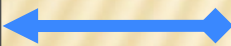
'Present'

Origin Stories of California Indigenous People:
" we were placed here by Creator at the 'Beginnings of the World' "

~NATIVE LAND STEWARDS~



N. American Indigenous "history":
evidence as old as 27,000 yrs or more



Ohlone Bay Area "history":
evidence as old as 10,000 yrs

"European Contact"
Columbus: 1492



"California Colonization"
1st California Land Expedition: Portola in 1769



California Statehood
1850



Purpose Statement

The Association of
Ramaytush Ohlone (ARO)
represents the interests of the
original peoples of the San
Francisco Peninsula. The purposes
of the ARO align with our ancestral
responsibilities to:
Care for the Earth
and to
Care for all Life
which resides in our ancestral
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Project Areas

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Rematriation

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Rematriation



Revitalization of culture, language, and community

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Project Areas

- ✱ Rematriation
- ✱ Revitalization of culture, language, and community
- ✱ Research, consultation, and education

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- ✱ Research, consultation, and education
- ✱ Ecological restoration
- ✱ Community service
- ✱ Arts and Cultures



THE CDFW CUTTING THE GREEN TAPE PROGRAM

Pete McHugh, CDFW Bay-Delta Region
State of the Estuary 2024





CUTTING THE GREEN TAPE

The California Department of Fish and Wildlife's Cutting the Green Tape program is a statewide effort to increase the pace and scale of habitat restoration by creating and implementing new environmental permitting and grant funding tools.



Grant Funding



**Permitting and
CEQA**



**Project
Coordination**

<https://wildlife.ca.gov/Cutting-Green-Tape>



Photo: Brad Henderson



My thinking has shifted from ‘this is how we have always done it’ to seeing the issue from a restoration practitioner perspective. An NGO does not care what branch I work in, they just want to do their project and not be sent to another window.”

STATE REGULATORY AGENCY STAFF MEMBER

A NEW PARADIGM FOR RESTORATION PERMITTING

- The old way: view restoration projects through lens of development – focused on avoiding impacts at the expense of benefits
- The new way: restoration = beneficial management for protected species

CDFW CGT Program origin & Structure

CGT program created in FY21-22 to:

Help 'increase the pace and scale of environmental restoration ... by streamlining the State's process to approve and facilitate these projects.'

(EO N-82-20)

Implement recommendations for granting and permitting efficiencies developed collaboratively by the restoration community with CNRA, CDFW

Program structure:

Statewide program with regional and HQ functions

Bay-Delta (R3) & North-Central (R2) regions cover the Bay, Delta

Regions write permits; HQ supports with policy/legal guidance, tool development, statewide coordination

R3 CGT Supports CDFW's BRRIT functions





CUTTING THE GREEN TAPE

Restoration Permitting and CEQA Tools



Restoration Management Permit (RMP)

The RMP is a consolidated take authorization for both state listed species and Fully Protected species.



Restoration Consistency Determination (CD)

Restoration CDs are fast, free, and provide take coverage for animals that are both state and federally listed.



Habitat Restoration and Enhancement Act (HREA)

HREA is a CEQA exemption, LSA Agreement, and CESA permit for small restoration projects.



Statutory Exemption for Restoration Projects (SERP)

SERP can save substantial money and time for qualifying projects that need CEQA coverage.

CEQA Statutory Exemption for Restoration Projects (SERP)

- Established Sept 23, 2021, in California P.R.C. § 21080.56
- SERP is a CEQA exemption for restoration projects of any size that “... conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife ...” [subject to other criteria]
- Using SERP for CEQA compliance –
 - Lead Agency makes preliminary determination RE: eligibility
 - Obtains concurrence from CDFW Director
 - Lead Agency files NOE, CDFW posts concurrence on web
- SERP expires Jan 1, 2025

SERP BY The NUMBERS



As of 5/25/24:

138 consultation requests statewide

50 concurrences issued (4 in the Estuary)

Concurrences encompass >20,000 acres

Range of project types, complexity included

Noteworthy savings due to exemption,

approx. 7 mos. & >\$100K per project



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Restoration Management PERMIT

- WHAT'S IN A NAME? MANAGEMENT.
- A WAY TO AUTHORIZE TAKE OF CA ENDANGERED, THREATENED, OR FULLY PROTECTED SPECIES FOR RESTORATION PROJECTS (TYPICALLY WITHOUT ADDITIONAL MITIGATION)
- “UMBRELLA” PERMIT THAT CONSOLIDATES TWO TYPES OF TAKE AUTHORIZATIONS
- POTENTIAL TO INCLUDE OTHER CDFW AUTHORIZATIONS (LSAA, TAKE OF COMMON SPECIES) IN FUTURE



Consistency Determinations & FED ESA

CD on project-specific ITS/ITP, or Programmatic BOs (and ITS)
NOAA Restoration Center PBOs (Santa Rosa, Arcata, Central Valley)
USFWS Statewide Restoration PBO
Early coordination is key

Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

Program to fund, and/or permit restoration project
Central Coastal California Office jurisdiction

NMFS Consultation Number: WCR-2015-3755
Action Agencies: National Oceanic and Atmospheric Administration, Restoration Center Engineers, San Francisco

Programmatic Biological and Conference Opinion
California Statewide Programmatic Restoration Effort
FWS Reference: 2022-0005149-S7
US Fish and Wildlife Service Region 8, US Army Corps of Engineers (Los Angeles, Sacramento, and San Francisco Districts), and National Oceanic and Atmospheric Administration - Restoration Center, California

Lead Agency for Consultation Purposes:
U.S. Fish and Wildlife Service
Region 8
Sacramento, CA

Prepared by the Pacific Southwest Regional Office
U.S. Fish and Wildlife Service
Region 8
Sacramento, California
August 2022

Affected Species and NMFS' Determinations:

ESA-Listed Species	Status	Is Action Likely to Adversely Affect Spec or Critical Habitat?*
CCC coho salmon (<i>Oncorhynchus kisutch</i>)	Endangered	Yes
California coastal Chinook (<i>O. tshawytscha</i>)	Threatened	Yes
NC steelhead (<i>O. mykiss</i>)	Threatened	Yes
CCC steelhead (<i>O. mykiss</i>)	Threatened	Yes
S-CCC steelhead (<i>O. mykiss</i>)	Threatened	Yes
Green Sturgeon (<i>Acipenser medirostris</i>)	Threatened	*No

*Please refer to section 2.11 for the analysis of species to be adversely affected.

MICHAEL SENN Digitally signed by MICHAEL SENN
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Habitat Restoration and Enhancem

HREA – meet small habitat restoration project (SHRP) 401 Cert. criteria:

<5 acres/500 LF, voluntary, primary purpose is habitat benefit

HREA benefits:

faster than LSAA (if SHRP 401 in hand)
covers CESA authorization (if needed)
CEQA exemption

Best with CDFW-RWQCB collaboration



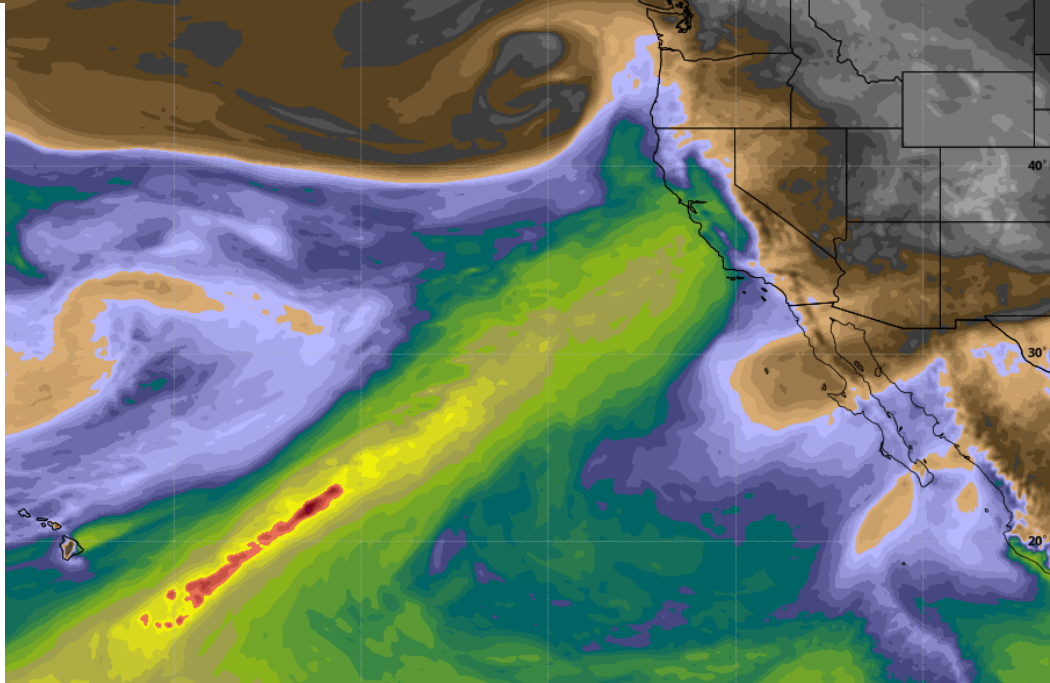


FIGURE 2. FIVE PHASES OF A PARADIGM SHIFT AS APPLIED TO CGT

