



Midpeninsula Regional  
Open Space District

R-19-54  
Meeting 19-13  
April 24, 2019

## AGENDA ITEM 11

### AGENDA ITEM

Award of Contract for State and Federal Waters Environmental Permitting Services

### GENERAL MANAGER'S RECOMMENDATIONS

1. Authorize the General Manager to execute a contract amendment with Horizon Water and Environment, LLC, to provide additional state and federal waters environmental permitting services in an amount not to exceed \$624,847, for a new contract amount of \$724,581.
2. Authorize a 12% contingency of \$74,982 to cover unanticipated issues during permit negotiations, for a total contract amount not-to-exceed \$799,563.

### SUMMARY

Midpeninsula Regional Open Space District (District) regularly obtains environmental permits for ongoing maintenance, operations, and construction activities for protected waters and species. The District utilizes a mix of “programmatic” permits that cover many routine activities across District boundaries and “individual” permits that cover specific, non-routine projects. The General Manager recommends amending the contract with Horizon Water Environmental, LLC., (Horizon) for a not-to-exceed new contract amount of \$724,581, and authorizing a 12% contingency amount of \$74,982. The proposed contract amendment with Horizon would provide consultant services to obtain programmatic permits that cover ‘routine maintenance’ activities, restoration projects, and trail construction projects from four different federal and state agencies. These four agencies include the US Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), US Fish and Wildlife Service (USFWS), and California Department of Fish and Wildlife (CDFW) (Attachment 1). Horizon will also apply for a coastal development permit with San Mateo County to streamline the same types of projects in the coastal zone and complete a California Environmental Quality Act (CEQA) document that covers all of these planned projects. The Fiscal Year (FY) 2018-19 budget includes sufficient funds for costs through the end of this fiscal year. The proposed FY2019-20 Action Plan and Budget will include additional funds to provide the second phase of work under this contract amendment.

### DISCUSSION

#### Background

Environmental permits largely fall within two categories: water and wildlife, which derive from the Clean Water Act and Endangered Species Act respectively, each having state and federal versions. Much of the District’s work that generates the need for environmental permitting is centered around avoiding or controlling water as it intersects with District infrastructure, including trails, roads, bridges, and ponds. Additionally, many of the protected species on

District preserves (e.g. California red-legged frog, San Francisco garter snake, western pond turtle) are associated with these aquatic habitats and obtaining permits for potential impacts to these species becomes a component of the environmental permitting process. Therefore, most projects require species and water-related permits from both state and federal agencies (Attachment 2 and Table 1). The District has experienced a significant increase in the number of required permits given the recent growth of the maintenance and capital programs.

Another driver for this project is the renewal of the programmatic agreement with the RWQCB, which expired in 2018, and has been extended temporarily for two years. The RWQCB's shared authority with the Corps under the Clean Water Act requires a joint 401/404 water quality certification for District activities. The RWQCB conditioned the renewal of the District's programmatic agreement for routine maintenance activities with a requirement for the District to obtain a similar agreement with the Corps. The Corps permit process ("Regional General Permit") entails federal consultation with USFWS, known as the Section 7 process under the Endangered Species Act, and consultation with the State Historic Preservation Office under Section 106. Because the process is complex and costly, staff and Horizon are recommending that the District include as many common and routine project types and activities in this programmatic permitting effort. Once established, these agreements generally last for 5-8 years with options for extension and amendment. Future extensions are anticipated to be low cost and require minimal consultant services, because the original permits created by the consultants are expected to only need minor modifications that staff can largely perform.

The goals for this permitting effort are:

- Develop a straight forward permitting process and internal guide for ongoing and expanded routine maintenance projects carried out by District staff and agricultural tenants (e.g. replacing culverts, repairing spring boxes, etc.);
- Obtain additional 'take' coverage for federal and state special status species for District projects that do not provide species recovery;
- Reduce project delay, cost, and uncertainty caused by long individual Corps permit processes;
- Define a consistent permitting process and schedule for new trail projects that intersect water and/or protected wildlife species/habitat, including many Measure AA projects;
- Ensure the Integrated Pest Management Program activities, particularly road and trail brushing, have the permits and standard avoidance and minimization measures for projects that intersect State and Federal Waters and/or protected wildlife species/habitat;
- Analyze and mitigate the effects of the routine maintenance program (including new trails) through the CEQA process; and
- Obtain a coastal development permit to streamline small-scale projects in the coastal zone of San Mateo County.

At the Board of Directors (Board) retreat on February 28, 2019, staff highlighted this project as a critical Natural Resources Department project because it affects many future Action Plan project costs and schedules, as well as Measure AA delivery.

On April 11, 2019, District staff and Horizon met with the Corps, USFWS, CDFW, and RWQCB on the proposed approach to address District permitting needs and the project types to be included in the programmatic permits. Preliminary feedback indicated that the general approach, which is consistent with other agencies in the region, is suitable to begin the permitting process with agencies, and that the District can begin negotiating the detail of the agreements/permits. The proposed contract amendment with Horizon covers this work.

**Table 1. State and Federal Environmental Permits for District Projects**

<b>Permit Type</b>	<b>Agencies</b>	<b>Current Permit Approach</b>	<b>Potential Future Approach</b>
Federal Wildlife	US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)	Mixed: programmatic “recovery” permit for some species/activities and some individual permits	Comprehensive: Section 7 consultation for Corps-jurisdiction projects that are not covered under an existing Section 10 Recovery Permit.
Federal Water	US Army Corps of Engineers (Corps)	Individual permits specific to different activities	Comprehensive: 404 Regional General Permit covering <i>most</i> activities
State Wildlife	California Department of Fish and Wildlife (CDFW)	Mixed: programmatic “routine maintenance agreement” and individual permits for new facilities (roads, trails, parking lots), or large (non-routine) projects	Comprehensive: Expand existing programmatic agreement to include additional trail work and make consistent with other permits
State Water	Regional Water Quality Control Board (RWQCB)	Mixed: programmatic “routine maintenance agreement” and individual permits for new facilities or large (non-routine) projects	Comprehensive: Programmatic “Stream Maintenance Program” covering <i>most</i> activities

### Consultant Selection

On April 10, 2018, staff released a Request for Proposals for these services. On May 7, three (3) proposals were received and interviews were held on May 25 and May 31 with Horizon and ICF Jones & Stokes, Inc., respectively. The third firm submitting a proposal, WRECO, was not interviewed due to a lack of experience with programmatic permitting. Horizon was determined to be the most qualified with the best project approach at a fair and reasonable price. In July of 2018, the Board authorized the General Manager to enter into contract with Horizon for the first phase of work for a total not-to-exceed amount of \$99,734 (R-18-90). Horizon performed the first phase of work successfully, including a comprehensive review of the District’s permitting needs and developing the permitting approach. Based on their knowledge gained from the first phase, Horizon is best situated to provide the second phase of work under this contract amendment due to their understanding of the District, current permits, project types, and anticipated future projects. Horizon possesses experience in applying for and obtaining similar permits for the Santa Clara Valley Water District, San Jose Water Company, and is currently under contract with San Mateo County for similar services.

### **FISCAL IMPACT**

The FY2018-19 Budget and Action Plan includes \$150,000 for the *Endangered Species Act Programmatic Permitting* project. There are sufficient funds in the project budget to cover the recommended action and expenditures anticipated this fiscal year. Additional funds will be requested in the proposed FY2019-20 budget as part of the annual Budget and Action Plan approval process.

<b>Endangered Species Act Programmatic Permitting (Project #80034-44)</b>	<b>Prior Year Actuals</b>	<b>FY2018-19 Amended Budget</b>	<b>FY2019-20 Projected Budget</b>	<b>FY2020-21 Projected Budget</b>	<b>Total</b>
<b>Project #80034-44 Budget:</b>	\$13,123	\$150,000	\$645,000	\$55,000	<b>\$863,123</b>
Spent-to-Date (as of 03/29/2019):	(\$13,123)	(\$48,025)	\$0	\$0	<b>(\$61,148)</b>
Encumbrances:	\$0	(\$45,184)	\$0	\$0	<b>(\$45,184)</b>
Horizon Contract Amendment - Costs:	\$0	(\$50,000)	(\$574,847)	\$0	<b>(\$624,847)</b>
12% Contingency:	\$0	(\$6,000)	(\$68,982)	\$0	<b>(\$74,982)</b>
<b>Budget Remaining (Proposed):</b>	<b>\$0</b>	<b>\$791</b>	<b>\$1,171</b>	<b>\$55,000</b>	<b>\$56,962</b>

The recommended action is not funded by Measure AA.

### **BOARD COMMITTEE REVIEW**

This item has not been previously reviewed by a Board Committee.

### **PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

### **CEQA COMPLIANCE**

This item is not a project subject to CEQA

### **NEXT STEPS**

If approved, the consultant will work to obtain permits, which includes agency negotiations, permit applications, technical studies in support of the permits, mitigation strategies, and an initial study/environmental assessment as part of the CEQA process. The anticipated project schedule includes: permit development through December 2019, CEQA certification in spring of 2020, and, pending agency processes, permit receipt in late 2020 or early 2021.

Attachment

1. Programmatic Permitting Project Types
2. Jurisdictional Conceptual Diagram

Responsible Department Head:

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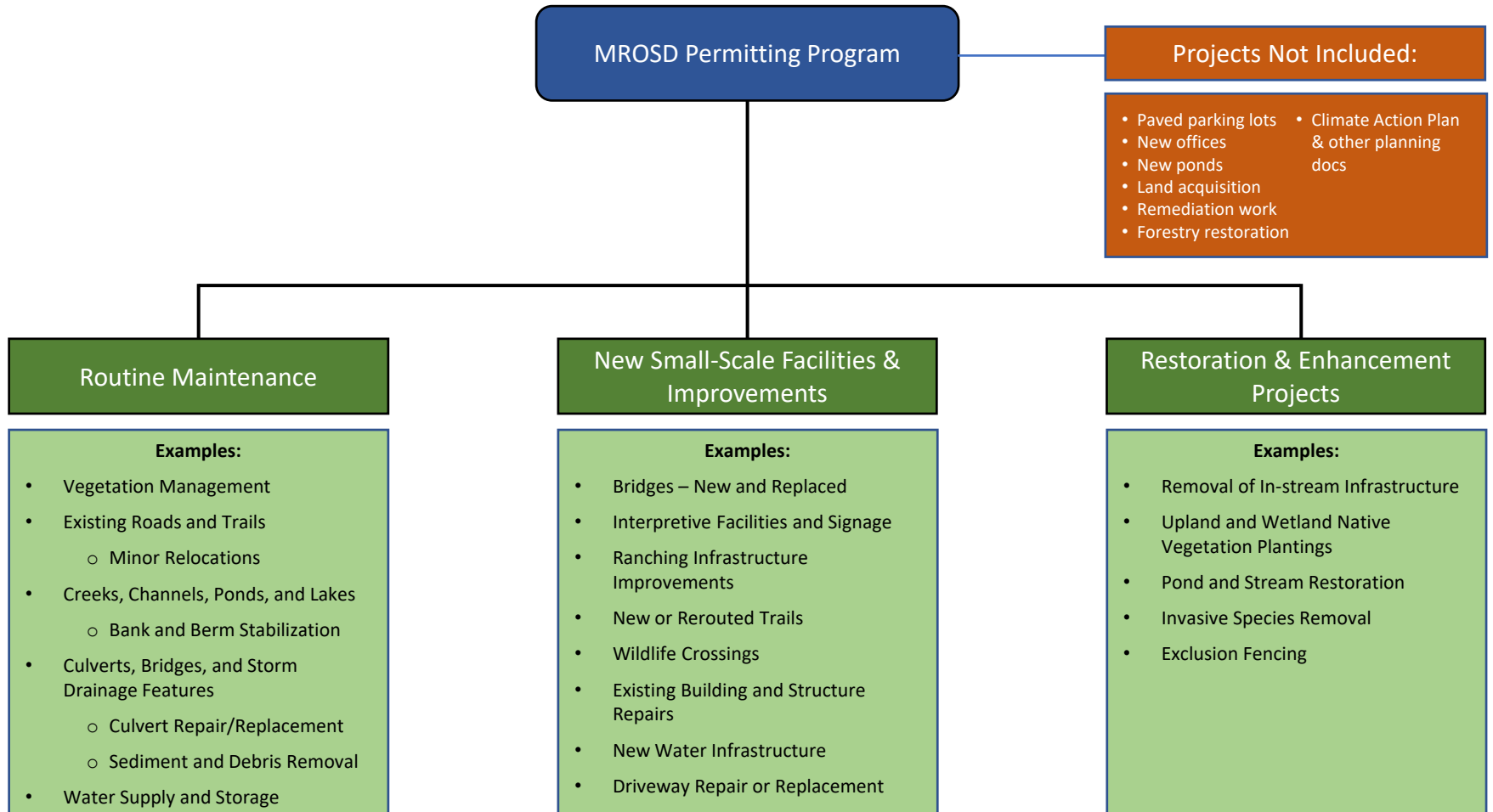
Contact person:

Aaron Hébert, Water Resources Specialist

Graphics prepared by:

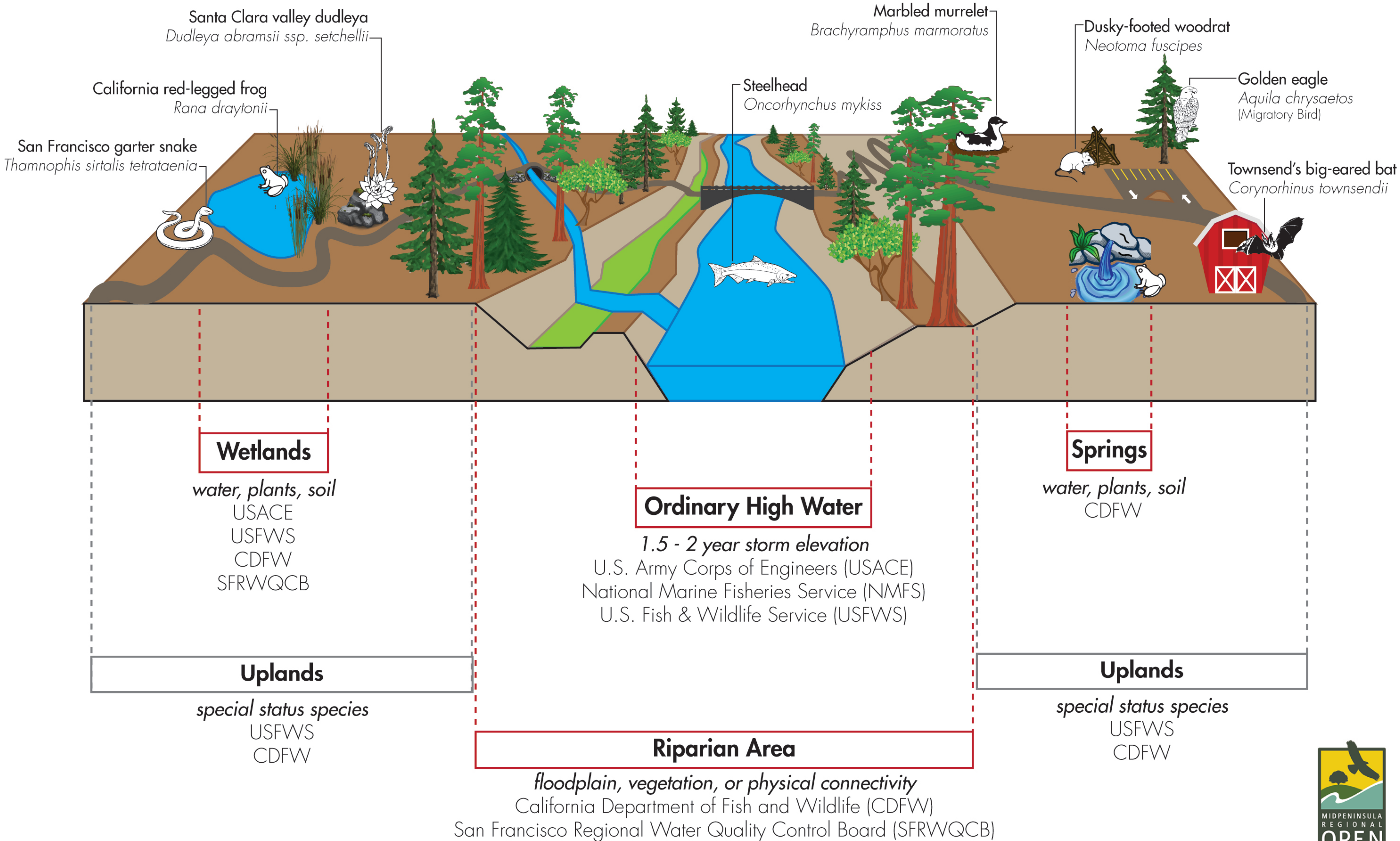
Jamie Hawk, GIS Data Analyst I

# Attachment 1. Project Types to be Covered Under Programmatic Permits



# Environmental Jurisdiction Diagram\*

## Midpeninsula Regional Open Space District



\*Does not include:  
 - Water Rights administered by the State Water Resources Control Board  
 - City or County Environmental Ordinances or Codes