

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: July 22, 2011
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update on the Regional General Permit

RECOMMENDATION

ACCEPT an update from Staff on the U.S. Army Corps of Engineer’s proposed Regional General Permit related to the HCP/NCCP.

DISCUSSION

BACKGROUND

On March 22, 2011, Mary R. Pakenham-Walsh, Project Manager, California Delta Branch, U.S. Army Corps of Engineers, Sacramento Regulatory Division (“Corps”) provided an update to the Governing Board on recent actions by the Corps on the proposed RGP. The Governing Board accepted the update, directed Staff to conduct additional public outreach on the RGP and directed staff to bring the proposed In Lieu Fee Program back to the Board for consideration and adoption once it was ready. Attached please find the staff report presented to the Board at the March 2011 meeting which has additional background information.

Over the last several months, staff has held a public workshop regarding the RGP and has provided on-going technical support to the U.S. Army Corps of Engineers as they prepare to issue an RGP. The purpose of this report is to provide a brief update on these matters.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: July 22, 2011 APPROVED AS RECOMMENDED: Yes
OTHER: _____

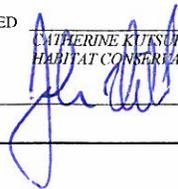
VOTE OF BOARD MEMBERS

___ UNANIMOUS
___ AYES: Glover, Pope, Stratford, Longmire
___ NOES: _____
___ ABSENT: Bryant
___ ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED
CATHERINE KUISURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY _____, DEPUTY



PUBLIC WORKSHOP AND OUTREACH EFFORTS

On June 22, 2011 Conservancy Staff hosted an Informational Workshop on Coordinating Species Permitting under the East Contra Costa County HCP/NCCP with Federal Wetlands Regulation. The intent of the Workshop was to provide information on the proposed RGP and give the public an opportunity to ask questions and make suggestions. The Workshop consisted of a panel of regulators which included the following:

- Kate Dadey & Mary Pakenham-Walsh, U.S. Army Corps of Engineers
- Randi Adair & Jeanne Chinn, California Department of Fish and Game
- Stephanie Jentsch, U.S. Fish and Wildlife Service

Presentations were made by John Kopchik, Ms. Dadey and Ms. Pakenham-Walsh. The three of them and the remainder of the panel then answered questions. The public turnout was strong, with approximately 33 people attending to hear the presentations and ask questions. Attendees represented a broad spectrum of organizations interested in the HCP/NCCP and the proposed RGP, including consultants that perform project permitting for private and public projects in the area, public agency representatives (including representatives from the participating cities and the County), private developers, conservation organizations and representatives from private mitigation banking companies. Staff believes the workshop was very well received.

Other public outreach efforts in the past year on this topic include a presentation by the Corps and Conservancy Staff in March 2011 to the Contra Costa Council Land Use Task Force, discussion of this topic at various quarterly meetings of the Conservancy's Public Advisory Committee, a presentation and panel on this topic at the annual Vacaville conference on HCPs in November 2010 which was attended by more than 150 people and hosted by the Conservancy and others who are part of the Northern California Conservation Planning Partners, and presentations by staff at legal/environmental affairs conferences in San Francisco in September 2010 and in Sacramento in June 2010.

RGP STATUS UPDATE

During the Information Workshop on June 22, 2011 the Corps announced that the South Pacific Division of the Corps (which oversees both the Sacramento and San Francisco Districts), has officially designated authority to the Sacramento District to act as the lead Corps District for all required actions associated with issuing a RGP. Furthermore, under the RGP, the Sacramento District will have the responsibility to verify all activities under the HCP/NCCP that qualify for the RGP within both with the Sacramento and San Francisco districts. Designation of one lead Corps District was a goal for the Conservancy.

In June of 2011, the Corps Sacramento District initiated programmatic consultation on the RGP under Section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service. At the same time, the Corps Sacramento District also requested a General 401 Water Quality Certification under Section 401 of the Clean Water Act from the State Water Resources Control Board for activities that would be authorized under the Corps proposed implementation of the RGP. Completion of a Biological Opinion by the U.S.

Fish and Wildlife Service and a 401 Water Quality Certification by the State Board (and/or by the appropriate Regional Boards) would further coordinate the natural resources permitting process with the HCP/NCCP and provide improved streamlining and assurances to project proponents. The State Water Resources Control Board and the two Regional Boards with jurisdiction in the HCP/NCCP Plan Area (Central Valley RWQCB and San Francisco Bay RWQCB) have been involved in the process of developing the HCP/NCCP and associated permit programs for wetlands and waters for years (and, of course, the USFWS was the initial proponent of the HCP, has approved the HCP, and is assisting with implementation). The Water Board has previously identified challenges with certification of the RGP, however current conversations among staff from the State and Regional Boards, the U.S. Environmental Protection Agency, and Corps Sacramento District indicate that there is an eagerness to try to resolve these challenges.

The Sacramento District of the Corps has expressed interest in issuing the RGP very soon, anticipating that work on the Section 7 consultation with U.S. Fish and Wildlife Service and on the 401 Water Quality Certification with the State and Regional Boards would continue after RGP issuance. The proposed In Lieu Fee Instrument, the agreement that would memorialize payment of the HCP/NCCP fees as eligible mitigation under the RGP, would also follow issuance of the RGP. Conservancy staff has initiated drafting the In Lieu Fee Instrument and will report to the Board on this matter at an upcoming meeting. Until the In Lieu Fee Instrument is in place, Conservancy staff will continue to work with Corps and other agencies on a case-by-case basis to try to coordinate wetland mitigation and the HCP/NCCP. Since the Conservancy has already constructed several wetland restoration projects, the Conservancy is in a much better position to provide such coordination than it would be otherwise.

Attachments:

- March 2011 Report to the Board on Corps Presentation