



Memorandum

Date:	May 8, 2014
To:	Kenneth Schreiber Interim Executive Officer Santa Clara Valley Habitat Agency 535 Alkire Avenue , Suite 100 Morgan Hill, CA 95037
From:	Brad Norton, ICF Kathryn Gaffney, ICF
Subject:	Santa Clara Valley Habitat Plan Regional General Permit Application Process and Summary

Purpose

The purpose of the Regional General Permit (RGP) permit process is to streamline the permitting process for applicants who need to obtain a permit from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act (CWA) for Habitat Plan covered activities that will impact wetlands and other waters (waters of the U.S. or “waters”), if the impact is less than 0.5 acre and equal to or less than 300 linear feet of streambed. This process will also provide support to applicants to ensure their projects are consistent with both the Habitat Plan and the RGP.

Process

Prior to commencing a proposed activity, project applicants will:

1. Determine if activity is covered by the Habitat Plan;
2. Draft Habitat Plan application package (including RGP forms if waters will be impacted);
3. Conduct analysis outlined in the application package to:
 - a. evaluate which land-cover types will be impacted,
 - b. identify which Avoidance and Minimization Measures (AMMs) (from the Habitat Plan and Corps’ requirements) will be applied,
 - c. assess if the project will result in the dredge or fill of waters of the U.S.,
 - d. determine if the RGP applies, and

- e. assess if the project will affect listed fish or cultural resources.
4. Confirm findings with local planner;
5. Submit application package and pay fees; and
6. Respond to information requests from the Habitat Agency or local jurisdiction.

Upon submittal of the application, the local jurisdiction will review the application for completeness. If it is deemed complete it will be forwarded to the Corps within thirty (30) calendar days of receipt. If the Corps determines that an activity is not an eligible activity under the RGP, the Corps will notify the local jurisdiction in writing within thirty (30) calendar days and provide instructions to seek authorization under a standard permit or Nationwide permit. If the Corps determines that a proposed activity is eligible for coverage under the RGP, it will notify the local jurisdiction within 20 calendar days that the project may use the RGP process. The Habitat Agency will then notify the project applicant within 5 days. Project applicants may not proceed with the project until receiving written notification from the local jurisdiction that the activity is authorized under the RGP.

If the Corps determines that listed fish or cultural resources may be impacted, a minimum of an additional 35 days of review time will be needed to obtain concurrence with the State Historic Preservation Office (SHPO) or National Marine Fisheries Service (NMFS).

The process is illustrated in more detail in Figure 1.

Exceptions and Limitations

The RGP process may not be appropriate for all projects. Specific exceptions and limitations include:

1. Projects with impacts greater than 0.5 acre of waters and 300 feet of stream;
2. Projects with impacts to listed fish; and
3. Projects with impacts to cultural resources.

The RGP process does not currently include the Water Quality Certification Process with the Regional Water Quality Control Board (Regional Board) under Section 401 of the CWA; however, the AMMs and mitigation is designed to support permitting with the Regional Board. Applicants must also work with the appropriate Regional Board (San Francisco Bay or Central Coast) to obtain the appropriate permit.

Other Considerations and Conditions

Mitigation. The Habitat Agency is seeking to streamline waters mitigation requirements with the Corps. However, initially, because no mitigation has yet been constructed, applicants will need to provide their own waters mitigation in the form of on-site restoration, bank credits, or other Corps-approved wetland mitigation.

Single and complete project. The project must be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by the RGP.

After-the-fact projects. The RGP may not be used to authorize activities after they have impacted waters of the United States.

Compliance with Habitat Plan conditions. Activities to be authorized under the RGP must be Habitat Plan covered activities and must fully comply with the Habitat Plan. Compliance with the Habitat Plan requires project applicants to implement the appropriate AMMs (also called “Conditions”) outlined in the application.

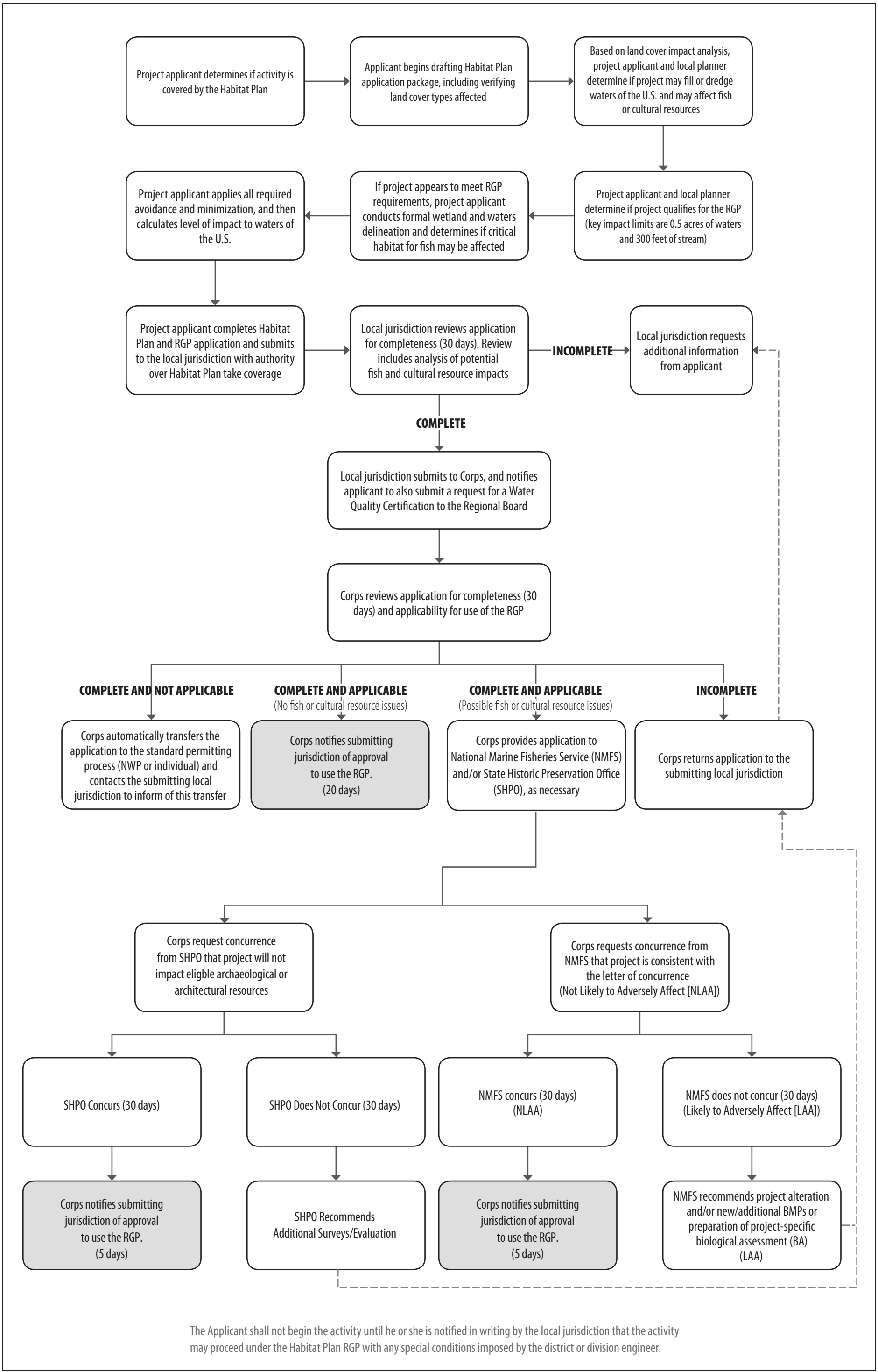
Activity completion. Any activity authorized by the Corps’ district engineer under the RGP must be completed within two (2) years of the date it is authorized. The “authorization date” is the date the district engineer verifies in writing that the activity meets the terms and conditions of the RGP.

Discretionary Authority. The Corps has the discretion to suspend, modify, or revoke authorizations under the RGP.

Benefits

Applicants can expect that the RGP process will take between 60 and 90 days. This is considerably shorter than a typical nationwide permitting process that may take 180 days.

Applicants will work with Habitat Agency staff rather than the Corps to ensure the application is complete and readily reviewable.



The Applicant shall not begin the activity until he or she is notified in writing by the local jurisdiction that the activity may proceed under the Habitat Plan RGP with any special conditions imposed by the district or division engineer.

Figure 1
Application and Consultation Process for Using the
Santa Clara Valley Habitat Plan Regional General Permit