Santa Clara Valley Habitat Plan
Regional General General Permit #18

Training and Workshop for Co-Permittees
April 5, 2016
Agenda

- Welcome and Objectives (5 min.)
- Overview of Regional General Permit #18 (40 min.)
- RGP Process and Preparing Applications (20 min.)
- Examples and Discussion (20 min.)
- Co-Permittee Input and Feedback (30 min.)
- Next Steps and Wrap-up (5 min.)
Objectives

• Understand the purpose of the RGP and how it relates to the Habitat Plan
• Understand how to prepare an RGP application
• Discuss key issues that might arise during preparation of an application
• Provide feedback on the application process and how to improve it
Overview of the RGP

- Federal permit issued by the U.S. Army Corps of Engineers (Corps) to comply with Section 404 of the Clean Water Act (CWA) – **5-year permit**
- It is both a *permit* and a *permitting process* designed to compliment the Habitat Plan
- Similar to, and built upon, the nationwide permitting process
RGP Issued to All of Us
Local Control and Increased Certainty for Project Permitting

USFWS Endangered Species

CDFW Endangered Species

U.S. Army Corps Wetlands and Streams

Regional Board Wetlands

Santa Clara Valley Habitat Plan

Coming Soon
RGP Covered Activities

- Habitat Plan–covered activities that also discharge fill into waters of the U.S.
- **17 categories of activities**
- **Activities with minimal impacts on waters of the U.S.**
  - 0.1 – 0.5 acre and 50 – 300 linear feet
Jurisdiction under the CWA

• “Waters of the United States” under Section 404 Clean Water Act [33 CFR § 328.3(a)]
  – Wetlands are a subset of waters of the U.S.
  – 3 parameter test:
    • Hydrology
    • Soils
    • Vegetation

• “Waters of the State” under California Water Code Section 13050(e)
  – Waters of the U.S. within California
  – Isolated waters
  – 2 parameter test:
    • Hydrology
    • Soils
Regulatory Jurisdiction
## Overview of the RGP Activities

<table>
<thead>
<tr>
<th>#</th>
<th>Activity</th>
<th>Project Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bridge removal and repair</td>
<td>0.1 ac, 100 linear feet</td>
</tr>
<tr>
<td>2.</td>
<td>Bridge replacement, widening, and installation</td>
<td>0.5 ac, 300 linear feet</td>
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<tr>
<td>3.</td>
<td>Culvert repair, replacement, and removal</td>
<td>0.25 ac, 300 linear feet</td>
</tr>
<tr>
<td>4.</td>
<td>Culvert installation</td>
<td>0.5 ac, 300 linear feet</td>
</tr>
<tr>
<td>5.</td>
<td>Outfall repair, replacement, removal, and installation</td>
<td>0.1 ac, 50 linear feet</td>
</tr>
<tr>
<td>6.</td>
<td>Water intake structure repair, replace., and install.</td>
<td>0.25 ac, 100 linear feet</td>
</tr>
<tr>
<td>7.</td>
<td>Sediment removal</td>
<td>0.25 ac, 300 linear feet</td>
</tr>
<tr>
<td>8.</td>
<td>Removal of vegetation and storm debris</td>
<td>No limit, but subject to conditions</td>
</tr>
<tr>
<td>9.</td>
<td>Temporary construction access and dewatering</td>
<td>0.1 ac, 50 linear feet</td>
</tr>
<tr>
<td>10.</td>
<td>Recreational facility const., reconstruction, and mainten.</td>
<td>0.25 ac, 200 linear feet</td>
</tr>
<tr>
<td>11.</td>
<td>Restoration, establishment, and enhancement</td>
<td>No limit, but subject to conditions</td>
</tr>
<tr>
<td>12.</td>
<td>Installation of fish screens</td>
<td>0.1 ac</td>
</tr>
<tr>
<td>13.</td>
<td>Bank stabilization</td>
<td>0.1 ac, 300 linear feet</td>
</tr>
<tr>
<td>14.</td>
<td>Minor maintenance of levees, canals, and ditches</td>
<td>0.2 ac</td>
</tr>
<tr>
<td>15.</td>
<td>Surveying activities</td>
<td>0.08 ac</td>
</tr>
<tr>
<td>16.</td>
<td>Utility repair, removal, replacement, and installation</td>
<td>0.2 ac</td>
</tr>
<tr>
<td>17.</td>
<td>Development</td>
<td>0.5 ac, 300 linear feet</td>
</tr>
</tbody>
</table>
Does the RGP Cover my Project?

- Activities **must** occur in the Plan Area
- Activities **must** be covered by the Habitat Plan
- Activities **must** meet size restrictions
  - *Greater than 0.5 acre*, or *over 300 linear feet not covered*
- Activities **must** comply with the RGP
- Activities **must** be listed on the RGP
Requirements of the RGP

• Similar to those under Nationwide Permits (NWPs)
  – Avoidance
  – Minimization
  – Compensatory Mitigation
  – Adherence to Corps’ terms:
    • General Terms (11 items)
    • Special Conditions (20 items)
Overview of RGP Process

- **Prepare Application**
- **Habitat Agency Review** (15 days)
- **Corps Review** (15 days completeness, 30 days for issuance unless BO needed)
- **NMFS/SHPO Review, if necessary** (30 days, 135 days if BO needed)
- **Issue Permit**
RGP Application

**Part I. Project Overview**
- Project information
- Project description: data and 12 questions
- Series of required attachments

**Part II. RGP Conditions**
- Checklist:
  - 11 general conditions
  - 20 special conditions

**Part III. Fees**

**Part IV. Signature**
RGP Application – Part I

• Part I. Project Overview
  – Item 1. Applicant Contact Information
  – Item 2. Project Description
    • Property
    • RGP Activity Type
    • Purpose and Need
    • Project’s Impacts on Waters
    • Design to Avoid and Minimize Effects
      – Specific Considerations
    • Fill and Dredge Information
      – Type, Source, Method, Location
    • Impact Area (sf and length)
RGP Application – Part I

• Part I. Project Overview
  – Item 2. Project Description (cont.)
    • Bank Stabilization
    • Wetland Delineation
    • Mitigation
      – Applicant-Responsible
      – Habitat Plan
        » Credits being developed, however, currently there are no credits so will need to cover temporal loss

• Other Resource Considerations
  – Wildlife Species
  – Anadromous Fish
  – Tribal and Cultural Resources
RGP Application – Part I

- Part I. Project Overview
  - Item 3. Required Attachments
    - Wetland Delineation
    - Vicinity Map
    - Site Plan
    - Plan View and Cross-Sectional Drawings
    - Photos with Viewpoints on Drawings
    - Conditions
      - Not Likely to Adversely Affect (NLAA) Attachment
    - RGP Processing Fee
    - GIS/CAD Files
  - Each item has specific formatting and data standards
RGP Application – Part II

• Part II. Conditions
  – General Terms (11 items)
    • Fits within RGP
    • Mitigation provided
    • Financial assurances provided
    • Fits under Not Likely to Adversely Affect (NLAA)
    • Single and complete project
    • Not after the fact project
    • Complies with Habitat Plan
    • Corps may add conditions
    • Complete prior to December 2020
    • Corps has discretionary authority
    • Expiration date
RGP Application – Part II

• Part II. Conditions (cont.)
  – Special Conditions (20 items)
    • Threatened and Endangered Species – U.S. Fish and Wildlife Service (USFWS)
      – Habitat Plan will serve this function
    • Threatened and Endangered Species – National Marine Fisheries Services (NMFS)
      – NLAA conclusion (Attachment 2)
      – Biological Assessment (BA) needed if “may affect”
    • Notification requirements if protected species are discovered
    • CWA Section 401 compliance
      – Integration underway, but currently needed separately
    • Cannot affect historic properties
    • 15 others relating to cultural resources, floodplain, site maintenance, aquatic life, equipment, materials, etc.
RGP Application – Part III

• Part III. Fees
  – Habitat Agency is working to determine what the additional fee will be and how it will be charged
  – Habitat Agency is working to minimize additional incremental fees
  – However, additional fees may be needed because:
    • This is a new permit, under the CWA
    • Restoration success monitoring is more rigorous than that required by the Habitat Plan
    • Additional staff time is required to process and review these applications
RGP Application – Part IV

• Part IV. Signature
  – Similar to commitment required for all Corps’ permits
  – Legal commitment that the information is true, complete, and accurate
  – Allows assignment of an agent
Process After Application Submittal

• Habitat Agency review
  – 15 day review for completeness
  – Respond to any questions from the Habitat Agency

• Corps review
  – 15 day review for completeness
  – 30 days for issuance, if application is complete and there are no fish or cultural issues

• NMFS review, if necessary
  – 60 days for issuance, if application is complete and fish issues are addressed in NLAA
  – 135 + 30 days for issuance, if application is complete and fish issues require a Biological Opinion

• Permit issuance
  – Corps notices Habitat Agency
  – Habitat Agency notices applicant
#5 Outfall Replacement

- City of San Jose – Replacement of eight outfalls
#3 Culvert Repair

- Santa Clara Valley Water District – Culvert repair on watershed conservation lands – Site 4
#3 Culvert Repair

- Santa Clara Valley Water District – Culvert repair on watershed conservation lands – Site 8
Group Discussion

• Pop Quiz
  – Is the RGP a permit or process?
  – How long is the RGP good for?
  – Are projects over 0.5 acre allowed?
  – Are projects over 300 linear feet allowed?
  – How long will it take to get a project-specific permit?

• Break-out Session
  – Which projects and activities can use the RGP?
Input and Feedback

• Do you feel ready to prepare an application?

• What concerns do you have about the program?

• Do you have recommendations to overcome these concerns?
Input and Feedback

• How does the application look?
  – Approachable?
  – Easy to read?
  – Too long?

• What challenges do you expect will arise?
  – Activities?
  – Project limits?
  – Fees?
  – Applicant-responsible compensatory mitigation?
  – Other?
Next Steps and Wrap-up

• Today we discussed:
  – Purpose of the RGP and how it relates to the Habitat Plan
  – How to prepare an RGP application
  – How to talk about key issues that might arise during preparation of an application

• Thank you for your feedback on the application process and how to improve it
  – Follow-up survey?
  – Follow-up working group?