



- Board of Directors
Communications and Legislation Committee

10/11/2011 Board Meeting

8-5

Subject

Express support for H.R. 1907 (Calvert, R-CA) - Infrastructure Facilitation and Habitat Conservation Act of 2011

Description

In 1982, Congress amended the federal Endangered Species Act (ESA) to authorize the Secretaries of the Interior and Commerce to issue permits for the taking of protected species that is incidental to an otherwise lawful activity. One condition for these incidental take permits is that the applicant must prepare a conservation plan that mitigates the impact of the taking. Regional conservation plans have become an important tool for state and local government agencies to perform many public service and land use planning activities in compliance with the ESA, as well as other environmental laws.

A common problem that faces regional conservation plans is the timing of the species protection measures relative to the activity that will result in taking of the species. Where the environmental mitigation is funded by fees imposed on, or collected from, the activity that has been authorized by the incidental take permit the funding does not become available until the permitted activity is ready to begin. As a result, the environmental impacts occur before any mitigation measures are put in place. This situation is not acceptable to the federal regulatory agencies and environmental groups. They often impose a requirement that mandates up-front funding for conservation plans to ensure some level of protection for species.

H.R. 1907 ([Attachment 1](#)) would create a source of federal funding to provide up-front money to acquire land for conservation plans adopted by local government agencies for purposes of implementing infrastructure development. The bill would require the Secretary of the Interior to establish a loan program for those agencies to borrow funds specifically for use to acquire land for conservation plans approved pursuant to Section 10 of the Endangered Species Act. Loan applications will be reviewed by the Secretary of the Interior to confirm that the applicant is implementing an approved conservation plan issued to provide incidental take authorization for infrastructure development. Loans will be approved based on eligibility and determination of the financial soundness of the agency's plan for habitat acquisition and loan repayment.

This loan program would provide an important source of funding for local governments. Construction of new infrastructure, as well as maintenance and operation of existing facilities, may disturb habitat used by endangered species. To mitigate impacts and to obtain the required permits for its operations, Metropolitan has established or participated in the creation of several conservation plans pursuant to the Endangered Species Act. The availability of additional funding to assist with land acquisition, usually one of the most expensive elements of a conservation plan, would benefit Metropolitan and other local government agencies.

H.R. 1907 was introduced by Representative Ken Calvert (R-CA), and cosponsored by Representative Darrell Issa (R-CA). Senator Dianne Feinstein (D-CA) has introduced a similar bill in the Senate, S. 826. The legislation would offer an alternative funding source for Metropolitan and provide a general benefit for all local agencies that must implement conservation plans to move forward with public infrastructure improvements.

Staff Recommendation

Based on the potential benefits to Metropolitan and the region, staff recommends support for H.R. 1907.

Policy

Metropolitan's policy principles on federal Endangered Species Act issues, as revised and adopted by the Board on February 11, 1997, M.I. 42287

Metropolitan Water District Act, Section 123: Borrowing, Limitation

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express support for H.R. 1907.

Fiscal Impact: Potentially positive impact from availability of federal loan funds for future conservation plan costs

Business Analysis: The availability of federal loans for conservation plan funding provides a benefit for all local government agencies in financing environmental mitigation costs related to infrastructure projects.

Option #2

Take no position on H.R. 1907.

Fiscal Impact: Loss of potential funding source for future conservation plan costs

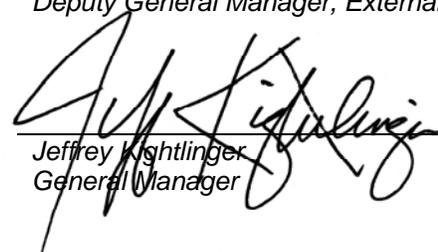
Business Analysis: In the absence of the federal loan program, local government agencies will continue to rely on existing funding sources to meet environmental mitigation costs of infrastructure projects.

Staff Recommendation

Option #1


 Linda Waade
 Deputy General Manager, External Affairs

9/28/2011
 Date


 Jeffrey Lightlinger
 General Manager

9/29/2011
 Date

Attachment 1 – H.R. 1907

112TH CONGRESS
1ST SESSION

H. R. 1907

To require the Secretary of the Treasury to establish a program to provide loans and loan guarantees to enable eligible public entities to acquire interests in real property that are in compliance with habitat conservation plans approved by the Secretary of the Interior under the Endangered Species Act of 1973, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2011

Mr. CALVERT (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To require the Secretary of the Treasury to establish a program to provide loans and loan guarantees to enable eligible public entities to acquire interests in real property that are in compliance with habitat conservation plans approved by the Secretary of the Interior under the Endangered Species Act of 1973, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Infrastructure Facili-
5 tation and Habitat Conservation Act of 2011”.

1 **SEC. 2. CONSERVATION LOAN AND LOAN GUARANTEE PRO-**
2 **GRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ELIGIBLE PUBLIC ENTITY.—The term “eli-
5 gible public entity” means a political subdivision of
6 a State, including—

7 (A) a duly established town, township, or
8 county;

9 (B) an entity established for the purpose
10 of regional governance;

11 (C) a special purpose entity; and

12 (D) a joint powers authority, or other enti-
13 ty certified by the Governor of a State, to have
14 authority to implement a habitat conservation
15 plan pursuant to section 10(a) of the Endan-
16 gered Species Act of 1973 (16 U.S.C. 1539(a)).

17 (2) PROGRAM.—The term “program” means
18 the conservation loan and loan guarantee program
19 established by the Secretary under subsection (b)(1).

20 (3) SECRETARY.—The term “Secretary” means
21 the Secretary of the Treasury.

22 (b) LOAN AND LOAN GUARANTEE PROGRAM.—

23 (1) ESTABLISHMENT.—As soon as practicable
24 after the date of enactment of this Act, the Sec-
25 retary shall establish a program to provide loans and
26 loan guarantees to eligible public entities to enable

1 eligible public entities to acquire interests in real
2 property that are acquired pursuant to habitat con-
3 servation plans approved by the Secretary of the In-
4 terior under section 10 of the Endangered Species
5 Act of 1973 (16 U.S.C. 1539).

6 (2) APPLICATION; APPROVAL PROCESS.—

7 (A) APPLICATION.—

8 (i) IN GENERAL.—To be eligible to re-
9 ceive a loan or loan guarantee under the
10 program, an eligible public entity shall sub-
11 mit to the Secretary an application at such
12 time, in such form and manner, and in-
13 cluding such information as the Secretary
14 may require.

15 (ii) SOLICITATION OF APPLICA-
16 TIONS.—Not less frequently than once per
17 calendar year, the Secretary shall solicit
18 from eligible public entities applications for
19 loans and loan guarantees in accordance
20 with this section.

21 (B) APPROVAL PROCESS.—

22 (i) SUBMISSION OF APPLICATIONS TO
23 SECRETARY OF THE INTERIOR.—As soon
24 as practicable after the date on which the
25 Secretary receives an application under

1 subparagraph (A), the Secretary shall sub-
2 mit the application to the Secretary of the
3 Interior for review.

4 (ii) REVIEW BY SECRETARY OF THE
5 INTERIOR.—

6 (I) REVIEW.—As soon as prac-
7 ticable after the date of receipt of an
8 application by the Secretary under
9 clause (i), the Secretary of the Inte-
10 rior shall conduct a review of the ap-
11 plication to determine whether—

12 (aa) the eligible public entity
13 is implementing a habitat con-
14 servation plan that has been ap-
15 proved by the Secretary of the
16 Interior under section 10 of the
17 Endangered Species Act of 1973
18 (16 U.S.C. 1539);

19 (bb) the habitat acquisition
20 program of the eligible public en-
21 tity would very likely be com-
22 pleted; and

23 (cc) the eligible public entity
24 has adopted a complementary
25 plan for sustainable infrastruc-

1 ture development that provides
2 for the mitigation of environ-
3 mental impacts.

4 (II) REPORT TO SECRETARY.—
5 Not later than 60 days after the date
6 on which the Secretary of the Interior
7 receives an application under sub-
8 clause (I), the Secretary of the Inte-
9 rior shall submit to the Secretary a
10 report that contains—

11 (aa) an assessment of each
12 factor described in subclause (I);
13 and

14 (bb) a recommendation re-
15 garding the approval or dis-
16 approval of a loan or loan guar-
17 antee to the eligible public entity
18 that is the subject of the applica-
19 tion.

20 (III) CONSULTATION WITH SEC-
21 RETARY OF COMMERCE.—To the ex-
22 tent that the Secretary of the Interior
23 considers to be appropriate to carry
24 out this clause, the Secretary of the

1 Interior may consult with the Sec-
2 retary of Commerce.

3 (iii) APPROVAL BY SECRETARY.—

4 (I) IN GENERAL.—Not later than
5 120 days after receipt of an applica-
6 tion under subparagraph (A), the Sec-
7 retary shall approve or disapprove the
8 application.

9 (II) FACTORS.—In approving or
10 disapproving an application of an eli-
11 gible public entity under subclause (I),
12 the Secretary may consider—

13 (aa) whether the financial
14 plan of the eligible public entity
15 for habitat acquisition is sound
16 and sustainable;

17 (bb) whether the eligible
18 public entity has the ability to
19 repay a loan or meet the terms of
20 a loan guarantee under the pro-
21 gram;

22 (cc) any factor that the Sec-
23 retary determines to be appro-
24 priate; and

1 (dd) the recommendation of
2 the Secretary of the Interior.

3 (III) PREFERENCE.—In approv-
4 ing or disapproving applications of eli-
5 gible public entities under subclause
6 (I), the Secretary shall give preference
7 to eligible public entities located in
8 biologically rich regions in which rapid
9 growth and development threaten suc-
10 cessful implementation of approved
11 habitat conservation plans, as deter-
12 mined by the Secretary in cooperation
13 with the Secretary of the Interior.

14 (C) ADMINISTRATION OF LOANS AND LOAN
15 GUARANTEES.—

16 (i) REPORT TO SECRETARY OF THE
17 INTERIOR.—Not later than 60 days after
18 the date on which the Secretary approves
19 or disapproves an application under sub-
20 paragraph (B)(iii), the Secretary shall sub-
21 mit to the Secretary of the Interior a re-
22 port that contains the decision of the Sec-
23 retary to approve or disapprove the appli-
24 cation.

1 (ii) DUTY OF SECRETARY.—As soon
2 as practicable after the date on which the
3 Secretary approves an application under
4 subparagraph (B)(iii), the Secretary
5 shall—

6 (I) establish the loan or loan
7 guarantee with respect to the eligible
8 public entity that is the subject of the
9 application (including such terms and
10 conditions as the Secretary may pre-
11 scribe); and

12 (II) carry out the administration
13 of the loan or loan guarantee.

14 (c) TERMINATION OF AUTHORITY.—The authority
15 under this section shall terminate on the date that is 10
16 years after the date of enactment of this Act.

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