



South Sacramento HCP Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

LETTER OF PERMISSION PROCEDURE FOR COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN WITH LESS THAN SIGNIFICANT IMPACTS ON THE HUMAN ENVIRONMENT

DATE: July 25, 2019

ACTION ID: SPK-1995-00386

AUTHORITY: 33 CFR 325.2(e)(1)(ii)

LOCATION: The South Sacramento Habitat Conservation Plan (SSHCP) Plan Area encompasses approximately 317,655 acres in southern Sacramento County (*Figure 1*, attached). The Plan Area includes the City of Galt, including its sphere of influence, and the area of the City of Rancho Cordova located south of U.S. Highway 50. The geographical boundaries of the Plan Area are U.S. Highway 50 and White Rock Road to the north, the Sacramento River levee and County Road J11 (Walnut Grove-Thornton Road) to the west, the Sacramento County line with El Dorado and Amador Counties to the east, and with the San Joaquin County to the south.

PURPOSE: The U.S. Army Corps of Engineers (Corps), Sacramento District has established this Letter of Permission (LOP) procedure to efficiently authorize SSCHP covered activities which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (CWA 404) with more than minimal on the aquatic environment but less than significant impacts on the human environment under the National Environmental Policy Act (NEPA).

The SSHCP LOP procedure is an optional abbreviated process for issuing an individual permit, available to all applicants for Department of the Army (DA) permits for SSHCP covered activities meeting the criteria and conditions described in this notice. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be evaluated under a different permit type or procedure. The Sacramento District evaluates and makes decisions for the SSHCP LOP procedure.

BACKGROUND: In accordance with Title 33 of the Code of Federal Regulations (CFR) Part 325, district engineers are authorized to use alternative procedures to authorize activities under the Corps Regulatory Program. LOPs are a type of individual permit issued through an abbreviated process which includes coordination with federal and state fish and wildlife agencies and a public interest evaluation, but without publishing an individual public notice.

The SSHCP provides coverage for twenty-eight species of plants and wildlife, including ten that are state and/or federally-listed as threatened or endangered. The SSHCP is a regional approach to address issues related to planned development and species habitat conservation. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) has approved the SSHCP through a species incidental take permit (ITP) issued to the SSHCP's Plan Permittees under Section 10 of the ESA. The

Plan Permittees have additionally developed a SSHCP Aquatic Resources Program (ARP), complementary to the SSHCP, with a locally-based permit program for activities resulting in no more than minimal individual and cumulative impacts on aquatic resources.

PROPOSED CATEGORIES OF ACTIVITIES: This LOP procedure applies only to SSHCP covered activities that have been authorized by a SSHCP “Land Use Authority Permittees” (LUAPs) or the South Sacramento Conservation Agency Joint Powers Authority (SSCA), consistent with the SSHCP and ARP. SSHCP covered activities are described briefly below, and in greater detail in the SSHCP.

Activities to be authorized under an LOP following the procedure described herein must be SSHCP covered activities. Applicants must receive a consistency determination from a LUAP or the SSCA that the proposed project is a covered activity under the SSHCP. Compliance with the SSHCP requires applicants to implement applicable and appropriate avoidance and minimization measures contained in Chapter 5 of the SSHCP, and other applicable terms and conditions as contained in the SSHCP.

Authorizations under an LOP will be issued only for those activities which meet all of the procedures and criteria identified in this notice, including the general conditions, and which do not result in a potentially significant impact(s) on the human environment. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under an LOP, to add special conditions to LOP authorizations, or to determine that an activity may not be authorized by a LOP and will instead require authorization under another permit type.

For a SSHCP covered activity to be authorized under an LOP following this procedure, impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. All applicable avoidance and minimization measures contained in Chapter 5 of the SSHCP and the ARP shall be required, resulting in fulfillment of most on-site avoidance and minimization requirements necessary to comply with CWA 404 requirements. Evaluation of project-level, on-site avoidance and minimization opportunities will be assessed on a case-specific basis. For example, the USACE may require evaluation of alternatives to avoid and minimize effects to waters of the U.S. within and adjacent to streams. This may result in minor adjustments to features such as stream setback width requirements imposed by the SSHCP in an area of a project site containing a wetland adjacent to the stream setback.

To qualify for a LOP under this procedure; activities must meet the following criteria:

1. The proposed activity does not result in a potentially significant impact(s) on the human environment that requires preparation of an environmental impact statement (EIS) under NEPA).
2. Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in the SSHCP, and shall be accomplished by payment into the Corps-approved South Sacramento In-Lieu Fee (ILF) Program.

Covered Activities under the SSHCP: The following SSHCP covered activities, described in greater detail in Chapter 5 of the SSHCP, are applicable to this LOP procedure.

1. **Urban Development in the UDA:** Activities associated with the construction and maintenance of urban development projects and associated facilities/activities, including but not limited to structures (residential, commercial, industrial), parks/recreation facilities, water supply facilities, flood control and

stormwater management, utilities (e.g., electric), solid waste management, wastewater, transportation and stream channel modification.

2. **Mining in the UDA:** Activities associated with surface extraction of rock or mineral resources, construction of associated infrastructure (e.g., buildings and facilities including surface mining pits, processing sites, conveyors, access roads and detention basins), and reclamation of previously mined land in accordance with the applicable federal and state laws.

3. **Rural Transportation Projects:** Activities associated with transportation projects outside of the UDA that are approved by the Sacramento County's 2030 General Plan, inclusive of construction, improvement and operation-related maintenance. For example, road widening, realignment and interchange improvement. Chapter 5 of the SSHCP describes specific rural transportation projects that fit into this category (e.g., widening of nine segments of arterial roads).

4. **Recycled Water Projects:** Activities associated with construction and maintenance of facilities associated with two specific recycled water projects; one that would serve the existing Bartley-Cavanaugh Golf Course, and the other known as the South Sacramento County Agriculture and Habitat Lands Recycled Water Project (South County Agricultural Program).

5. **Covered Activities in Preserve Setbacks in the UDA:** Activities associated with construction and maintenance of permeable and semi-permeable trails, bio-retention swales, fencing, firebreaks, benches, shade structures, shade trees, trash receptacles, interpretive signs and kiosks, outdoor lighting and livestock access facilities (e.g., access points) for livestock utilized pursuant to preserve management plans.

6. **Covered Activities in Stream Setbacks in the UDA:** Activities associated with construction and maintenance of permeable and semi-permeable trails, bio-retention swales, crossings perpendicular to streams (e.g., new roads, bike or pedestrian trails and utility lines), stream bank stabilization projects, fencing, firebreaks, benches, shade structures, shade trees, interpretive signs and kiosks, riparian habitat re-establishment or establishment, outfalls, flood control structures and stormwater management.

7. **SSHCP Preserve System Covered Activities:** Activities associated with implementation of the SSHCP Conservation Strategy, including preserve management, monitoring, habitat (including aquatic) enhancement, re-establishment establishment, "low-impact" nature trails, removal or breeching of farm levees, research activities (e.g., species surveys), livestock water supply, groundwater monitoring and extraction wells (specific to Kiefer Landfill), detention basins, and maintenance of existing utility facilities within SSHCP preserves.

8. **Covered Activities in the Laguna Creek Wildlife Corridor of the SSHCP Preserve System:** Activities associated with construction and maintenance of permeable and semi-permeable trails, benches, trash receptacles, bio-retention swales, fencing, shade structures, shade trees, crossings perpendicular to streams (e.g., new roads, bike or pedestrian trails and utility lines), stream bank stabilization projects, interpretive signs and kiosks, riparian habitat re-establishment and establishment, outfalls, flood control structures and stormwater management.

EXCLUSIONS:

1. The LOP procedure does not apply to any activities in waters of the U.S. that are not considered covered activities under the SSHCP.
2. The LOP procedure does not apply to any activities in waters of the U.S. that have a potential to significantly impact the human environment.

LOP PROCEDURE: The Sacramento District evaluates and makes decisions for the SSHCP LOP procedure.

1. **Before submitting an application:**

The applicant must attend a pre-application meeting with the Sacramento District. Applicants are encouraged to invite the applicable LUAP or SSCA (i.e., the anticipated reviewer of the local Aquatic Resource Impact Permit) to the pre-application meeting.

2. **Application submittal:**

To be considered for authorization by LOP, the application must include all information required for a standard permit application, pursuant to 33 CFR 325.1. The application package must be submitted to the Sacramento District in electronic form (pdf), suitable for electronic transmittal and/or posting to an FTP site, and include the following:

- a. A cover letter from the applicant requesting an LOP under the SSHCP LOP procedure for the proposed activity, referencing the Sacramento District's identification number and including contact information for the applicant and their designated agents or primary points-of-contact. This must include mailing and e-mail addresses and telephone and fax numbers.
- b. A completed and signed Department of the Army Engineering Form 4345.
- c. A copy of the Aquatic Resource Impact Permit application submitted to the LUAP and/or the SSCA.
- d. An aquatic resources delineation for the activity area, conducted in accordance with the Sacramento District's minimum standards for aquatic resource delineations, or information that an aquatic resources delineation has been verified and is still valid.
- e. Site location map(s), including the proposed activity, clearly outlined on USGS 7.5' quad sheet drawings, with latitudes and longitudes for the site(s), name of the quad sheet(s) and directions to the site, as well as all appropriate aerial and other imagery available.
- f. A complete description of the proposed activity, including all of the information identified under 33 CFR 325.1(d) "Content of application."
- g. Plan and profile views of the proposed work, relative to potential or approved waters of the U.S. (e.g., wetlands and open waters below the Ordinary High Water Mark), showing areas, types and acreages of waters of the U.S. proposed to be impacted by the proposed activity. All available

drawings must be provided and must show proposed impacts on appropriately scaled figures, in accordance with the Corps' map and drawing standards. All maps and drawings shall follow the South Pacific Division February 2016, Updated Map and Drawing Standards for the South Pacific Division Regulatory Program, or most recent update (available on the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>), unless specifically waived by the Corps.

h. The total area (acreage and/or linear feet) and types of waters of the U.S. to be directly and/or indirectly affected by the proposed activity, the volume (in cubic yards) and type of material to be discharged into each type of aquatic resource(s), acreage and/or linear feet of loss of waters of the U.S. by aquatic resources type, a description of habitat types, including plant communities, within and surrounding the activity site, and a description of how the proposed activity would affect all of the above resources.

i. A description and graphical representation of how impacts to waters of the U.S. and associated functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable on the project site. A summary of all applicable avoidance and minimization conditions proposed to be implemented, as required by the SSHCP, shall also be provided. This may be fulfilled by submitting a copy of the applicant's documentation provided to the LUAP and/or the SSCA, including but not limited to the submittal of documentation to support the local permitting entity's Determination of Environmentally Equivalent or Superior Alternative (DEESA), provided these documents clearly identify avoidance and minimization measures related to waters of the U.S.

j. A description of potential indirect (secondary) and cumulative impacts to waters of the U.S. and the human environment in the watershed and vicinity of the proposed activity.

k. Documentation and record of all pre-application coordination with the Sacramento District and other agencies (as applicable), including any activity-specific comments or concerns provided by agencies, as well as the applicant's response(s) to the comments or concerns.

l. Information, in report form, concerning on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a). The information must address compliance with the Environmental Protection Agency's 404(b)(1) Guidelines at 40 CFR part 230.

m. A statement providing the proposed compensatory mitigation for offset of unavoidable losses of waters of the U.S., indicating proposed compliance with General Condition 3, *Compensatory Mitigation*.

n. A cultural resources report completed in accordance with the Sacramento District's Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) (http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf). Hardcopies shall be mailed to the attention of Chief, CA Delta Section at the address below. The electronic copy shall be sent to CESPK-REGULATORY-INFO@usace.army.mil (or most up-to-date guidance found on web site below).

o. A statement confirming if the proposed activity will require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. If yes, describe if a written request for Section 408 has been submitted. Note an activity that requires Section 408 permission will not be authorized prior to a Section 408 permission being received.

3. Review and Decision:

a. The Sacramento District will review the applicant's submittal for completeness within approximately fifteen (15) calendar days of receipt. If the application is incomplete, the appropriate Sacramento District staff person will notify the applicant and request the additional information necessary to complete the application for further processing.

b. If the Sacramento District determines the application is complete but the activity cannot be authorized by a LOP, the Sacramento District will notify the applicant within 15 calendar days of that determination and proceed to an alternate permitting process (General Permit or Standard Permit).

c. If the application is determined to be complete and appears to meet LOP criteria, the Sacramento District will notify the applicant that the proposed activity is being evaluated for LOP authorization. The Sacramento District will notify the applicable LUAP and the SSCA, and applicable state and federal coordination agencies via e-mail of the proposed LOP for the activity, and request any comments within fifteen (15) calendar days of such notice. The Sacramento District will also request any additional information necessary to complete processing of the permit application, and, if sufficient information has been submitted, initiate any required consultation(s) with other agencies, to the extent necessary (e.g., in lieu of programmatic consultations).

d. The Sacramento District will review the comments received and, if otherwise complete (e.g., NHPA Section 106 consultation and 401 Water Quality Certification approved or waived), make a determination within 30 calendar days after the close of the comment period as to whether LOP authorization is warranted, and whether special conditions are needed. If the Sacramento District determines the activity (1) meets the criteria for LOP authorization, (2) would have a less than significant impact on aquatic resources and the human environment, (3) meets the requirements of the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines for Specification of Disposal Sites, (4) would not be contrary to the public interest, (5) is in compliance with other applicable laws (e.g. ESA, NHPA, Section 401 WQC), and (6) has been provided evidence of a consistency determination from the applicable LUAP or the SSCA that the project is covered under the SSHCP, an LOP will be issued.

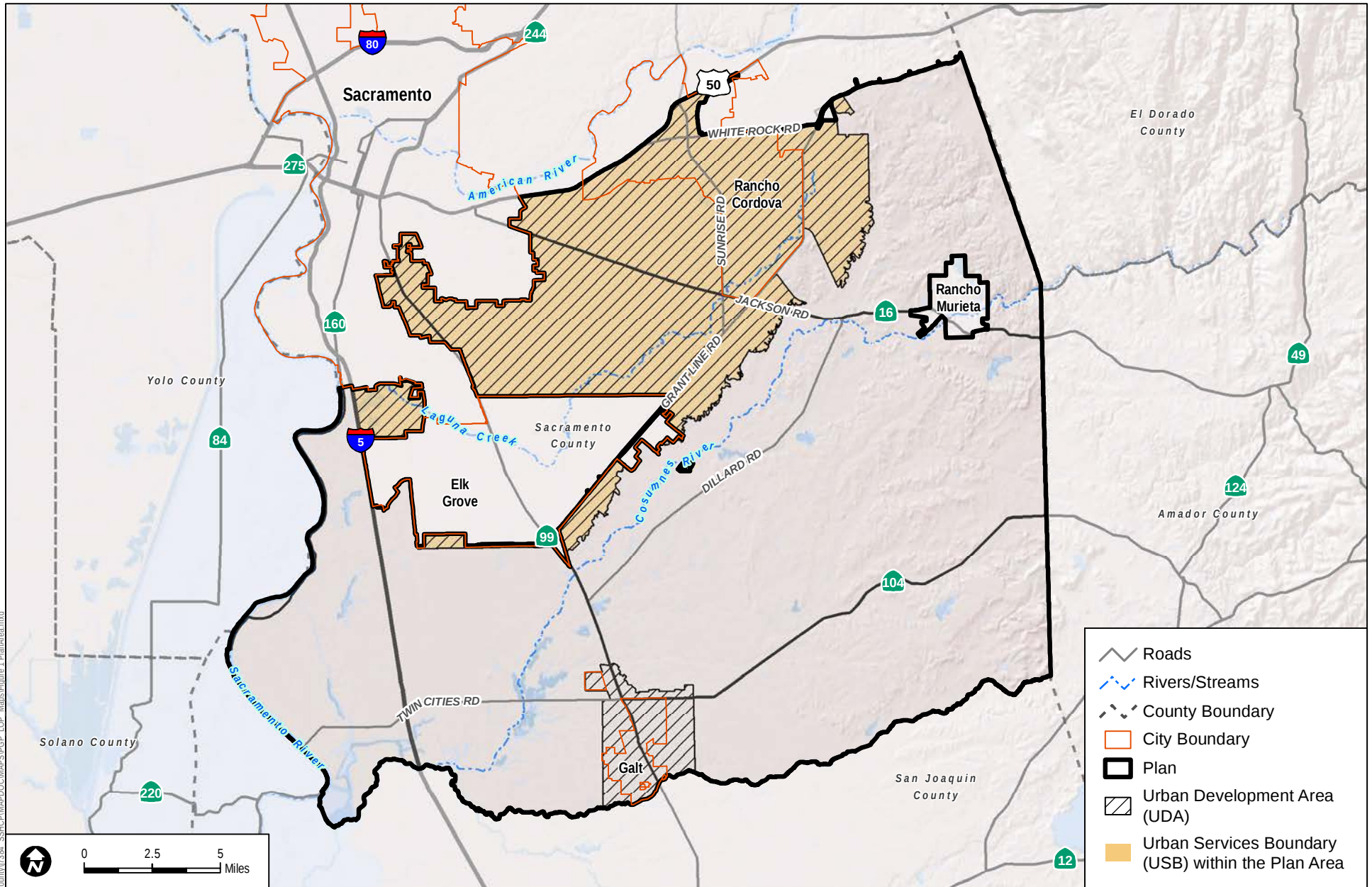
e. If at any time during the process the Sacramento District determines the activity may not be authorized by a LOP, Sacramento District staff will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process, as described in C(3)(b) above.

f. Evidence of Section 401 Water Quality Certification must be provided to the Sacramento District before any final LOP decision is made. An LOP will not be issued until and unless all necessary certifications, consultations and/or authorizations (e.g., 401 Water Quality Certification, NHPA Section 106) have been completed and/or issued.

g. The Sacramento District will add special conditions to LOP authorizations as necessary.

ATTACHMENT:

1. *Figure 1:* South Sacramento Habitat Conservation Plan Area



SOURCE: ESRI, County of Sacramento 2018

Figure 1 - South Sacramento Habitat Conservation Plan Area