



South Sacramento HCP Abbreviated Standard Permit Process

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG.

July 2019

ABBREVIATED STANDARD PERMIT PROCESS FOR COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN WITH MORE THAN SIGNIFICANT IMPACTS ON THE HUMAN ENVIRONMENT

Background

The South Sacramento Habitat Conservation Plan (SSHCP) covers 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, following a comprehensive conservation strategy. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) approved the SSHCP through a species incidental take permit issued to five Plan Permittees and the South Sacramento Conservation Agency (SSCA) under Section 10 of the Endangered Species Act (ESA 10). The following provides the approach to be utilized in the U.S. Army Corps of Engineers (Corps) Sacramento District's Abbreviated Standard Permit (SP) process for issuing standard permits for SSHCP covered activities.

When Would the Abbreviated Standard Permit Process Apply?

The Abbreviated SP process will be used for the small number of SSHCP covered activities requiring authorization under Section 404 of the Clean Water Act Section (CWA 404) that may significantly affect the human environment under the National Environmental Policy Act (NEPA), requiring the preparation of an Environmental Impact Statement (EIS). As a result of coordination and alignment with the SSHCP and a locally-based Aquatic Resources Program (ARP), the Sacramento District's evaluation process for SP applications can be streamlined or "abbreviated" to produce higher quality and faster decisions.

EIS Trigger for SSHCP Abbreviated SP Process

If an EIS is required for a SSHCP covered activity, the abbreviated SP process would apply when the Corps determines an EIS is required. The determination that a proposed activity may significantly affect the human environment is based on an analysis of the direct and indirect effects of the proposed action, within the Corps' scope of analysis as defined in 33 CFR Part 325, Appendix B.

The Sacramento District recognizes that identifying the appropriate type of CWA 404 permit appropriate for processing SSHCP covered activities needing CWA 404 authorization is of paramount interest to project applicants, particularly early in project planning and design. Although a final determination of the need for an EIS can only be made by the Corps in response to receiving a complete permit application, the Sacramento District encourages project applicants to engage during the early planning stages of projects to discuss CWA 404 regulatory strategies. Following this approach, project applicants would have limited unknowns in terms of which type of SSHCP-aligned CWA 404 permit is anticipated to be required.

Abbreviated Standard Permit Process

While the procedural requirements for CWA 404 SPs would follow the same process as identified by regulations found at 33 CFR Part 325, *Applications for Permits*, the anticipated timeline for completing this process would be substantially reduced as a result of streamlining. Certain SP processing components are required by regulation; examples include contents of a complete application, and public notices. A top objective of the abbreviated SP process is to address, in the most efficient way possible and with reliance on the SSHCP, including its EIS and other related documents including the ARP, the most information-intensive and time-consuming aspects of SP evaluation and streamline these to the maximum extent possible. Key processing elements of the SSHCP abbreviated SP process are described below, and summarized (with some additional procedural examples) in comparison to a typical SP process in **Table 1**.

Pre-application Meeting

The abbreviated SP process requires a pre-application meeting between the project applicant, Corps, applicable SSHCP Permittee (e.g., County of Sacramento) and the SSCA. As an outcome of the pre-application meeting, the Corps will provide feedback on whether it appears an EIS may be necessary, as well as guidance on alternatives the applicant may consider to avoid and minimize effects to the human environment, and reduce the likelihood of an EIS being required.

Complete Permit Application and Supplemental Information

Reducing the review time for an SP under the SSHCP will be in part achieved through the applicant's submittal of a complete Department of the Army (DA) permit application and supplemental information. The information necessary to reduce processing times includes: (1) Providing information required for a complete application as defined at 33 CFR 325, *Applications for Permits*; (2) Information to show the project is in compliance with all applicable requirements of the SSHCP; (3) Information to show the project is in compliance with the U.S. Environmental Protection Agency's (EPA's) *Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material* (404(b)(1) Guidelines) as relates to on-site alternatives to avoid and minimize adverse effects to waters of the U.S.; (4) Information to show the project is in compliance with Section 106 of the National Historic Preservation Act (NHPA) and Section 401 of the CWA, as appropriate; and (5) A proposed plan for compensating for the loss of waters of the U.S. on the project site, consistent with the South Sacramento In-Lieu Fee (ILF) Program.

Information Requirements for Aquatic Resources in SP Application's EIS

The level of information and/or extent of analysis necessary in the proposed project's EIS to comply with NEPA at the project level will be reduced as a result of tiering from the SSHCP EIS. While timelines for review required by NEPA regulations will remain the same (e.g. Draft EIS comment period of 45 days, Final EIS review period of 30 days), submittal of information necessary for a complete application and tiering from the SSHCP EIS will substantially reduce the required preparation time for the EIS, including using applicable information regarding direct, indirect, and cumulative effects, incorporation of applicable avoidance and minimization measures, and elimination of the requirement for evaluation of off-site alternatives.

Compliance with CWA 404 Avoidance and Minimization Requirements, Including EPA's 404(b)(1) Guidelines

Because the SSHCP EIS examines a range of reasonable HCP alternatives affecting waters of the U.S., it served as the basis for the Sacramento District's landscape-level evaluation of alternatives under

NEPA¹. Similarly, the SSHCP EIS and supplemental information submitted to the Corps concurrently with the project's EIS processing, provide the primary basis for the Corps' evaluation of avoidance, minimization and less damaging practicable alternatives at the regional scale. Most project-level avoidance and minimization requirements will be satisfied when proposed activities are designed to comply with all applicable avoidance and minimization measures contained in the SSHCP and ARP.

An on-site alternatives analysis will still be required, but the off-site alternatives analysis normally required for SP evaluation under EPA's 404(b)(1) Guidelines has been addressed at the regional level in the Corps' Record of Decision (ROD) for the SSHCP EIS. Most on-site avoidance and minimization will be achieved by incorporating applicable avoidance and minimization measures from the documents noted above. The Corps will exercise its discretionary judgment, consistent with CWA 404 regulations, in evaluating avoidance and minimization of on-site impacts to waters of the U.S. This will be accomplished within the context of recognizing regional, plan-wide trade-offs in aquatic resource impacts, avoidance, minimization and compensatory mitigation, resulting in an overall enhanced quality of regional aquatic resource protection provided by the SSHCP and ARP. For example, a SSHCP-required stream setback may have opportunity to be reasonably expanded to include the outer boundary of an adjacent wetland. Assessment of avoidance and minimization opportunities is necessarily site-specific, however the Sacramento District intends to apply case-specific analysis in consideration of the SSHCP's regional approach to avoidance and minimization measures.

Compensatory Mitigation Requirements

Compensatory mitigation requirements for unavoidable impacts to waters of the U.S. would align to the mitigation requirements contained in the SSHCP, and would be satisfied by a "one-fee" system in which the SSHCP's fees required for impacts to aquatic resources would cover both the SSHCP's requirements and the Corps' compensatory mitigation requirements. This would be accomplished by payment into the Corps-approved South Sacramento ILF Program established in May 2019 by the SSHCP Permittees, consistent with requirements of the Federal Mitigation Rule (33 CFR Part 332).

Compliance with Other Laws

To-date, the Corps has obtained programmatic compliance with Section 7 of the ESA, and for the Corps' programmatic general permit (PGP) 16 under the CWA 404 SSHCP permit strategy, programmatic Section 401 water quality certification (401 WQC). Programmatic Section 7 ESA coverage for abbreviated SPs provides for greater assurances and streamlining. The Corps intends to continue pursuing the goals of a programmatic Section 401 WQC for abbreviated SPs, and programmatic compliance with Section 106 of the NHPA. In comparison to a typical SP process, programmatic approaches to complying with these laws is anticipated to save significant amounts of time and cost to project applicants (see **Table 1**) on the following page.

¹ As documented in the Corps' Record of Decision for the SSHCP EIS (July 2019).

Table 1. SSHCP Abbreviated Standard Permit vs. Normal Standard Permit Requirements

Requirements	SSHCP Abbreviated SP	Normal SP
Pre-application Meeting	Required	Recommended
Complete Application	Required. See 33 CFR Part 325.1(d)	Required. See 33 CFR Part 325.1(d)
Public Notice	Required. See Under 33 CFR Part 325.3	Required. See under 33 CFR Part 325.3
EIS Level of Analysis	Reduced, Due to "Tiering" from SSHCP EIS/EIR	Required. Stand-Alone, Project-Specific
Alternatives for NEPA, 404(b)(1) and Public Interest Review	Reduced, Due to "Tiering" from SSHCP EIS/EIR, and Incorporating SSHCP Avoidance/Minimization Measures	Required. Stand-Alone, Project Specific
Evaluation of Off-site Alternatives Analysis	Not Required	Required
Evaluation of On-site Alternatives Analysis	Required. See 33 CFR Part 325, Appendix B.9(5). Primarily Satisfied through Incorporation of SSHCP Avoidance/Minimization Measures; Minor Adjustments Along Preserve Boundaries may be Necessary	Required. See Under 33 CFR Part 325, Appendix B.9(5). Project-Specific Avoidance and Minimization
Applicant Information About Avoidance and Minimization for Impacts to Waters of the US	Required. Most On-site Avoidance and Minimization Requirements Satisfied by Incorporating SSHCP Avoidance/Minimization Measures; Additional Supporting Information Will be Required	Required. No Standardized Design and Construction Avoidance/Minimization Measures to Rely Upon
Compensation for Impacts to Waters of the U.S.	Required. Compensatory Mitigation Achieved through South Sacramento In-Lieu Fee Program	Required. Project-specific mitigation plan subject to Corps approval. Compensatory mitigation Achieved through Mitigation Bank, Corps-Approved (Non-SSHCP) In-Lieu Fee Program, and/or Permittee-Responsible Mitigation; See 33 CFR Part 332.
Compliance with Section 7 of the Endangered Species Act (ESA)	Required. Project Covered by SSHCP's Biological Opinion (BO)	Required. Project-Specific Biological Assessment, Consultation, and BO
Compliance with Section 401 of the Clean Water Act (Section 401 Water Quality Certification)	Required. Project-Specific 401 WQC with future goal of programmatic WQC for abbreviated SPs	Required. Project-Specific 401 WQC.
Compliance with Section 106 of the National Historic Preservation Act	Required. Until a Programmatic Agreement (PA) is available, Project-Specific Information and Consultation	Required. Project-Specific Information and Consultation

BENEFITS OF THE ABBREVIATED STANDARD PERMIT PROCESS

Alignment with the SSHCP is an opportunity to streamline the standard permit process under the Corps Regulatory Program for covered activities that require preparation of an EIS. The abbreviated SP process will reduce Corps review time by more than half. With NEPA tiering and programmatic consultations, a permit decision can be made in 6 to 9 months (excluding any delays attributable to the permit applicant). Additional reduction in processing times would also occur if reviews are conducted concurrent with local agency review, including completing a joint EIS' and Environmental Impact Report (EIR) with the local agency. As shown in **Table 1**, reduction in length of processing of SPs under the abbreviated SP process will result from:

1. A reduction in time necessary to complete a Draft and Final EIS, as a result of tiering from the SSHCP EIS.
2. A reduction in the level of information required to show compliance with EPA's Section 404(b)(1) Guidelines, which would be limited to evaluation of on-site avoidance and minimization alternatives, most of which would be satisfied by incorporating SSHCP avoidance/minimization measures. This would result in a reduction in the review time by the Corps.
3. A reduction in Corps review time for proposed compensatory mitigation, as compensatory mitigation would occur through the purchase of ILF program credits and using mitigation ratios consistent with the SSHCP.
4. A reduction in processing time for Section 7 ESA compliance due to coverage by the USFWS's BO for the SSHCP.
5. Upon establishment of a programmatic 401 WQC for abbreviated SPs, a reduction in processing time for Section 401 WQC.
6. Upon establishment of a Section 106 NHPA PA, a reduction in processing time for Section 106 of the NHPA.