



South Sacramento HCP Minor Impact Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

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COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN WITH MINOR IMPACT

DATE:

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 within south Sacramento County (*Figure 1 [showing SSHCP Plan Area; figure to be developed]*, attached). The Plan Area includes the City of Galt and the City of Galt's sphere of influence, and the portion of the City of Rancho Cordova that is located south of U.S. Highway 50. The geographical boundaries of the Planning 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. The Plan Area excludes the northern portion of Sacramento County, the portion of Rancho Cordova located north of U.S. Highway 50, the City of Sacramento, City of Elk Grove, City of Folsom, sovereign lands of the Miwok Tribe, and the Sacramento County community of Rancho Murieta.

PURPOSE: The U.S. Army Corps of Engineers, Sacramento District (Corps) is establishing a Letter of Permission (LOP) procedure to more 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 but less than significant impacts on the aquatic environment. The SSHCP Minor Impact LOP Procedure is an optional abbreviated permit process available to all applicants for Department of the Army (DA) permits for 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 authorized under a different permit type or procedure.

BACKGROUND: In accordance with Title 33 of the Code of Federal Regulations (CFR) Part 325, district engineers are authorized to use alternative procedures, including LOPs, to authorize activities under the Corps Regulatory Program. LOPs are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of 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.

PROPOSED CATEGORIES OF ACTIVITIES: This LOP procedure applies only to SSHCP Covered Activities that have been authorized under the local ARP (i.e., have received an ARI permit processed under a local ARP ordinance). SSHCP Covered Activities are described briefly below, and in greater detail in the SSHCP.

Activities to be authorized under a LOP following the procedure described herein must be SSHCP Covered Activities and comply with any applicable terms and conditions contained in the SSHCP. Applicants must receive a consistency determination from a SSHCP LUAP or SSHCP IE that the proposed project is covered under the SSHCP. Compliance with the SSHCP requires applicants to implement the 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.

A 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 have only minor impacts on the aquatic environment. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under a 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. For purposes of the procedure, notwithstanding the Corps' discretionary authority described above, avoidance and minimization requirements shall be considered to be primarily satisfied when applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in both Chapter 5 of the SSHCP and the applicable ARP ordinance.

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 the National Environmental Policy Act (NEPA).
2. Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in the *Compensatory Mitigation Standards* specified in the local ARP ordinances (which mirror requirements contained the SSHCP), and shall be accomplished by payment into a Corps-approved SSHCP 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, after authorization under the local Aquatic Resources Program.

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. conducted in emergency situations.

LOP PROCEDURE:

1. Before submitting an application:

The applicant must attend a pre-application meeting with the Corps. Applicants are encouraged to invite the applicable SSHCP LUAP or SSHCP IE (i.e., the anticipated reviewer of the local ARI permit) to the pre-application meeting with the Corps.

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 Corps in both paper and 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 Minor Impact LOP procedures for the proposed activity, referencing the Corps' 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 (hardcopy, and electronic on CD) of the ARI permit application submitted to the SSHCP LUAP and/or SSHCP IE.
- d. An aquatic resources delineation for the activity area, conducted in accordance with the Corps' 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 and other aquatic resources 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 types of aquatic resources to be directly and/or indirectly affected by the proposed activity, the volume (in cubic yards) and type of material to be placed into the aquatic resources., 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 aquatic resources and their functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable on the project site. This may be a copy of the applicant's documentation provided to the SSHCP LUAP and/or SSHCP IE as required to demonstrate avoidance and minimization of impacts, including but not limited to the submittal of documentation to support the local permitting entity's Determination of Environmentally Equivalent or Superior Alternative (DEESA).

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

k. Documentation and record of all pre-application coordination with the Corps 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. Copies of state and local approvals, pending applications or approvals, and any other evidence that the proposed activity has been or is currently being reviewed by the appropriate state and local agencies and is consistent with their land use plans and policies, particularly wetland policies, programs, ordinances and/or laws.

3. Review and Decision:

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

b. If the Corps determines the application is complete but the activity cannot be authorized by a LOP, the Corps 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 Corps will notify the applicant that the proposed activity is being evaluated for LOP authorization. The Corps will notify the applicable SSHCP LUAP and SSHCP IE, 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 Corps will also initiate consultation(s) as necessary with other agencies, to the extent necessary (e.g., in lieu of programmatic consultations).

d. The Corps will review the comments received and, if otherwise complete (e.g., ESA, NHPA consultations and 401 Water Quality Certification done), 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 activity meets the criteria for LOP authorization and would have an overall minimal effect on aquatic resources and the human environment, an LOP will be issued.

e. If at any time during the process the Corps determines the activity may not be authorized by a LOP, Corps staff will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process, as described in C(2) above.

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

g. The Corps will add special and/or general conditions to LOP authorizations as necessary.