



SOURCE: County of Sacramento 2018

**South Sacramento Habitat Conservation Plan Area**

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# CWA 404 Permit Strategy Aligned with the South Sacramento Habitat Conservation Plan

U.S. ARMY CORPS OF ENGINEERS

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## 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, over a 50-year period. The boundaries of the 317,655-acre SSHCP Plan Area are generally U.S. Highway 50 to the north, the Sacramento River levee and County Road J11 to the west, the county line with El Dorado and Amador Counties to the east, and the county line with San Joaquin County to the south. The six SSHCP Plan Partners are the County of Sacramento, City of Galt, City of Rancho Cordova, Sacramento County Water Agency, Sacramento Regional County Sanitation District, and the Southeast Connector Joint Powers Authority. The Plan Partners have formed a SSHCP Implementing Entity to carry out the HCP's commitments and requirements. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) will approve the SSHCP through a species incidental take permit issued to five of the Plan Partners and the SSHCP Implementing Entity under Section 10 of the Endangered Species Act (ESA 10), collectively termed "SSHCP Permittees" upon approval of ESA 10. Before it can issue its incidental take permit, the USFWS must internally consult under Section 7 of the ESA (ESA 7) and is required to comply with the National Environmental Policy Act (NEPA) and other related laws.

The U.S. Army Corps of Engineers (Corps) regulates discharges of dredged or fill material into waters of the U.S., including wetlands, under Section 404 of the Clean Water Act (CWA 404) through its Regulatory Program. Permits are issued to applicants only after a determination has been made that the proposed activity is the least environmentally damaging practicable alternative under the U.S. Environmental Protection Agency's (USEPA) 404(b)(1) Guidelines, which involves evaluating avoidance, minimization and compensation for impacts to waters of the U.S. Further, the Corps must comply with ESA 7, NEPA, Section 401 of the Clean Water Act (CWA 401), and Section 106 of the National Historic Preservation Act (NHPA 106) before authorizing an activity under CWA 404. Types of permits the Corps issues include general permits issued on a regional, nationwide, or programmatic basis for activities with minimal impacts on the aquatic environment, individually and cumulatively, and individual permits (standard and letters of permission) for those activities which do not fall under a general permit or have greater than minimal impacts. The Corps' Sacramento District (Sacramento District) administers the Regulatory Program in the Central Valley and Sierra Nevada California, the States of Nevada and Utah, and the Western Slope of Colorado.

Currently, the Corps reviews permit applications on an individual or case-by-case basis, which sometimes makes it challenging to evaluate avoiding, minimizing and compensating impacts to aquatic resources on a broader scale. As a result, the Corps' review is generally on the merits of the individual activity and the characteristics of the proposed project site, with limited ability to comprehensively assess where the risks, trade-offs and interactions among several projects and aquatic resources can be considered. Over time, environmental issues and development demands, especially in urbanizing areas, have resulted in adverse effects to the aquatic ecosystem that are not necessarily surprising, but fall short of more

ecologically meaningful and sustainable outcomes that a landscape-scale permitting solution may afford. For instance, permits issued by the Corps have led to a patchwork of wetland mitigation sites in certain areas, which may have disjointed or inconsistent preserve boundaries and be functionally compromised by abutting development. Furthermore, the distance between the permitted impact location and its mitigation site may be considerable, especially in cases where the compensation was accomplished through the purchase of credits at a mitigation bank or through an in-lieu fee (ILF) program.

The Sacramento District views the SSHCP as a remarkable opportunity to improve both species and aquatic resource protection in a coordinated way on a regional scale, taking into account planned

***The Sacramento District views the SSHCP as a remarkable opportunity to improve both species and aquatic resource protection in a coordinated way on a regional scale, taking into account planned development and providing greater certainty for the regulated public.***

development and providing greater certainty for the regulated public. With this in mind, the Sacramento District has been coordinating with the USFWS and Plan Partners, and others, since 2004 to develop and implement a “streamlined” approach to permitting under CWA 404 that encompasses a number of different permit types and processes. The Corps’ “CWA 404 permit strategy” is intended to provide for better assurances and quicker permit decisions for the regulated public, while protecting aquatic resources to an equal or greater level in a manner

consistent with existing regulations, policies and processes. The expectation of putting in place an effective and efficient CWA 404 permit strategy is based on a number of tenets upon which the SSHCP is founded including, but not limited to:

- Protection of a broad range of species and habitats;
- Implementation of Low Impact Development Strategies (LIDS);
- Consistency with general plans;
- Avoidance of high quality vernal pool landscapes; and
- Preservation of watershed functions and stream corridors, and development of large, contiguous preserves, with particular focus on the Mather Core Recovery Area.

The CWA 404 permit strategy is being vetted through a public review process, inclusive of NEPA (as described in further detail below) and public notices distributed by the Sacramento District.

### **Benefits of CWA 404 Alignment**

In addition to providing a regional platform to inform better and faster CWA 404 permit decisions, a USFWS-approved SSHCP provides several other benefits to the Sacramento District and its customers. Because the SSHCP is an action that may potentially significantly affect the quality of the human environment, the USFWS is in the process of completing an Environmental Impact Statement (EIS) under NEPA that will include impact analyses over a 50 year period of all SSHCP covered activities within the Plan Area. As a cooperating agency, the Sacramento District intends to use the EIS in a programmatic manner to underpin its CWA 404 permit strategy. Because the EIS will examine a range of reasonable HCP alternatives affecting waters of the U.S., it can serve as the basis for the Sacramento District’s evaluation of alternatives under NEPA, and along with supplemental information provided to the Corps, the primary basis for evaluation of less damaging alternatives and mitigation under USEPA’s 404(b)(1) Guidelines. The Sacramento

***As a cooperating agency, the Sacramento District intends to use the EIS in a programmatic manner to underpin its CWA 404 permit strategy.***

District will adopt the EIS and make its own Record of Decision (ROD) regarding the CWA 404 permit strategy's compliance with the 404(b)(1) Guidelines at the regional scale. Any necessary subsequent NEPA documentation prepared by the Sacramento District will tier from the EIS.

The CWA 404 permit strategy will rely, at all levels of permitting, on the SSHCP to address avoidance, minimization and requirements for compensatory mitigation for impacts to aquatic resources. Key to satisfying compensatory mitigation requirements, payment of HCP-required fees will dually fulfill a Corps-approved SSHCP In-lieu Fee (ILF) Program established by the Plan Partners. Substantial processing efficiency and improving aquatic resource protection at the regional level will result from the CWA 404 permit strategy's reliance on the compensatory mitigation ratio requirements for aquatic resources contained in the SSHCP. Implementation of on-the-ground compensatory mitigation projects would be consistent with the SSHCP conservation strategy, located within SSHCP preserve areas.

The Sacramento District will further streamline the CWA 404 regulatory review process by requesting the USFWS to consult once programmatically for all SSHCP covered activities that require a CWA 404 permit, eliminating the need for individual project-by-project ESA 7 consultations. Furthermore, the Sacramento District will request programmatic water quality certification under CWA 401 from the Central Valley Regional Water Quality Control Board for all activities under the CWA 404 permit strategy. This will eliminate the need for permit applicants to apply individually for CWA 401 certification. Finally, to comply with NHPA 106, the Sacramento District will seek to develop a programmatic agreement with the California State Historic Preservation Officer, following coordination with tribes and others, for the CWA 404 permit strategy.

### **CWA 404 Permitting Strategy**

The Sacramento District has developed a multi-tiered approach to CWA 404 permitting that will address activities which involve discharges of dredged or fill material into waters of the U.S. covered by the USFWS-approved SSHCP. This strategy consists of the use of:

- A programmatic general permit (PGP) founded on a local aquatic resources protection program to be implemented through local aquatic resource ordinances, and designed to reduce duplication with that program, for activities with minimal individual and cumulative effects on the aquatic environment;
- A procedure for issuing Letters of Permission (LOPs) for activities with more than minimal but less than significant effects on the human environment, including aquatic resources; and
- An abbreviated process for issuing standard permits (SPs) for other activities consistent with the SSHCP that may have a significant impact on the human environment, and require the preparation of an EIS under NEPA.

### **PGP**

Based on the SSHCP and local aquatic resource ordinances (Sacramento County, City of Galt, City of Rancho Cordova and SSHCP Implementing Entity) that implement a locally-based Aquatic Resources Program (ARP), the Sacramento District will establish a PGP for covered activities that have minimal impacts on the aquatic environment. The PGP is premised on the ordinances resulting in the same or better level of protection to waters of the U.S. as currently in place under CWA 404. The PGP includes

limits and thresholds that exceed those found in many of the Nationwide Permits, such as an upper threshold for most projects of 2 acres instead of 0.5 acre. The PGP will not impose additional requirements or conditions on individual activities for avoiding, minimizing, or compensating for the loss of aquatic resources beyond those in the SSHCP, ARP and ordinances. The Corps will rely on the agencies responsible for administering the ARP/ordinances to regularly report to the Sacramento District on use of the ordinances and coverage under the PGP, not requiring a project-by-project notification or review process, thus eliminating to the maximum extent possible the Sacramento District's review of activities with minimal impacts on waters of the U.S. The PGP will result in CWA 404 authorization in under 30 days. The process for the Corps to establish the PGP follows the standard permit process, which requires a public notice. The PGP will be addressed in the Sacramento District's ROD prepared for the SSHCP EIS. The PGP will be effective once the local aquatic resources ordinances are approved.

***The PGP will not impose additional requirements or conditions on individual activities for avoiding, minimizing, or compensating for the loss of aquatic resources.***

#### LOP Procedure

For covered activities found to be consistent with the SSHCP requirements which would have more than minimal impacts to aquatic resources but less than significant impacts on the human environment under NEPA, the Sacramento District will institute a procedure for issuing LOPs under CWA 404. For purposes of the permit strategy, activities that are determined to not require an EIS will be eligible for authorization under the LOP procedure. As such, the procedure will not have a specific limitations or thresholds. The LOP procedure will streamline the standard permit process by eliminating the need for a public notice and only require the preparation of a simplified decision document that tiers from the SSHCP EIS. Most on-site 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. As a type of individual permit, the LOP procedure will require evaluation of on-site avoidance and minimization in compliance with CWA 404, including USEPA's 404(b)(1) Guidelines. 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. Like the other types of CWA 404 permits in the Sacramento District's permit strategy, compensatory mitigation requirements will be the same as those in the SSHCP. The goal is to issue LOPs in 60 days or less, assuming compliance (programmatically or otherwise) with other laws is in place.

***The LOP procedure will rely on the SSHCP to address avoidance, minimization, and compensatory mitigation for impacts to aquatic resources.***

The process for establishing the LOP procedure requires the development of a list of categories or activities proposed for authorization (which consists of the SSHCP covered activity categories) through coordination with federal, state and local agencies, a public notice, and a 401 WQC issued or waived on a generic or individual basis. The decision to implement the LOP procedures will be addressed in the Sacramento District's ROD.

### SP Abbreviated Process

A small number of SSHCP covered activities requiring CWA 404 will not fall under the PGP or LOP procedure and will require a SP. These activities are those that may have a significant impact on the human environment and require the preparation of an EIS under NEPA. If the Sacramento District serves as the federal lead agency for an activity under NEPA, the EIS requirement would be determined on a case-by-case basis upon receipt of a CWA 404 permit application by the Corps, consistent with the CWA 404 implementing regulations for NEPA (33 CFR Part 325, Appendix B). If the Corps is a cooperating agency to a federal lead agency who has determined an EIS is required under NEPA, the SP abbreviated process would apply if the Corps determines potential significant individual and/or cumulative impacts to the human environment could occur as a result of the proposed activities.

***The extent of analysis in the project EIS will be reduced by tiering from the SSHCP EIS, alternatives will be limited to the project site because avoidance has been addressed at the regional level, and compensatory mitigation requirements will align with those of the SSHCP.***

Even for activities that require a SP, the process and amount of time it takes to reach a permit decision can be compressed significantly by relying on the SSHCP. For instance, the extent of analysis in the project EIS will be lessened by tiering from the SSHCP EIS. Similar to the LOP procedure, most on-site 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. The primary additional evaluation necessary for the SP process is an alternatives analysis required for compliance with USEPA's 404(b)(1) Guidelines. This will be limited to just the project site ("on-site alternatives"), because avoidance and minimization assessment that would normally be done via evaluation of off-site alternatives as part of a typical SP process has already been addressed at the regional level. Please refer to the LOP procedure, above, for an example of how minor adjustments in project design may be sought to support compliance with avoidance and minimization requirements. Compensatory mitigation requirements will align with those of the SSHCP, as described above. Time may further be shortened through the preparation of a joint EIS/EIRs for projects (the Corps' preference). In addition, the Corps will pursue programmatic compliance with ESA, NHPA 106 and CWA 401 to provide for greater assurances and further streamline the process. With reliance on the SSHCP EIS and programmatic compliance with related laws, the Corps expects to complete SP decisions for activities under the SSHCP within six to nine months.

### Activities not Covered by the SSHCP

Activities involving a discharge of fill material into waters of the U.S. that are not covered under the SSHCP would be subject to the normal Corps' regulatory permit processes.

### **Next Steps**

The Sacramento District's proposed CWA 404 permit strategy was provided in the Draft EIS for the SSHCP published in June 2017. Following public input on the Draft EIS, coordination with the Plan Partners, resource agencies and others, and review of any new information that becomes available, the Sacramento District's CWA 404 permit strategy and final draft permit instruments were updated and included for public review in the Final EIS for the SSHCP. With adoption of the EIS, the Sacramento District will complete its ROD, issue final permit instruments, finalize establishment of the SSHCP ILF Program, and implement the CWA 404 permit strategy.



# South Sacramento HCP Programmatic General Permit

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## MINIMAL IMPACT COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN

**EFFECTIVE:**

**EXPIRES:** (5 years from effective date)

The U.S. Army Corps of Engineers, Sacramento District (Corps), hereby issues a programmatic general permit (PGP) for certain covered activities under the South Sacramento Habitat Conservation Plan that result in the discharge of dredged and/or fill material into waters of the United States (U.S.) resulting in no more than minimal individual and cumulative impacts on aquatic resources, and have been authorized by a local Aquatic Resource Impact Permit pursuant to local Aquatic Resource Protection (ARP) ordinances, implemented by SSHCP "Land Use Authority Permittees" (SSHCP LUAPs) or the SSHCP Implementing Entity (SSHCP IE). The ARP ordinances are associated with, and refer directly to, the SSHCP and an associated locally-based Aquatic Resources Program.

An activity is verified under the PGP when a SSHCP LUAP or the SSHCP IE approves a local Aquatic Resource Impact Permit, in compliance with the [INSERT FINAL DATE] SSHCP Aquatic Resources Program, a local ARP ordinance and all applicable terms and conditions of the SSHCP.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-1995-00386

**AUTHORITY:** Section 404 of the Clean Water Act (CWA 404)

**LOCATION:** The South Sacramento SSHCP Plan Area encompasses approximately 317,655 acres within 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 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:** This PGP is intended to minimize duplication between the SSHCP LUAPs' and SSHCP IE's local ARP and the Corps' Regulatory Program, for authorization of SSHCP covered activities subject to CWA 404 that are substantially similar in nature, and would result in minimal individual and cumulative impacts on the aquatic environment. The PGP is premised on local ARP ordinances, resulting in the same or better level of protection of waters of the U.S. as currently exists under CWA 404. Subject to certain exclusions and conditions, the PGP eliminates the need for project applicants to seek separate review from the Corps for many activities that result in minimal impacts to waters of the U.S., when such activities are authorized by a SSHCP LUAP or SSHCP IE in compliance with the SSHCP Aquatic Resources Program, under a local ARP ordinance. In addition to reducing duplication with the SSHCP Aquatic Resources Program and local ARP ordinances, the PGP is designed to

expedite review of certain covered activities through other programmatic elements, such as compliance with Section 7 of the federal Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA). The PGP will increase certainty, reduce time, and improve efficiency for project applicants through synergies with processes implemented by local jurisdictions, such as those associated with land use entitlements, while protecting aquatic resources, including waters of the U.S.

**BACKGROUND:** The SSHCP is a regional approach to address issues related to planned development and species habitat conservation. 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 Plan Permittees consist of Sacramento County, the City of Galt, the City of Rancho Cordova, the Sacramento County Water Agency, Sacramento Regional County Sanitation District, the Southeast Connector Joint Powers Authority, and the SSHCP IE. 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.

**ACTIVITIES COVERED:** This PGP applies only to SSHCP covered activities that are substantially similar in nature, would result in minimal individual and cumulative impacts on the aquatic environment, and have been authorized under the local Aquatic Resources Program. SSHCP covered activities are described briefly below and in greater detail in Chapter 5 of the SSHCP.

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 breaching 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. This PGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that do not require authorization from a SSHCP LUAP or SSHCP IE pursuant to a local ARP ordinance.

2. After-the-fact authorizations: This PGP may not be used to authorize activities that resulted in the discharge of dredged or fill material into waters of the U.S. without Department of the Army (DA) authorization.

#### **TERMS OF AUTHORIZATION:**

1. Activity Completion: Activities authorized by the Corps under this PGP may be conducted until the expiration date of the PGP, or the expiration date of the local Aquatic Resource Impact Permit issued by a SSHCP LUAP or SSHCP IE, whichever occurs sooner.

2. Applying for PGP Authorization: Prior to commencing a proposed activity, project applicants seeking authorization under this PGP shall notify the applicable SSHCP LUAP or SSHCP IE as required by the Aquatic Resources Program and local ARP ordinances, and in accordance with PGP general condition number 13 (*Notification*).

3. Compliance with SSHCP Conditions: Activities to be authorized under this PGP must be covered activities as identified above and in Chapter 5 of the SSHCP, and must comply with any applicable terms and conditions contained in the SSHCP. Project applicants must receive written concurrence from a SSHCP LUAP or SSHCP IE that the proposed project is eligible for coverage under the SSHCP. Compliance with the SSHCP requires project 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.

4. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this PGP. This discretionary authority may be used by the Corps to further condition or restrict the applicability of the PGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the U.S. or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the project applicant that the proposed activity is not authorized by the PGP and provide instructions on how to apply for authorization under another type of DA permit. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit, Regional General Permit, Letter of Permission or Standard Permit. The Corps will determine on a case-by-case basis, as needed, whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may restore authorization under the PGP at any time it determines the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the PGP at any time.

5. Avoidance and Minimization: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the PGP, notwithstanding the Corps' discretionary authority described above, this term shall be considered satisfied when project 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.

6. Impact Thresholds for Losses of Waters of the U.S.: Loss of waters of the U.S. shall be determined using the definition in Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457)

a. Except for as specified in b – c below, the loss of waters of the U.S. (including wetlands) resulting from authorization of a single and complete project under this PGP shall not exceed a total of 2.0 acres, and/or a total of 500 linear feet of perennial, intermittent, or third or higher order of ephemeral streams, and/or a total of 1,000 linear feet of irrigation or drainage ditch (provided the irrigation or drainage ditch is not a relocated or channelized stream, as verified by the Corps). The acreage of loss of streambed for streams and/or ditches shall be included in the acreage threshold for loss of waters of the U.S.

b. The loss of vernal pool waters of the U.S., as verified in writing by the Corps, in the Mather Core Recovery Area resulting from authorization of a single and complete project under this PGP shall not exceed 1.5 acres.

c. The cumulative loss of waters of the U.S. authorized under this PGP shall not exceed 120 acres of waters of the U.S., including wetlands, within the Plan Area. Additional restrictions are listed in the General Conditions, below.

7. Single and Complete: The activity must be a single and complete project as defined in the Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457).

8. Section 401 Water Quality Certification: In order for authorization to be valid under this PGP, an approved Section 401 Water Quality Certification (WQC) or waiver thereof is required to be obtained and evidence thereof in possession by the applicable SSHCP LUAP or SSHCP IE, prior to the commencement of activities authorized by this PGP (see General Condition 10 [*Water Quality Certification*]).

9. Reporting Requirements for Local Implementing Entities: Each of the four implementing entities of the local ARP ordinances (the SSHCP LUAPs and the SSHCP IE) shall submit reports to the Corps documenting usage of the PGP. Reporting will include the activity name, type of SSHCP covered activity, acreage and/or linear feet of permanent and temporary discharges of dredged and/or fill material into waters of the U.S. by aquatic resource type, acreage and/or linear feet of loss of waters of the U.S. by aquatic resource type, and evidence of the project applicant's fulfillment of CWA 404 compensatory mitigation requirements. Reporting shall be provided on a quarterly basis for Year 1, biannually for Year 2, and annually for Years 3-to-5 of this PGP. For this PGP to be applicable, a memorandum of understanding between the Corps and each LUAP or IE will need to be executed to record processing, tracking, and reporting of SSHCP covered activities.

#### **GENERAL CONDITIONS:**

1. Compensatory Mitigation: 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.

2. Compliance Inspections: The project applicant must allow representatives from the Corps to inspect the authorized activity at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the permit. The Corps will notify the project applicant at least 48 hours advance of an inspection.

3. Threatened and Endangered Species: No activity is authorized under this PGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA. Activities authorized under this PGP must comply with the mandatory terms and conditions of the USFWS's [programmatic Biological Opinion (BO) for this PGP] (USFWS #\_\_\_, dated \_\_\_) (copy [to be] attached). The BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" authorization under this PGP. Authorization under this PGP is conditional upon your compliance with all of the mandatory terms and conditions of the Biological Opinion. Failure to comply with the terms and conditions of the Biological Opinion would constitute non-compliance with the PGP. The USFWS is the appropriate authority to determine compliance with the terms and conditions of the Biological Opinion, and with the ESA. The project applicant must comply with all applicable conditions of this Biological Opinion, including those ascribed to the Corps.

4. **Historic Properties:** No activity is authorized under the PGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. If NHPA compliance is not addressed programmatically, e.g., by a Programmatic Agreement (PA), project applicants must notify the Corps if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, including previously unidentified historic properties. The notification shall consist of the application identified in General Condition 5, and two hard copies and one electronic copy of a cultural resources report meeting the Corps Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966 ([http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf)). The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.

5. **Notification:** The prospective project applicant shall submit an application to the applicable SSHCP LUAP or SSHCP IE, in accordance with the procedures specified in the SSHCP Aquatic Resources Program and local ARP ordinances. No notification is required to be made to the Corps, except as provided by General Condition 4.

6. **Permit Transfer:** If the property associated with this permit is sold, the project applicant shall transfer the permit verification to the new owner by submitting a letter to the applicable SSHCP LUAP or SSHCP IE, with a copy provided to the Corps, to validate the transfer. A copy of the local Aquatic Resource Impact Permit authorization issued by the applicable SSHCP or SSHCP IE must be attached to the letter, and the letter must contain the name and address of the transferee, as well as the following statement and signature of the transferee

When the structures or work authorized by this programmatic general permit (PGP) are still in existence at the time the property is transferred, the terms and conditions of this PGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this PGP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

7. **Wetland and Stream Setbacks:** Project applicants shall establish wetland and stream setback standards consistent with the minimum standards as described in the SSHCP Aquatic Resources Program and local ARP ordinances (mirroring requirements contained the SSHCP). Associated terms of the local ARP ordinances concerning setbacks, including (but not limited to) land use, allowable uses within setbacks, exemptions, and waivers shall apply as described in the SSHCP Aquatic Resources Program and applicable local ordinance. These terms shall meet or exceed all applicable standards and terms contained within Chapter 5 of the SSHCP.

8. **Tribal Rights:** No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Unanticipated Discovery: If the project applicant discovers any previously unknown historic, cultural or archeological remains and/or artifacts while accomplishing the activity authorized by this PGP, the project applicant shall immediately notify the Corps of what has been found, and to the maximum extent practicable, shall avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. Notification to the Corps shall include a copy of the local Aquatic Resource Impact Permit issued by the applicable SSHCP LUAP or SSHCP IE. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

10. Water Quality Certification: Water Quality Certification (WQC), or waiver thereof, under Section 401 of the Clean Water Act is required for activities to be authorized by this PGP. The project applicant shall comply with the terms and conditions of any individual or programmatic WQC provided by the State Water Resources Control Board and/or Central Valley Regional Water Quality Control Board.

**FURTHER INFORMATION:**

1. Congressional Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization:
  - a. The Corps has authority to determine if an activity complies with the terms and conditions of the PGP.
  - b. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
  - c. This permit does not grant any property rights or exclusive privileges.
  - d. This permit does not authorize any injury to the property or rights of others.
  - e. This permit does not authorize interference with any existing or proposed federal projects.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of the Corps that issuance of this PGP is not contrary to the public interest was made in reliance on the information provided by the SSHCP Plan Permittees.

5. Reevaluation of Permit Decision: The Corps may reevaluate its decision on this PGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The project applicant fails to comply with the terms and conditions of this permit.
- b. The information provided by the project applicant in support of a permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which the Corps did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

**PERMIT DURATION**: This PGP is valid for five (5) years from the date of issuance. It will expire on [Day, Month, 20XX]. At least sixty (60) calendar days prior to expiration, the Corps will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the PGP for another five years with or without modification, or not reissuing the PGP. If the Corps has not reissued the PGP by the expiration date, the PGP will no longer be valid. This PGP may also be modified, suspended, or revoked by the Corps at any time deemed necessary. In such instance, the Corps will issue a public notice concerning the proposed action.

**CONTACTS AND ADDITIONAL INFORMATION**: For additional information about this PGP, please contact the U.S. Army Corps of Engineers, Sacramento District.

This permit becomes effective when the federal official, designated to act for the Secretary of the Army has signed below.

*DRAFT*

*DRAFT*

\_\_\_\_\_  
 [Name]  
 Chief, Regulatory Division  
 Sacramento District

\_\_\_\_\_  
 [Date]



# South Sacramento HCP Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

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

**DATE:** *[Insert Date of Issuance]*

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**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 [showing SSHCP Plan Area; figure to be developed]*, 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 SSHCP 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.

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.

**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 that is 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" (SSHCP LUAPs) or the SSHCP Implementing Entity (SSHCP IE), consistent with the SSHCP and locally-based 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 SSHCP LUAP of SSHCP IE 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.

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 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 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.

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 breaching 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:****1. Before submitting an application:**

The applicant must attend a pre-application meeting with the Sacramento District. Applicants are encouraged to invite the applicable SSHCP LUAP or SSHCP IE (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 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 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 (hardcopy, and electronic on CD) of the Aquatic Resource Impact 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 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 SSHCP LUAP and/or SSHCP IE, 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. 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 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 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 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., Endangered Species Act [ESA], National Historic Preservation Act [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 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 SSHCP LUAP or SSHCP IE 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. 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 Sacramento District will add special conditions to LOP authorizations as necessary.



# South Sacramento HCP Abbreviated Standard Permit Process

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG.

February 2018

## 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. Additional background information on the SSHCP and the U.S. Army Corps of Engineers (Corps) Sacramento District's long-term coordination with the U.S. Fish and Wildlife Service (USFWS), other state and federal agencies, and the SSHCP Plan Partners is provided in the document titled "CWA 404 Permit Strategy Aligned with the South Sacramento Habitat Conservation Plan" (dated February 2018, hereafter "CWA 404 Permit Strategy"). The goal of the Sacramento District's coordination "from the ground up" with development of the SSHCP is to develop and implement a "streamlined" approach to permitting under Section 404 of the Clean Water Act (CWA 404) that encompasses a number of different permit types and processes. The following provides approaches and mechanisms to be utilized in the abbreviated SP process for issuing standard permits (SP) for SSHCP covered activities.

### When Would the Abbreviated Standard Permit Process Apply?

The abbreviated standard permit process will be used for the small number of SSHCP covered activities requiring authorization under 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 will include a required pre-application meeting between the project applicant, Corps and SSHCP Implementing Entity. As an outcome of the pre-application meeting, the Corps will provide feedback on whether it appears and 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) *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 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and Section 401 of the Clean Water Act, 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 SSHCP 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 project 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 of the EIS, including using applicable information regarding the direct, indirect, and cumulative effects, incorporation of applicable avoidance and minimization measures, and elimination of the 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 can serve as the basis for the Sacramento District's landscape-level evaluation of alternatives under NEPA. Similarly, the SSHCP EIS and supplemental information submitted concurrently with EIS processing to the Corps, provide the fundamental 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 would have been addressed at the regional level in the Corps' 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 offered by the SSHCP and associated local ARP. For example, a 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 expresses the intent to apply case-specific analysis in consideration of the SSHCP regulatory context within which the proposed action would be processed toward decision-making.

#### 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, vis-à-vis a SSHCP ILF Program that would be established consistent with requirements of the Federal Mitigation Rule (33 CFR Part 332).

#### Compliance with Other Laws

The Corps will pursue programmatic compliance with ESA, NHPA 106 and CWA 401 to provide for greater assurances and streamline these processes. 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.

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

<b>Requirements</b>	<b>SSHCP Abbreviated SP</b>	<b>Normal SP</b>
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 SSHCP 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 Programmatic 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 [WQC])	Required. Project Covered by Programmatic Section 401 Water Quality Certification (WQC)	Required. Project-Specific Section 401 WQC Application
Compliance with Section 106 of the National Historic Preservation Act (NHPA)	Required. Project Covered by Programmatic Agreement (PA)	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 actions which require the 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 consistent with the SSHCP.
4. A reduction in processing time for Section 7 ESA compliance due to issuance of a programmatic BO by USFWS.
5. A reduction in processing time for Section 401 WQC due to issuance of a programmatic 401 WQC by the Central Valley Regional Water Quality Control Board.
6. A reduction in processing time for Section 106 of the NHPA, due to development of a PA with the California State Historic Preservation Officer.