



Programmatic General Permit 17

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

MINIMAL IMPACT COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN

EFFECTIVE: TBD

EXPIRES: (5 years from effective date)

The U.S. Army Corps of Engineers, Sacramento District (Corps), hereby issues Programmatic General Permit (PGP) 17 for certain covered activities under the South Sacramento Habitat Conservation Plan (SSHCP) 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" (LUAPs) or the South Sacramento Conservation Agency Joint Powers Authority (SSCA). 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 this PGP when a LUAP or the SSCA approves a local Aquatic Resource Impact Permit, in compliance with the February 2018 SSHCP Aquatic Resources Program, local ARP ordinance(s), and all applicable terms and conditions of the SSHCP.

Note: The term "you" and its derivatives, as used in this PGP, means the project applicant seeking authorization under the SSHCP and this PGP, or any future transferee. The term "this office" refers to the appropriate U.S. Army Corps of Engineers, Sacramento District office identified in the *Contacts and Additional Information* section below.

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

ACTION ID: SPK-1995-00386

AUTHORITIES: Section 404 of the Clean Water Act (CWA 404)

LOCATION: This PGP covers activities within the 317,655-acre SSHCP Plan Area in Sacramento County (see *Figure 1*, 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 LUAPs' and SSCA'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 LUAP or the SSCA 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). This PGP increases certainty, reduces time, and improves 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 SSCA. 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 LUAP or the SSCA pursuant to a local ARP ordinance.

2. 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.

3. This PGP may not be used to authorize activities that require authorization under 33 USC 408 (Section 408) to alter or either temporarily or permanently occupy or use Corps' federally authorized Civil Works projects.

TERMS:

1. Activities authorized 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 LUAP or the SSCA, whichever occurs sooner.

2. Prior to commencing a proposed activity, project applicants seeking authorization under this PGP shall notify the applicable LUAP or the SSCA as required by the Aquatic Resources Program and local ARP ordinances, and in accordance with General Condition number 6 below (*Notification*).

3. 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 LUAP or the SSCA 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. 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.

5. Loss of waters of the U.S. shall be determined using the definition in Section F of the January 13, 2021, Federal Register Notice for *Issuance and Reissuance and Modification of Nationwide Permits; Final Rule* (86 FR 2744), which can be found at: <https://www.govinfo.gov/content/pkg/FR-2021-01-13/pdf/2021-00102.pdf>

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.

6. The activity must be a single and complete project as defined in Section F of the January 13, 2021, Federal Register Notice for *Reissuance and Modification of Nationwide Permits; Final Rule* (86 FR 2744), which can be found at: <https://www.govinfo.gov/content/pkg/FR-2021-01-13/pdf/2021-00102.pdf>

7. A general Section 401 water quality certification has been issued for this PGP. If a project proponent determines they cannot comply with one or more of the general water quality certification conditions, they must request individual water quality certification. A valid 401 water quality certification or waiver thereof is required to be obtained and evidence thereof in possession by the applicant, prior to the commencement of activities authorized by this PGP order for authorization to be valid under this PGP (see General Condition 10 [*Water Quality Certification*]).

GENERAL CONDITIONS:

1. 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 (consistent with ratios required by the SSHCP) and shall be accomplished by payment into the Corps-approved South Sacramento In-Lieu Fee (ILF) Program.

2. 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. 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 Biological Opinion (BO) for the SSHCP (USFWS #81420-2008-F-1526-10, dated April 30, 2019) (Attachment 2). 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 BO. Failure to comply with the terms and conditions of the BO would constitute non-compliance with the PGP. The USFWS is the appropriate authority to determine compliance with the terms and conditions of the BO, and

with the ESA. The project applicant must comply with all applicable conditions of this Biological Opinion, including those ascribed to the Corps.

4. 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), you must notify this office 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. Such notification may be conducted by a LUAP (e.g., City of Rancho Cordova), the SSCA, or the project applicant. The notification shall consist of the application identified in General Condition 6, and an electronic copy of a cultural resources report meeting the Corps Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966

(<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/2020.10.29-Section%20106%20Submittal%20Guidelines.pdf>) (or most up-to-date guidance found on the website below). The notification shall be submitted to SPKRegulatoryMailbox@usace.army.mil. The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate. The Corps' determination of compliance with the NHPA, including completed consultation with the SHPO, as appropriate, will be provided to the project applicant, applicable LUAP, and/or the SSCA. Should a memorandum of agreement (MOA) be required in association with a determination of "adverse effect to historic properties," the project applicant shall comply with the terms and conditions of the MOA.

5. No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. No activity is authorized under this PGP until the Corps has conducted necessary tribal coordination/consultation or has determined the proposed action does not impair Tribal rights, unless tribal coordination/consultation is addressed programmatically (e.g., by a PA).

6. The prospective project applicant shall submit an application to the applicable LUAP or the SSCA, 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 Conditions 4 and 5.

7. 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 LUAP or the SSCA, 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 LUAP or the SSCA 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)

8. 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.

9. 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 LUAP or the SSCA. 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 (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 (CVRWQCB). The CVRWQCB issued a programmatic WQC to the Corps on the PGP (WDID # [REDACTED], dated [REDACTED]) ([pending] Attachment 3).

FURTHER INFORMATION:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. The Corps has the 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 this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

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

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office 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. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. 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.

PERMIT DURATION: This PGP is valid for five (5) years from the date of issuance and will expire on [Day, Month, 20XX]. We may re-evaluate the terms and conditions of this PGP at any time we deem it's necessary to protect the public interest. If we have 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 instances, 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, by phone at 916-557-5250, or by email at SPKRegulatoryMailbox@usace.army.mil. A copy of this PGP can be found on our website at: <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Endangered-Species-Agency-Consultations/Habitat-Conservation-Plans/>

ATTACHMENTS:

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

2. *Biological and Conference Opinion on The Fish and Wildlife Service Proposed Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the South Sacramento Habitat Conservation Plan and The Army Corps of Engineers Proposed Authorization and Implementation of a Clean Water Act Section 404 Permit Strategy Aligned with the South Sacramento Habitat Conservation Plan* (April 30, 2019; USFWS #81420-2008-F-1526-10).
3. *(Pending)* Clean Water Act Section 401 Water Quality Certification.

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

Michael S. Jewell
Chief, Regulatory Division

Date