

EIS/EIR APPENDIX C

Draft Multi-Layered CWA 404 Permit Strategy for Future SSHCP Covered Activities

Appendix C-1. Draft CWA 404 Permit Strategy

Appendix C-2. Draft Programmatic General Permit

Appendix C-3. Draft Letter of Permission Procedure

EIS/EIR APPENDIX C-1
Draft CWA 404 Permit Strategy



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

U.S. ARMY CORPS OF ENGINEERS

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February 2017

Background

The South Sacramento Habitat Conservation Plan (SSHCP) proposes to cover 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 proposed boundaries of the SSHCP 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 Plan Area excludes the Cities of Sacramento, Elk Grove and Folsom, the Sacramento-San Joaquin Delta, and the Community of Rancho Murieta, as well as the sovereign lands of the Miwok Tribe. 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 are forming a SSHCP Implementing Entity to implement 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). 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 United States, 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 basis, making 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 evaluate 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, causing edge effects. Furthermore, the distance between the permitted impact location and its mitigation site may be great or located in another watershed, especially in cases where the compensatory mitigation was accomplished through the purchase of credits at a mitigation bank or through an in-lieu fee program.

The Sacramento District views the SSHCP as a chance 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. 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 consistent with existing regulations, policies and processes.

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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 now drafted and ready for public review and comment.

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. As an action significantly affecting the quality of the human environment, the SSHCP requires the USFWS prepare 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 a basis for the Sacramento District’s evaluation of less damaging alternatives and mitigation under USEPA’s 404(b)(1) Guidelines. The Sacramento District will adopt the EIS and make its own Record of Decision regarding the CWA 404 permit strategy’s compliance with the 404(b)(1) Guidelines at the regional scale.

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

Any necessary subsequent NEPA documentation prepared by the Sacramento District will tier from the EIS.

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 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 via local ordinance, 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 and City of Rancho Cordova) that implement the County's 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 the Nationwide Permits, such as an upper threshold for most projects of 2 acres instead of 0.5 acre. 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 beyond those in the SSHCP, ARP and ordinances. The Corps will rely on the agency(ies) 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

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

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.

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 an abbreviated 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

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

authorization under the LOP procedure; thus, the procedure will not have a specified maximum acreage threshold. 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. 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. Further, the LOP procedure will rely on the SSHCP to address avoidance, minimization and requirements for compensatory mitigation for impacts to aquatic resources. 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 programmatic compliance with other laws is in place.

SP Abbreviated Process

A small number of SSHCP covered activities requiring CWA 404 will not fall under the PGP, RGP, 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. 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, alternatives will be limited to the project site because avoidance has already been addressed at the regional level, and compensatory mitigation requirements will align with those of the SSHCP. Time may further be foreshortened 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 months.

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.

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 CWA 404 permit strategy is provided in draft form (PGP and LOP Procedure) in the SSHCP Draft EIS, including the terms, conditions, limits/thresholds and processes for each permit type. 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 (e.g., PGP) will be updated and included in the Final EIS for the SSHCP. The Final EIS will also include more details on process and timelines for the SP abbreviated process. With adoption of the EIS, the Sacramento District will complete its ROD and implement the CWA 404 permit strategy.

EIS/EIR APPENDIX C-2
Draft Programmatic General Permit



South Sacramento HCP Programmatic General Permit

U.S. ARMY CORPS OF ENGINEERS

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COVERED ACTIVITIES UNDER THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN WITH MINIMAL IMPACT 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 occur in waters of the United States (waters) that have minimal impacts, individually and cumulatively, 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 Resource 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 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. 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 Plan Area excludes the northern portion of Sacramento County, the portion of Rancho Cordova located north of U.S. Highway 50, the City of Sacramento, City of Elk Grove, City of Folsom, sovereign lands of the Miwok Tribe, and the Sacramento County community of Rancho Murieta.

PURPOSE: 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 activities subject to CWA 404 for SSHCP Covered Activities 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 for 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 most activities that cause minimal impacts to waters of the U.S., when such activities are authorized by a SSHCP LUAP or SSHCP IE under a local ARP ordinance. In addition to reducing duplication with local ARPs, 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]. 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.

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, 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. 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.

2. Emergency situations: This PGP does not authorize any activities in waters of the U.S. conducted in emergency situations.

TERMS OF AUTHORIZATION:

1. Activity Completion: Activities authorized by the Corps under this PGP are valid until the expiration date of the PGP. Activities authorized under this PGP that are under construction, or under contract for construction in reliance upon this authorization, will remain authorized provided the activity is completed within 12 months of expiration of the PGP.

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 in accordance with PGP general condition number 13 (*Notification*).

3. Compliance with SSHCP Conditions: Activities to be authorized under this PGP must be SSHCP Covered Activities 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 aquatic resources 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 NWP, LOP 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.:

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 may not exceed 2 acres, and/or a total of 500 linear feet of perennial, intermittent, or third or higher order of ephemeral streams.

b. The loss of vernal pool waters of the U.S. in the Mather Core Recovery Area resulting from authorization of a single and complete project under this PGP may not exceed 1.5 acres.

c. The total loss of waters of the U.S. authorized under this PGP may 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.

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 for activities to be 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, amount of permanent and temporary impacts to aquatic resources by 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 in 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 [*to be sought by initiation for programmatic Section 7 ESA consultation*] [programmatic Biological Opinion for this PGP] (USFWS #___, dated ___) (copy [to be] attached). The Biological Opinion 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 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 local ARP ordinances. No notification is required to be made to the Corps.
6. **Permit Transfer:** If the property associated with this permit is sold, the project applicant must obtain the signature and mailing address of the new owner on the permit verification letter, and forward a copy to both the applicable SSHCP LUAP or SSHCP IE and the Corps, to validate the transfer.

7. Wetland and Stream Setbacks: Project applicants shall establish wetland and stream setback standards consistent with the minimum standards described in the local ARP ordinances (which mirror requirements contained in 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 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. Discovery of Previously Unknown Remains and Artifacts (or - Unanticipated Cultural Resources Discoveries): 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 must immediately notify the Corps of what has been found, and to the maximum extent practicable, must avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. 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. Authorizations under this PGP are valid until the permit expires. An activity authorized by this PGP that has commenced, or is under contract to commence, will have 12 months from the date of the PGP expiration to be completed.

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]Date
Chief, Regulatory Division
Sacramento District

DRAFT

EIS/EIR APPENDIX C-3
Draft Letter of Permission Procedure



South Sacramento HCP Minor Impact Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

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

DATE:

ACTION ID: SPK-1995-00386

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

LOCATION: The South Sacramento Habitat Conservation Plan (SSHCP) Plan Area encompasses approximately 317,655 acres within south Sacramento County (*Figure 1 [showing SSHCP Plan Area; figure to be developed]*, attached). The Plan Area includes the City of Galt and the City of Galt's sphere of influence, and the portion of the City of Rancho Cordova that is located south of U.S. Highway 50. The geographical boundaries of the Planning Area are U.S. Highway 50 and White Rock Road to the north, the Sacramento River levee and County Road J11 (Walnut Grove-Thornton Road) to the west, the Sacramento County line with El Dorado and Amador Counties to the east, and with the San Joaquin County to the south. The Plan Area excludes the northern portion of Sacramento County, the portion of Rancho Cordova located north of U.S. Highway 50, the City of Sacramento, City of Elk Grove, City of Folsom, sovereign lands of the Miwok Tribe, and the Sacramento County community of Rancho Murieta.

PURPOSE: The U.S. Army Corps of Engineers, Sacramento District (Corps) is establishing a Letter of Permission (LOP) procedure to more efficiently authorize SSCHP Covered Activities which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (CWA 404) with more than minimal but less than significant impacts on the aquatic environment. The SSHCP Minor Impact LOP Procedure is an optional abbreviated permit process available to all applicants for Department of the Army (DA) permits for activities meeting the criteria and conditions described in this notice. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be authorized under a different permit type or procedure.

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

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

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

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

A LOP will be issued only for those activities which meet all of the procedures and criteria identified in this notice, including the general conditions, and which have only minor impacts on the aquatic environment. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under a LOP, to add special conditions to LOP authorizations, or to determine that an activity may not be authorized by a LOP and will instead require authorization under another permit type.

For a SSHCP Covered Activity to be authorized under an LOP following this procedure, impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the procedure, notwithstanding the Corps' discretionary authority described above, avoidance and minimization requirements shall be considered to be primarily satisfied when applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in both Chapter 5 of the SSHCP and the applicable ARP ordinance.

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

1. The proposed activity does not result in a potentially significant impact(s) on the human environment that requires preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA).
2. Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in the *Compensatory Mitigation Standards* specified in the local ARP ordinances (which mirror requirements contained the SSHCP), and shall be accomplished by payment into a Corps-approved SSHCP in-lieu fee (ILF) program.

Covered Activities under the SSHCP: The following SSHCP Covered Activities, described in greater detail in Chapter 5 of the SSHCP, are applicable to this LOP procedure, after authorization under the local Aquatic Resources Program.

1. **Urban Development in the UDA:** Activities associated with the construction and maintenance of urban development projects and associated facilities/activities, including but not limited to structures (residential, commercial, industrial), parks/recreation facilities, water supply facilities, flood control and stormwater management, utilities (e.g., electric), solid waste management, wastewater, transportation and stream channel modification.

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

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

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

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

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

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

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

EXCLUSIONS:

1. The LOP procedure does not apply to any activities in waters of the U.S. that are not considered Covered Activities under the SSHCP.

2. The LOP procedure does not apply to any activities in waters of the U.S. conducted in emergency situations.

LOP PROCEDURE:

1. Before submitting an application:

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

2. Application submittal:

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

a. A cover letter from the applicant requesting an LOP under the SSHCP Minor Impact LOP procedures for the proposed activity, referencing the Corps' identification number and including contact information for the applicant and their designated agents or primary points-of-contact. This must include mailing and e-mail addresses and telephone and fax numbers.

b. A completed and signed Department of the Army Engineering Form 4345.

c. A copy (hardcopy, and electronic on CD) of the ARI permit application submitted to the SSHCP LUAP and/or SSHCP IE.

d. An aquatic resources delineation for the activity area, conducted in accordance with the Corps' minimum standards for aquatic resource delineations, or information that an aquatic resources delineation has been verified and is still valid.

e. Site location map(s), including the proposed activity, clearly outlined on USGS 7.5' quad sheet drawings, with latitudes and longitudes for the site(s), name of the quad sheet(s) and directions to the site, as well as all appropriate aerial and other imagery available.

f. A complete description of the proposed activity, including all of the information identified under 33 CFR 325.1 (d) "Content of application."

g. Plan and profile views of the proposed work, relative to potential or approved waters of the U.S. (e.g., wetlands and open waters below the Ordinary High Water Mark), showing areas, types and acreages of waters and other aquatic resources to be impacted by the proposed activity. All available drawings must be provided and must show proposed impacts on appropriately scaled figures, in accordance with the Corps' map and drawing standards. All maps and drawings shall follow the South Pacific Division February 2016, Updated Map and Drawing Standards for the South Pacific Division Regulatory Program, or most recent update (available on the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>), unless specifically waived by the Corps.

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

i. A description and graphical representation of how impacts to aquatic resources and their functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable on the project site. This may be a copy of the applicant's documentation provided to the SSHCP LUAP and/or SSHCP IE as required to demonstrate avoidance and minimization of impacts, including but not limited to the submittal of documentation to support the local permitting entity's Determination of Environmentally Equivalent or Superior Alternative (DEESA).

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

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

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

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

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

3. Review and Decision:

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

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

c. If the application is determined to be complete and appears to meet LOP criteria, the Corps will notify the applicant that the proposed activity is being evaluated for LOP authorization. The Corps will notify the applicable SSHCP LUAP and SSHCP IE, and applicable state and federal coordination

agencies via e-mail of the proposed LOP for the activity, and request any comments within fifteen (15) calendar days of such notice. The Corps will also initiate consultation(s) as necessary with other agencies, to the extent necessary (e.g., in lieu of programmatic consultations).

d. The Corps will review the comments received and, if otherwise complete (e.g., ESA, NHPA consultations and 401 Water Quality Certification done), make a determination within 30 calendar days after the close of the comment period as to whether LOP authorization is warranted, and whether special conditions are needed. If the activity meets the criteria for LOP authorization and would have an overall minimal effect on aquatic resources and the human environment, an LOP will be issued.

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

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

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