



# 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*