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Up	Previous	Next	Main	Collapse	Search	Print	No Frames

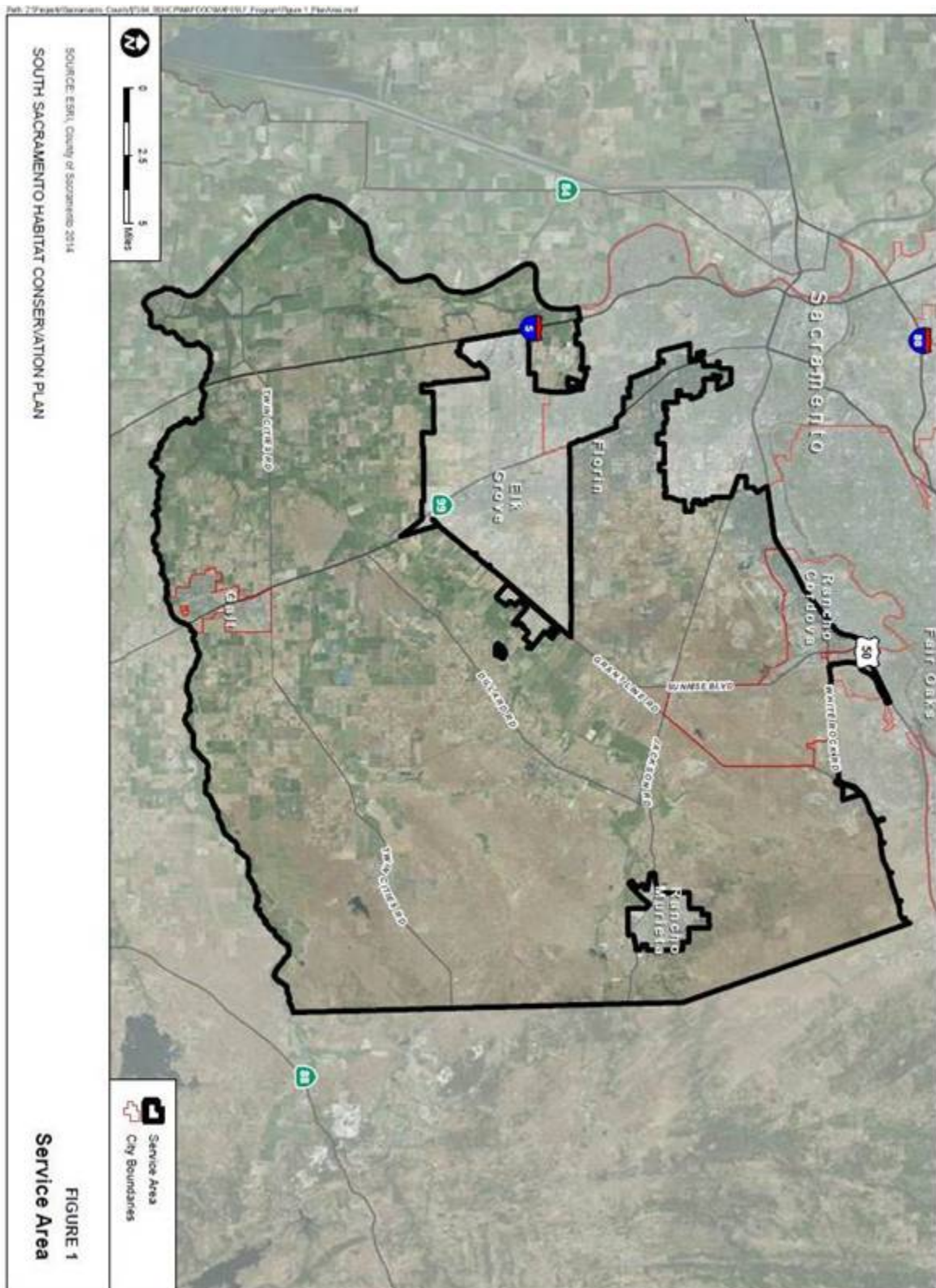
[Title 16 BUILDINGS AND CONSTRUCTION](#)

Chapter 16.135 AQUATIC RESOURCES PROTECTION

16.135.010 Findings, Purpose and Intent.

- A. The Board of Supervisors finds that due to urban and agricultural development only a fraction of the aquatic resources that historically dominated the SSHCP Plan Area landscape remains today.
- B. The Board of Supervisors finds that a regional conservation approach is needed to protect existing aquatic resources within the South Sacramento Habitat Conservation Plan's (SSHCP's) Plan Area and to streamline the permitting processes for development and infrastructure projects in the Plan Area.
- C. The Board of Supervisors recognizes that the avoidance, minimization and compensatory mitigation of aquatic resources provides several important functions and services, such as flood storage, wildlife habitat, mitigation of storm water and pollutants, filtration for drinking water, and prevention of storm damage to buildings and upland areas.
- D. The Board of Supervisors wishes to avoid or minimize impacts of future activities on SSHCP Plan Area aquatic resources and to ensure "no-net-loss" of aquatic resources and aquatic functions by re-establishing or establishing aquatic resources within the Plan Area as compensatory mitigation when unavoidable impacts to aquatic resources occur.
- E. The Board of Supervisors wishes to facilitate development consistent with the County General Plan and to ensure that there is enough mitigation available to accommodate aquatic resource mitigation requirements and to ensure that habitat mitigation remains economically feasible within the region.
- F. The purpose and intent of this Chapter is to achieve no-net-loss of aquatic resource function and services and to enact efficient aquatic resource permitting consistent with the requirements of the federal Clean Water Act (Sections 404 and 401), California [Fish and Game Code](#) Section 1600 and the Porter-Cologne Water Quality Control Act (Porter-Cologne).
- H. This Chapter regulates all aquatic resources within that portion of the unincorporated County that is south of U.S. Highway 50, east of the Sacramento River levee and County Road J11, west of the Sacramento County line with El Dorado and Amador Counties, and north of the Sacramento County line with San Joaquin County, as depicted in Figure 1, "Plan Area."

Figure 1. Plan Area



(SCC 1627 § 1, 2018.)

16.135.020 Definitions.

“Aquatic Resources” means wetland waters (i.e. vernal pools, swales, freshwater marsh, other seasonal wetlands, etc.), non-wetland waters (i.e. ponds, lakes, streams, rivers, drainages, ditches, etc.), and riparian (i.e. mixed riparian scrub, mixed riparian woodland, etc.).

“Aquatic Resources Impact Permit” means a permit required for any activity permanently or temporarily impacting an Aquatic Resource.

“Avoidance” means avoiding the permanent and/or temporary impact altogether by not taking a certain action or parts of an action.

“Compensatory Mitigation” means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, of aquatic resources for the purposes of offsetting unavoidable adverse permanent and/or temporary impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

“Compensatory Mitigation Ratio” means the amount of Compensatory Mitigation that must be provided to offset an acre or fraction thereof of permanent and/or temporary impact.

“County” means the County of Sacramento.

“Director” means the Director of the Department of Community Development.

“Enhancement” means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

“Establishment” means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

“Habitat” means the place or environment where a plant or animal naturally lives and grows (a group of particular environmental conditions), and as defined in the South Sacramento Habitat Conservation Plan. Habitat may be occupied (i.e. individuals or a population of species are or have recently been present) or unoccupied.

“Impact.” See “Permanent Impact” and “Temporary Impact.”

“Minimization” means to reduce permanent and/or temporary impacts by limiting the degree or magnitude of the action and its implementation.

“Open Water” means a permanent water impoundment that is mostly free from masses of underwater vegetation at very shallow depths.

“Permanent Impact” means the permanent loss of an Aquatic Resource resulting from the adverse effects of grading, filling, excavation, dredging, or changing of drainage of an Aquatic Resource.

“Plan Area” means that portion of the unincorporated County that is south of U.S. Highway 50, east of the Sacramento River levee and County Road J11, west of the Sacramento County line with El Dorado and Amador Counties, and north of the Sacramento County line with San Joaquin County, as depicted in Figure 1, “Plan Area.”

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

“Riparian” means a transitional area between terrestrial and aquatic ecosystems, which is distinguished by gradients in biophysical conditions, ecological processes, and biota, typically adjacent to perennial, intermittent and ephemeral streams, lakes, and estuarine-marine shorelines.

“Setback” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands and streams from disturbances associated with adjacent land uses.

“Stream” means a perennial, intermittent, or ephemeral course of water that has a bed and bank and with a definable ordinary high water mark.

“Temporary Impact” means the grading, filling, excavation, dredging, or changing of drainage of an Aquatic Resource where the Aquatic Resource is restored to pre-construction contours and elevations after construction, and revegetated, as appropriate.

“Vernal Pool” means a type of seasonal wetland habitat that is characterized by a specific set of physical parameters and a unique assemblage of highly specialized endemic plants and animals; a seasonal body of standing water that typically forms in the spring from direct precipitation, with occasional contributions from other sources, dries out completely in the hotter months of summer, and refills in the autumn; pools free of fish that provide important breeding habitat for many terrestrial or semi-aquatic species such as Branchiopods, frogs, and salamanders.

“Watershed” means a drainage basin that is defined by a 10-digit hydrologic unit code as defined by the Federal Standard for Delineation of Hydrologic Unit Boundaries.

“Wetland” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include freshwater marsh, vernal pools, swales and similar areas.

“Aquatic Resources Delineation” means identifying the amount and boundaries of Aquatic Resources, including wetlands, using U.S. Army Corps of Engineers (USACE) mapping standards and USACE minimum standards for delineations. (SCC 1627 § 1, 2018.)

16.135.030 Applicability.

All proposed projects within the Plan Area that permanently and/or temporarily impact an Aquatic Resource shall require an Aquatic Resources Impact Permit from the County. No person, company, or agency shall permanently or temporarily impact Aquatic Resources as set forth in this Section except as consistent with this Chapter.

- A. An Aquatic Resources Impact Permit must be obtained:
 1. In conjunction with any County issued discretionary permit.
 2. Before an activity is performed that impacts Aquatic Resources, if no construction or building permit is required.
- B. Exemptions. In general, this Chapter requires permits for permanent and temporary impacts to aquatic resources. However, certain activities are exempt from permit requirements. The following activities and associated uses shall be exempt from the provisions of this Chapter:
 1. Exempt Maintenance Activities.
 - a. Maintenance of drainage ditches (does not include new construction of drainage ditches); construction and maintenance of irrigation ditches; maintenance of structures like dams, dikes and levees; and construction and maintenance of stock ponds or farm ponds.

b. Discharges associated with facilities that are appurtenant and functionally related to irrigation ditches are included in the exemption (e.g. siphons, pumps, headgates, wingwalls, weirs, diversion structures, etc.).

c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

d. If a maintenance activity would involve any modifications to the original fill design, including the location of the fill, the type of material to be used, the amount of material used, etc., then the activity does not qualify for the maintenance exemption.

2. Exempt Farming, Ranching, and Mining Activities.

a. Established (ongoing) farming and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, or upland soil and water conservation practices are exempt. This exemption pertains to “normal farming” and harvesting activities that are part of an established, ongoing farming operation. Examples of normal farming practices include but are not limited to planting different crops as part of an established rotation, introduction of a new cultivation technique such as discing between crop rows for weed control and discharges associated with ongoing rotations of rice. Activities that bring an Aquatic Resource into farm production where the Aquatic Resource has not previously been used for farming are not considered part of an established operation, and therefore are not exempted. An example includes the conversion of grazing land to cropland that results in impacts to Aquatic Resources.

b. Construction and maintenance of permanent and temporary farm roads or temporary mining roads.

Temporary roads must be constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of Aquatic Resources are not impaired and that the reach of the Aquatic Resources is not reduced, and that any adverse effect on the aquatic environment are minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the State’s approved program description pursuant to the requirements of 40 CFR 233.22(i)d.

i. Roads established within farming or mining operations shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming or mining operations, and local topographic and climatic conditions;

ii. Road fill shall be bridged, culverted or designed to prevent the restriction of expected flood flows;

iii. The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

iv. Discharges shall be made in a manner that minimizes construction equipment in Aquatic Resources outside of the fill area;

v. Vegetative disturbance shall be kept to a minimum;

vi. Construction and maintenance of crossing shall not disrupt the migration or other movement of aquatic life;

vii. Borrow material shall be taken from upland sources where feasible;

viii. The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species, or adversely modify or destroy the critical habitat of such species;

ix. Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and Aquatic Resources shall be avoided;

x. The discharge shall not be located in the proximity of a public water supply intake;

- xi. The discharge shall not occur in a component of the National Wild and Scenic River System;
 - xii. The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and
 - xiii. All temporary fills shall be removed in their entirety and the area restored to its original elevation.
3. Construction of temporary sedimentation basins.
- a. This exemption applies to the construction of temporary sedimentation basins on a construction site which does not permanently impact Aquatic Resources.
 - b. Construction site means any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of the structures. Also includes any other land areas which involve land-disturbing excavation activities, including quarrying and other mining areas, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.
- C. Interpretation.
- 1. When there is a conflict between any provisions of this Chapter or any other regulations adopted by the County, that providing the most protection to aquatic resources shall apply.
 - 2. If there is any question as to whether a proposed activity qualifies for an exemption, coordination with the County shall occur and results documented in writing.
 - 3. Compliance with this Chapter does not constitute compliance with other federal, state and local regulations, and permit requirements (for example, Section 106 of the National Historic Preservation Act, USACE Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, Section 401 Water Quality Certification, or Porter-Cologne Water Quality Control Act). The project proponent is responsible for complying with all requirements, apart from the provisions of this Chapter.
- D. Recapture Provision.
- 1. Exemptions do not apply when impacts related to activities change the use of the Aquatic Resource and reduce the reach, or impair the flow or circulation of Aquatic Resources. This “recapture” provision involves a two-part test that results in an activity being considered not exempt when both parts are met:
 - a. Does the activity represent a “new use” of the Aquatic Resource; and
 - b. Would the activity result in a “reduction in reach/impairment of flow or circulation” of Aquatic Resources?
 - c. Consequently, any impact that results in the destruction of the Aquatic Resource character of an area (e.g., it converts to uplands due to new or expanded drainage) is considered a change in the Aquatic Resource, and by definition, a reduction of their reach and is not exempt. (SCC 1627 § 1, 2018.)

16.135.040 Aquatic Resource Impact Permits.

- A. General.
- 1. An Aquatic Resource Impact Permit is required for any development activity that is not exempt pursuant to Section [16.135.030\(B\)](#) and that permanently and/or temporarily impacts Aquatic Resources.
 - 2. All Aquatic Resource Impact Permits require approval of a compensatory mitigation plan in accordance with the provisions of Section [16.135.040\(J\)](#) unless the compensatory mitigation plan requirement is waived under the provisions of Section [16.135.040\(J\)\(3\)](#).

B. Standards. Aquatic Resource Impact Permit applications shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, storm water management, and on-site wastewater disposal.

C. Pre-Permit Consultation. Any person applying for an Aquatic Resource Impact Permit is encouraged, but not required, to meet with the Director during the earliest possible stages of project planning in order to discuss Aquatic Resource impact avoidance, minimization, compensation, and the required contents of a compensatory mitigation plan before significant commitments have been made to a particular project design. Pre-permit consultations and planning will help project proponents create projects which will be more quickly and easily processed.

D. Permit Applications. Applications for Aquatic Resource Impact Permits shall be made to the Director on forms furnished by the Director. Unless the Director waives one (1) or more of the following information requirements, applications shall include:

1. Aquatic Resources delineations and setback width designations pursuant to Sections [16.135.050](#) and [16.135.080](#);

2. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals one hundred feet (1" = 100', a scaling ratio of 1:1200) showing the location, width, depth and length of all existing and proposed structures, roads, storm water facilities, sewage treatment, installations, stockpiling areas and borrow sites;

3. The exact sites and specifications for all development activities proposed within Aquatic Resources and Setbacks, including:

Timing of construction activity,

Type of equipment,

Type of fill material and cubic yards of each type of fill,

Type and location of permanent and/or temporary impacts to Aquatic Resources;

4. A compensatory mitigation plan meeting the requirements of Section [16.135.040\(J\)](#).

E. Permit Processing. To the extent practicable and feasible, the processing of Aquatic Resource Impact Permits will be consolidated with other County permits or approvals which affect activities in Aquatic Resources, such as subdivision, grading, site plan, and building permit approval, so as to provide a timely and coordinated permit process.

F. Permit Issuance. The Director shall issue final approval of the Aquatic Resource Impact Permit authorizing commencement of the activity subject to the following conditions:

1. Submittal and approval of documentation for a project-scale assessment of the effects of a project on Aquatic Resources, including mapping (USACE-verified jurisdictional determination) and a description of the functions and services of the mapped areas' Aquatic Resources; and

2. Submittal and approval of on-site project alternatives information demonstrating efforts that first avoid, and then minimize permanent and temporary effects to Aquatic Resources; and

3. Submittal and approval of an alternative that minimizes permanent and temporary impacts to Aquatic Resources and associated functions and services to the greatest extent practicable, if a complete avoidance alternative is not practicable as determined by the Director, Documentation of this Determination of Environmentally Equivalent or Superior Alternative (DEESA) shall be recorded by the Director. See Section [16.135.60\(A\)\(2\)](#) for DEESA procedure; and

4. Submittal and approval of a determination of compliance with SSHCP terms and conditions; and

5. If compensatory mitigation is required then the following conditions must also be met:

- a. Either the submittal and approval of a permittee-responsible compensatory mitigation plan pursuant to Section [16.135.040\(J\)](#), and
- b. The recording of a conservation easement as required by Section [16.135.080\(C\)\(2\)](#) and (4), and
- c. The posting of financial assurance as required by Section [16.135.080\(H\)](#), or
- d. Proof of payment into an in-lieu fee program approved by the USACE and that contains the impact site within its service area, or
- e. Proof of compensatory mitigation through payment into a conservation or mitigation bank approved by the USACE and that contains the impact site within its service area.

G. Permit Duration. The Aquatic Resource Impact Permit shall be valid for the period specified in the Aquatic Resource Impact Permit.

H. Aquatic Resource Impact Permit Financial Assurances.

1. Financial Assurance Estimates. The project proponent shall submit itemized cost estimates for the required financial assurances including cost estimates associated with performance assurance and maintenance assurance. The Director may adjust the estimates to ensure that adequate funds will be available to complete the specified compensatory mitigation upon forfeiture. In addition the cost estimates must include a contingency as follows:

- a. Estimates for bonds shall be multiplied by one hundred fifty percent (150%);
- b. All other estimates shall be multiplied by one hundred ten percent (110%).

2. Waiver of Financial Assurances. The Director may waive the requirement for one or both financial assurances if:

- a. The project proponent demonstrates that it paid into an in-lieu fee program approved by the USACE that contains the impact site within its service area; or
- b. The project proponent used a conservation or mitigation bank that is approved by the USACE and that contains the impact site within its service area.

3. Types of Financial Assurances. The Director shall accept the following forms of financial assurances:

- a. An escrow account secured with an agreement approved by the Director;
- b. A bond provided by a surety for estimates that exceed five thousand dollars (\$5,000);
- c. A deposit account with a financial institution secured with an agreement approved by the Director;
- d. A letter of commitment from a public agency; or
- e. Other forms of financial assurance determined to be acceptable by the Director.

4. Acceptance of Work and Release of Financial Assurances.

a. Release of Performance Assurance. Upon request, the Director shall release the performance assurance when the following conditions are met:

- i. Completion of construction and planting specified in the approved compensatory mitigation plan;
- ii. Submittal of an as-built report documenting changes to the compensatory mitigation plan (if any) that occurred during construction;
- iii. Field inspection of the completed site(s); and
- iv. Provision of the required maintenance assurance.

b. Release of Maintenance Assurance. Upon request, the Director shall release the maintenance assurance when the following conditions are met:

- i. Completion of the specified monitoring and maintenance program;

ii. Submittal of a final monitoring report demonstrating that the goals and objectives of the compensatory mitigation plan have been met.

c. Incremental Release of Financial Assurances. The Director may release financial assurances incrementally only if specific milestones and associated costs are specified in the approved compensatory mitigation plan and the document legally establishing the financial assurance.

5. Forfeiture. If the aquatic resource impact permit holder fails to perform or maintain compensatory mitigation in accordance with the approved aquatic resource impact permit, the Director may declare the corresponding financial assurance forfeit pursuant to the following process:

a. The Director shall, by registered mail, notify the aquatic resource impact permit holder/agent that is signatory to the financial assurance and the financial assurance holder, of non-performance with the terms of the approved aquatic resource impact permit.

b. The written notification shall cite a reasonable time for the aquatic resource impact permit holder, or legal successor, to either propose alternative compensatory mitigation or to comply with provisions of the aquatic resource impact permit and state the County's intent to forfeit the financial assurance should the required work not be completed in a timely manner.

c. Should the required work not be completed timely, the County shall declare the assurance forfeit.

d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized either to correct the deficiencies which resulted in forfeiture or, if such correction is deemed by the Director to be impractical or ineffective, to enhance other aquatic resources in the same watershed or, if deemed impracticable to do so, contribute to an established cumulative effects fund for watershed-scale habitat and aquatic resource conservation.

I. Appeal Process. An Aquatic Resource Impact Permit decision may be appealed to the Board of Supervisors.

J. Aquatic Resource Impact Permit Compensatory Mitigation Plans.

1. Compensatory mitigation plans are required for activities that permanently and/or temporally impact Aquatic Resources. Content requirements for the Plans that are not applicable to a project may be waived by the Director upon request of the project proponent.

2. The compensatory mitigation plan consists of two (2) parts: baseline information for the site and a conceptual compensatory mitigation plan. If off-site aquatic resource compensatory mitigation is proposed, baseline information for both the project site and mitigation site is required.

a. Baseline information shall include:

i. Aquatic Resources delineation as described in Section [16.135.050](#);

ii. Description and maps of land cover types and vegetative conditions at the site;

iii. Description and maps of hydrological conditions at the site;

iv. Description of soil conditions at the site based on an on-site analysis and available soils information from online or published sources such as the Natural Resources Conservation Service's soils maps;

v. A topographic map of the site; and

vi. A functional assessment or condition of the existing aquatic resources.

b. The contents of the compensatory mitigation plan shall be consistent with the USACE Regional Compensatory Mitigation and Monitoring Guidelines for the South Pacific Division (2015), Appendix D of the ARP, and include:

i. Title page;

ii. Contributor page;

- iii. Distribution page;
- iv. Table of Contents;
- v. Brief description of proposed compensatory mitigation project and proposed source of compensatory mitigation;
- vi. Determination of goals and objectives of the proposed project. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the compensatory mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria;
- vii. A description of all permanent and temporary impacts (acreage and linear ft.) that require compensatory mitigation under this Chapter;
- viii. Description of site selection criteria such as watershed overview, landscape setting and position, and site specific information, including consistency with the site selection guidance provided in the ARP (Appendix D);
- ix. Other baseline information such as: map showing locations of permanent and/or temporary impact and compensatory mitigation sites; map showing proposed preserves and setbacks; delineation of Aquatic Resources; functional/condition assessment, if appropriate; species of concern (federal and/or state); cultural resources; existing and planned land uses within and surrounding the proposed compensatory mitigation sites (s); existing site topography/elevations; aerial photos, land uses, site changes (deep ripping, impoundments, channel straightening or realignment); interviews with adjacent landowners, ranchers, land managers regarding locations of seeps, observations of flood events, trespassing/vandalism, opportunities for education and outreach;
- x. Written specifications for the compensatory mitigation project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome;
- xi. Discussion and map of plant material to be planted and planting densities;
- xii. Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);
- xiii. Discussion of water sources for all aquatic resources on the site;
- xiv. Project schedule;
- xv. A monitoring and management program to measure the success of the compensatory mitigation project.
 - (a) The compensatory mitigation project shall be monitored for a period necessary to determine if the project is meeting its performance standards, and to determine if measures are necessary to ensure that the compensatory mitigation project is accomplishing its objectives. Compensatory mitigation projects are required to have a minimum monitoring period of five years. For aquatic resources with slow development rates (e.g., vernal pools and riparian habitats) a monitoring period of more than five (5) years is required. Monitoring periods may be extended if performance standards are not being met. Before determining success there should be at least two consecutive annual monitoring reports where all the performance standards are met without human intervention (e.g., artificial irrigation),
 - (b) Monitoring shall be designed to measure the performance standards outlined in the compensatory mitigation plan,

(c) A monitoring protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project,

(d) Monitoring reports shall be submitted annually, or on a pre-arranged alternate schedule, for the duration of monitoring period,

(e) Monitoring reports shall analyze the results of monitoring, documenting milestones, successes, problems, and recommendations for corrective and/or contingency actions to ensure success of the compensatory mitigation project;

xvi. A contingency plan that identifies potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met;

xvii. A monitoring and management program to measure and maintain the long-term sustainability of the compensatory mitigation project in perpetuity. Monitoring and management programs shall be consistent with established practices of the SSHCP and ARP and information collected in a manner that allows for seamless integration into the SSHCP database.

3. The preparation of a compensatory mitigation plan is not required if all required compensatory mitigation is achieved through the use of:

a. A conservation or mitigation bank approved by the USACE that contains the impact site within its service area; or

b. An in-lieu fee program approved by the USACE that contains the impact site within its service area. (SCC 1627 § 1, 2018.)

16.135.050 Aquatic Resources Delineation.

A. Aquatic Resources Delineation Standards.

1. In conjunction with the submittal of an application for a discretionary permit, the Director shall determine the probable existence of Aquatic Resources on the parcel involved in the development permit application. If Aquatic Resources are believed to exist on a parcel, project proponents for all projects subject to this Chapter must prepare a Verified Aquatic Resources Delineation. All Verified Aquatic Resources Delineations shall be performed in accordance with the minimum standards set forth by the Sacramento District USACE and State Water Quality Control Board at the time of the delineation. All Aquatic Resources Delineations shall be submitted to the Director. The Director will in turn submit the Aquatic Resources Delineation to the USACE for verification. (SCC 1627 § 1, 2018.)

16.135.060 Avoidance, Minimization and Compensation Standards.

A. Avoidance, Minimization and Compensation. Documentation must demonstrate that the following hierarchy of avoidance and minimization has been considered as part of an Aquatic Resources Impact Permit:

1. Avoid permanent and temporary impacts to Aquatic Resources. The proposed project shall first avoid, and then minimize, permanent and temporary impacts to Aquatic Resources to the greatest extent practicable. Those permanent and/or temporary impacts that are unavoidable shall be mitigated such that the lost functions and services are replaced as set forth under the DEESA described below.

2. Minimize permanent and/or temporary impacts to Aquatic Resources if complete avoidance is infeasible. The Director must find that the project proponent has limited the degree or magnitude of impact to Aquatic Resources by using a site design that follows DEESA. The DEESA shall include the following information to be supplied by the applicant and reviewed by the Director:

a. A defined project area boundary.

- b. A detailed project description that demonstrates: (1) why an avoidance alternative is not practicable; and (2) that the project minimizes direct and indirect effects to Aquatic Resources to the greatest extent practicable. This description shall include information regarding any Aquatic Resources on site that are being avoided.
- c. Amount (acres and linear feet (if applicable) and cubic yards) of unavoidable permanent and temporary impacts to Aquatic Resources associated with the project.
- d. A detailed description of project design features and how the project complies with mitigation measures as described in Chapter 5 of the South Sacramento Habitat Conservation Plan that reduce permanent and/or temporary impacts, including but not limited to: impact minimization, on-site stream realignment, Best Management Practices, Low Impact Design and Avoidance and Minimization Measures.
- e. A description and amount of proposed compensatory mitigation. Compensatory mitigation must conform to the minimum mitigation ratios required by Section [16.135.070](#).
- f. An analysis that demonstrates that, although the proposed project would not completely avoid permanent and/or temporary impacts to Aquatic Resources within the area subject to this Chapter with proposed design and compensation measures, the project would be environmentally equivalent or superior to that which would occur under a complete avoidance alternative without these measures, based on one or more of the following factors:
- i. Effects on designated Critical Habitat and Core Recovery Areas.
 - ii. Effects on the abundance of Aquatic Resources.
 - iii. Effects on listed species.
 - iv. Effects on the diversity of Aquatic Resources.
 - v. Effects on habitat connectivity and functions.
 - vi. Effects on the condition of Aquatic Resources.
- g. Compensate for permanent and temporary impacts to Aquatic Resources that will occur, after efforts to avoid and minimize have been exhausted. The Director must find that:
- i. Unavoidable permanent and temporary impacts are compensated in accordance with Section [16.135.070](#); and
 - ii. The required compensatory mitigation is monitored and remedial action is taken when necessary to ensure the success of mitigation activities. (SCC 1627 § 1, 2018.)

16.135.070 Compensatory Mitigation Standards.

A. Compensatory mitigation for permanent and temporary impacts to Aquatic Resources is based on the following ratios:

Land Cover Type	Compensatory Mitigation Ratio (Re-Establishment/ Establishment)
Vernal Pool	1:1
Swale	1:1
Stream/Creek (VPIH)	1:1

Seasonal wetland	1:1
Freshwater marsh	1:1
Open water	1:1
Riparian	1:1
Mine tailing riparian woodland	1:1

B. **Compensatory Mitigation Prioritization.** When considering options for successfully providing the required compensatory mitigation, the type and location options shall be considered in the order presented in the Department of the Army, Corps of Engineers' Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, 33 C.F.R. Part 332 § 332.3, paragraphs (b)(2) through (b)(6). However the preference hierarchy may be overridden when the required compensatory mitigation involves: larger, more ecologically valuable parcels; is subject to more rigorous scientific and technical analysis, planning and implementation; involves advanced site identification and planning; and utilizes significant investment of financial resources, for sites located to successfully replace lost functions and services, taking into account such watershed-scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, compatibility with adjacent land uses, and in general and when practicable to meet the aforementioned considerations, in the same watershed. Therefore, any ILF Program adopted by the County consistent with the SSHCP Conservation Strategy and the ARP and approved by the USACE can be the preferred option for successfully providing required compensatory mitigation.

C. **Compensatory Mitigation.** Allowable types of compensatory Aquatic Resource mitigation are listed below, in the general order of preference.

1. Re-establishment.
2. Rehabilitation.
3. Establishment (Creation).
4. Enhancement. (SCC 1627 § 1, 2018.)

16.135.080 Setback Standards.

A. **Minimum Wetland and Stream Setback Standards.**

1. Refer to Chapter 5 of the South Sacramento Habitat Conservation Plan for minimum wetland and stream setback standards, which may be amended from time to time.

B. **Stream Setback Exemptions.** The setback standards of this Chapter do not apply where there is:

1. An existing Drainage Master Plan that was adopted prior to adoption of this Chapter; or
2. An existing Specific, Master, or Community Plan that was adopted prior to adoption of this Chapter.

C. **Land Use Requirements within Wetland or Stream Setbacks.**

1. Any discretionary review of a proposed project must ensure that sufficient area exists outside of the Wetland or Stream Setback to accommodate primary and accessory structures, paved areas, septic systems, and other uses or activities that might adversely affect the functioning of the Wetland or stream.

2. A conservation easement shall be recorded in a form approved by the Director as adequate to protect and maintain the Aquatic Resources and setback area consistent with the provisions of this Chapter. Conservation easements will run with the land in perpetuity and be binding on the property owner and successors.

3. Any lands proposed for development that include all or a portion of a wetland or stream setback will, as a condition of any subdivision map, provide for vegetation or re-vegetation of any portions of the setback that are not vegetated at the time of the application or that were disturbed by prior land uses. Vegetation will include native or natural tree and plant species as deemed acceptable by the Director.

4. For building lots that exist as of the date of adoption of this Chapter, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear structural setbacks may extend into the wetland or stream setback, provided that an easement is recorded that prohibits clearing or construction in the wetland or stream setback.

5. A permanent physical demarcation along the upland boundary of the wetland or stream setback shall be installed and thereafter maintained. Such demarcation may consist of fencing or other prominent physical marking that does not impede flood flows and must be approved by the Director. Signs, approved by the Director, shall be posted at an interval of one (1) per one hundred (100) feet, indicating that the setback area is a protected area. Signs must be perpetually maintained at locations along the outer perimeter of the wetland or stream setback.

D. Allowable Uses Within Wetland and Stream Setbacks:

1. Refer to Chapter 5 of the South Sacramento Habitat Conservation Plan for allowable uses within stream and wetlands setbacks, which may be amended from time to time.

E. Wetland and Stream Setback Waivers. A waiver of wetland and stream setbacks may be granted by the Director under one of the following conditions:

1. A lot existing as of the date this Chapter is effective for which there is insufficient room outside the wetland or stream setback for uses permitted by the underlying zoning and for which there is no other reasonable or prudent alternative to placement in the setback, including obtaining variances from setback or other requirements that would allow conformance with the setback requirements.

2. An economic hardship whereby a project proponent demonstrates to the Director's satisfaction that the subject property is not capable of yielding an economic return as a result of unique circumstances specific to the subject property, as follows:

a. An economic hardship related to or arising from the characteristics of the property due to the particular physical surroundings, shape, or topographical conditions of the property involved, rather than the personal situations of the project proponent or the result of any action or inaction by the project proponent or the owner or predecessors in title.

b. The necessity of acquiring additional land to locate development outside the wetland or stream setback will not be considered an economic hardship unless the project proponent can demonstrate that there is no adjacent land that is reasonably available or could be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed activity.

c. The proposed project will serve an essential public health and safety need, as demonstrated to the satisfaction of the Director.

3. A project proponent may submit a written request for a wetland or stream setback waiver to the Director. The written request must include specific reasons justifying the waiver and any other information necessary to evaluate the proposed waiver request. The Director may require an alternative analysis that clearly demonstrates that no other feasible alternatives exist and that minimal permanent and temporary impact would occur as a result of the project or development.

4. In granting a request for a wetland or stream setback waiver, the Director may require project design features including site design, landscape planting, fencing, signs, and water quality best management practices to reduce adverse permanent and temporary impacts on wetlands and streams and other sensitive resources.

F. Nonconforming Structures.

1. Legally existing but nonconforming structures and uses of land within wetland or stream setbacks may be continued. Encroachment into the wetland or stream setback will only be allowed where previous allowable (i.e., permitted or otherwise legal) development or disturbance exists. Existing impervious surfaces within the wetland or stream setback that resulted from previous allowable disturbances or developments shall not be expanded. If a legally existing but nonconforming use has been discontinued for a period of more than 90 days, it shall not thereafter be re-established, with the exception of agricultural uses that are following prescribed best management practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this Chapter.

2. Activities that change the use of the Aquatic Resource and reduce the reach, or impair the flow or circulation of Aquatic Resources are required to obtain an Aquatic Resources Impact Permit. See Section [16.135.030\(B\)\(3\)\(b\)](#). (SCC 1627 § 1, 2018.)

16.135.090 Alternatives for Compliance.

A. All of the provisions of this Chapter can be met by complying with an approved permit that satisfies all state and federal Clean Water Act requirements and Porter-Cologne Water Quality Control Act requirements.

1. The Permit must provide coverage within the Plan Area that is applicable to this Chapter; and
2. The Permit must require compensatory mitigation ratios that are equal to or greater than the ratios presented in this Chapter 16.135.070(A). (SCC 1627 § 1, 2018.)

16.135.100 Enforcement.

A. The County shall have jurisdiction to enjoin any activities in violation of this Chapter.

B. In the event of a violation of this Chapter, the County shall have the power to order restoration of Aquatic Resources. If the responsible person, entity, or agent does not complete such restoration within a reasonable time following the order, the County shall have the authority to restore the affected aquatic resources to their prior condition and the person, entity, or agent responsible for the violation shall be held liable to the County for the cost of restoration.

C. In addition to other remedies provided for elsewhere in this Chapter, the Director may suspend or revoke Aquatic Resource Impact Permit(s) issued in accordance with this Chapter and associated development permits if the project proponent or permittee has not complied with any or all of the conditions or limitations set forth in the Aquatic Resource Impact Permit, has exceeded the scope of work set forth in the Aquatic Resource Impact Permit, or has failed to undertake the project in the manner set forth in the Aquatic Resource Impact Permit.

D. In the event that a violation of this Chapter occurs, the County will notify the US Army Corps of Engineers, US Environmental Protection Agency, US Fish and Wildlife Service, the Regional Water Quality Control Board, and California Department of Fish and Wildlife. Notification will be in the form of a one-page form that describes the nature and extent of the violation, with an aerial photo depicting the location of the violation. (SCC 1627 § 1, 2018.)

16.135.110 Severability.

The Board of Supervisors of the County of Sacramento declares that should any section, paragraph, sentence, or word of this Chapter be declared for any reason to be invalid, it is the intent of the Board of

Supervisors that it would have passed all other portions of this Chapter, independent of the provision declared invalid. (SCC 1627 § 1, 2018.)

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