



Santa Clara Valley Habitat Plan

CLARIFICATION AND INTERPRETATION

Subject	Fee Zone Determination
Clarification Number	 2017-005
Approved	December 6, 2017

Category

Fee Zone Determination

Topic

Fee Zone determination for all covered activities

Issue/Question/Problem Statement

How is the Fee Zone identified and what is the verification process?

Plan Guidance

Fee Zone Definitions

Habitat Plan, Chapter 9, *Costs and Funding* states the following, beginning on page 9-24.

“Unlike the other developments fees, the land cover fee varies by location. Three *Fee Zones* are defined by a map that determines the land cover fee paid by development (**Figure 9-1, Habitat Plan**). The Fee Zone map was developed based on the land cover mapping in the Plan. These three

zones correspond to the dominant land cover types, conservation value, and open space value within each Fee Zone.

- **Zone A: Ranchland and Natural Lands¹.** Land within Zone A is strongly dominated by natural land cover types including grassland, oak woodland, and chaparral (**Figure 9-2, Habitat Plan**). Land uses in Zone A are mostly ranchland, low-density rural development, or public open space. Zone A occurs mostly outside of the Santa Clara Valley floor within the Diablo Range and the Santa Cruz Mountains and adjacent foothills. Development in this zone is expected to have, on average, greater effects on more covered species and natural communities than in other zones.
- **Zone B: Mostly Agricultural and Valley Floor Rural Residential Lands.** Zone B is strongly dominated by agricultural land cover types such as grain, row-crop, hay and irrigated pasture, disked/short term fallowed, orchards, and vineyards (**Figure 9-2, Habitat Plan**). Zone B also includes much of the rural residential land cover in the study area. Zone B occurs in the Santa Clara Valley exclusive of areas mapped by the Habitat Plan as having urban land cover types. Small adjacent valleys such as the Almaden Valley also contain small areas of Zone B. In general, covered activities that occur in this area have an effect on covered species and natural communities, but to a lesser extent than in Zone A.
- **Zone C: Small Vacant Sites.** Zone C includes specific sites that meet all of the following criteria:
 - Undeveloped sites (all land covers except urban-suburban, landfill, reservoir or agriculture developed).
 - 0.5 to 10.0 acres in size (parcels less than 0.5 acres are exempt from the land cover fee).
 - Surrounded on four sides by one or more of the following land cover types: urban-suburban, landfill, or agriculture developed.
 - Has no stream, pond, wetland, riparian, or serpentine land cover type within the site.

Sites must meet these four criteria in order to be eligible for the Zone C fee. Similar sites that do not meet all of the four criteria above pay the Zone A or Zone B land cover fee. Development of these areas will result in loss of open space and some habitat values, but impacts will be less than those in Zone B and substantially less than those in Zone A because these areas are already surrounded by development.”

Exemptions from Development Fees

Habitat Plan, Chapter 9, *Costs and Funding* states the following, beginning on page 9-22.

“All development that occurs on land mapped by the Habitat Plan as “urban-suburban”, “landfill”, “reservoir”, or “agriculture developed” land cover types (see Chapter 3 for land cover type

¹ Fee zone names are provided only as a general guide to the dominant land cover. The fee amount will be determined solely by a parcel’s location within a Fee Zone mapped on **Figure 9-1** and the verified land covers present on the site.

descriptions) is exempt from development fees², with the exception of the nitrogen deposition fee and burrowing owl fee, if it is not located in or adjacent to a parcel that contains a stream, riparian woodland or forest, wetland, pond, or serpentine.”

Fee Zone Verification Process

Habitat Plan Chapter 6, *Conditions on Covered Activities* provides guidance on the entire application process, including how the Fee Zones are verified. Applicable excerpts, starting on Habitat Plan page 6-86, include the following.

Item 2: Project Description and Map

“A vicinity map will include any streams or water bodies that fall within the mapped area. If the project is located in Fee Zone A or B, but the project applicant believes that the project qualifies for Fee Zone C, the project applicant must demonstrate compliance with the criteria provided in Chapter 9, Section 9.4.1 *Habitat Plan Development Fees*, subheading *Land Cover Fee Zones*. A project detail map will be included that shows the area on which fees will be levied, as well as the full project parcel if inside the urban service area or the full development area if outside the urban service area, and any relevant landforms, roads, water bodies, and existing and proposed structures that will be affected by the proposed project.”

Item 3: Land Cover Types on Site

“As described in Chapter 3 *Physical and Biological Resources* a detailed land cover map was developed for the study area for this Plan. This land cover map was essential in estimating impacts of the covered activities (Chapter 4) and developing the conservation strategy (Chapter 5). However, due to limitations in the land cover mapping (see **Table 3-4, Habitat Plan**) and the potential for land cover to change over time, land cover types must be verified at the time applications are submitted. This step is also critical because almost all impacts under the Plan are tracked by land cover type.

Proponents of all projects and activities with quantifiable impacts, including approved Participating Special Entities, will specify the amount and type of land cover that will be permanently and temporarily impacted. All fees are paid on the development area (see **Figure 6-1, Habitat Plan**) except for land inside the urban service area designated with a land use of Urban Development or Rural Residential (see **Figure 2-2, Habitat Plan**) that is less than 10 acres, where fees are assessed on the parcel. In addition, all public corridor projects (e.g., stream and utility) pay fees based on the project footprint, regardless of parcel size. As described in Condition 12, projects that do not completely avoid indirect effects to wetlands (including wetlands on parcels adjacent to the covered activity development area) will be considered permanently impacted and will count towards the impact caps described in **Table 4-2** and will be assessed fees as described in Chapter 9.”

² Some lands inside the planning limit of urban growth have already been approved for development by local land use agencies. These sites are subject to the Habitat Plan development fee if land use approval is still required. However, as described in Chapter 4, these lands were not included in the impact analysis. Similarly, for the purposes of the revenue estimates, Habitat Plan fees were not assumed to be collected on these sites.

“All calculations and other information provided in application packages will be verified by the local jurisdiction or Implementing Entity so that all impacts to land cover types can be tracked appropriately and fees paid. This exercise can be performed through air-photo analysis or field verification. Project proponents may request assistance from local planning staff in this analysis (for exempt projects, local jurisdictions will document land cover types present). For sites outside urban or suburban areas that support natural land cover types, land cover verification may need to be performed by a qualified biologist. Land cover type classification will be done in accordance with the descriptions provided in Section 3.3.5 *Natural Communities and Land Cover Types*. If the project site supports or may support any wetland or stream land cover types that would be affected by the proposed project, a qualified biologist must be retained (see Item 4 below).

All land cover determinations provided by private applicants will be verified by local planning staff. All land cover determinations provided by a Permittee will be verified by Implementing Entity staff. A private applicant or Permittee may retain Implementing Entity staff (at cost) to conduct this land cover mapping. Local jurisdiction staff may also be available to provide this service to private applicants as part of the application review process.

Land cover mapping of sites with the following land cover types, as mapped by the Plan, can be conducted by the applicant or local planning staff.

- California annual grassland³;
- reservoirs;
- all agricultural land cover types; and
- all development land cover types.”

“The application package must include a map showing all land cover types on the project parcel(s) if the project is located inside the urban service area or within the development area if the project is outside the urban service area, and a table showing the amount of each land cover type to the nearest 0.1 acre for all non-stream land covers or linear foot for streams (blank tables will be provided in the template application package). These final values will be used to calculate any required fees (Chapter 9).”

The following table is excerpted from the *Santa Clara Valley Habitat Plan Fees and Conditions Worksheet*, and provides further guidance for the required field verification.

Table 1. Habitat Plan Fees and Conditions Worksheet Land Cover Field Verification Methods

Land Cover	Field Verification Method
California Annual Grassland; Reservoir; Orchard; Vineyard; Grain, Row Crop, Hay and Pasture, Disked/Short-Term Fallowed; Agriculture Developed; Urban-Suburban; Rural-Residential; Golf Courses/Urban Parks; Landfill; Barren	Site Plans, Site Photos <i>Planning or building office staff may also use aerial photos or a site visit for verification</i>

³ See definition of annual grassland in Chapter 3. When trees are present in annual grassland at low density, the land cover may instead be oak woodland. In these cases, a qualified professional is needed to make the determination.

Mixed Oak Woodland and Forest, Coast Live Oak Forest and Woodland, Mixed Evergreen Forest, Redwood Forest	Mapping by an Arborist, Forester, or Qualified Biologist ^a <i>Requires site visit by arborist, forester, or qualified biologist and mapping of land covers</i>
All other land covers not listed above, such as: Serpentine Bunchgrass Grassland, Northern Mixed Chaparral, Mixed Riparian Forest, Seasonal Wetland	Mapping by a Qualified Biologist <i>Requires site visit by qualified biologist and mapping of land covers</i>

^a A “qualified biologist” is a biologist trained to perform the given task; such a person is, more specifically, a wildlife biologist or botanist. For land cover verification, the qualified biologist must be competent in land cover delineation. Applicants will provide the local jurisdiction with a brief resume of the biologist to verify his or her qualifications. If the task has the potential to result in take of covered species (e.g., discouraging use of a den by a San Joaquin kit fox), the biologist must be approved by the Habitat Agency and Wildlife Agencies prior to conducting such tasks.

Item 4: Map of Wetlands, Ponds, Streams, and Riparian Woodlands

“A map of all coastal and valley freshwater marsh, seasonal wetlands, ponds, riparian woodland, and streams is required for any project subject to the Habitat Plan that may directly or indirectly affect these aquatic land cover types.” (Habitat Plan page 6-89)

Discussion

The designation of “Urban Areas,” as shown on the Fee Zone Map is not defined in the Habitat Plan. However, the Draft Habitat Plan—released in December 2010—originally included a “Fee Zone D: Urban Areas.” The Draft Habitat Plan defined Fee Zone D as comprising “all developed sites not mapped at Zones A, B, or C.” The text also states that, “because natural and agricultural land cover types are absent from this zone, the land cover fee is not charged... however, other development fees will apply.” As such, it is assumed that the “Urban Areas” designation in the Fee Zone Map was retained in the Final Habitat Plan, even though Fee Zone D was removed, to simply illustrate that most fees (with the exceptions of nitrogen deposition and burrowing owl fees, as noted in the Plan Guidance section above) do not apply to developed land cover types. Nonetheless, this “Urban Areas,” designation has caused confusion during implementation.

In addition, covered activities that occur in an area of the Fee Zone Map shown as Fee Zone C, Small Vacant Sites have caused some confusion during implementation.

Determination

Limitations in the land cover mapping have led to a requirement that land cover types be verified at the time applications are submitted. It is the verified land cover, together with a parcel’s location, that determine the applicable Fee Zone. Areas identified as “Urban Areas” in the Fee Zone map must be verified as required by the application process. This verification is accomplished through a process of elimination. If the project site does not meet the definitions of land cover in Fee Zones A, B or C, then it can be determined to be “urban-suburban,” “landfill,” or “developed agriculture,”. In such cases, no land cover fee (fees based on Fee Zones) shall apply. Nitrogen deposition or burrowing owl fees may still apply.

If a project falls within Fee Zone C, then the applicant will pay the Fee Zone C rate. If a project falls within Fee Zone A or B, but the site meets the criteria for Fee Zone C, then the applicant may submit documentation demonstrating that the Fee Zone was originally applied in error. At such time, the Permittee reviewing the application will make a determination on the applicable Fee Zone, based on site conditions at permit issuance (i.e., 2013). For example, if a site is designated as Fee Zone A or B in the Geobrowser, and subsequently becomes surrounded by development during the permit term, the Fee Zone will remain as originally designated.

In any case where a project is located in or adjacent to a parcel that contains a stream, riparian woodland or forest, wetland, pond, or serpentine, field verification of land cover types that could be affected will be conducted by a qualified biologist and other, non-Fee Zone fees may apply. See Coverage Screening Form (Habitat Agency website) for additional guidance.

Projects that fall within the "Urban Areas" designation of the Fee Zone Map must confirm the land cover type present on the project site according to the existing verification process. If the land covers to be affected are non-fee paying, then no land cover fee applies (although other specialty or nitrogen fees may apply). If the land cover types are determined to be fee-paying types, then the project applicant will pay either the Zone A or Zone B land cover fee, as determined by the Habitat Agency or local jurisdiction processing the application. In most cases, areas on the valley floor will pay the Fee Zone B rate, and areas outside the valley floor will pay the Fee Zone A rate.