

# April 9, 2014 Developer Training Follow-up Questions and Answers

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1. **Request to create a chart of different riparian setbacks, comparing the Habitat Plan/Cities/County requirements.**

Riparian setbacks for each jurisdiction vary considerably due to proposed land use, type of stream, location of development, and topography. To obtain project specific riparian stream setback requirements, consult with your project's local jurisdiction.

2. **Burrowing Owl surveys-if not mapped, no surveys vs overwintering surveys-do AMM for surveys cover overwintering?**

Western burrowing owl habitat surveys will be required in the study area in all modeled occupied nesting habitat (see Habitat Plan Figure 5-11 and the Geobrowser Map – Wildlife Survey Areas).<sup>1</sup> Surveys are not required in sites that are mapped as potential burrowing owl nesting or only overwintering habitat (see Habitat Plan page 6-62).

The breeding season and non-breeding season avoidance measures apply to all projects that affect any burrowing owl habitat, regardless of whether surveys are required by this condition. In other words, if a project is occurring outside of modeled occupied nesting habitat, the project proponent is obligated to ensure avoidance and minimization of impact to burrowing owls according to the measures described on Habitat Plan pages 6-64 and 6-65.

Please use the flow chart in Figure 6-4 of the Habitat Plan to determine if pre-construction surveys or monitoring are required for a specific project site.

3. **Burrowing Owl buffer plus fees at 1.5 miles; what if it goes beyond property lines?**

The burrowing owl fee is charged on the area on which land cover fees are levied (Habitat Plan page 9-33). This does not include a buffer of 1.5 miles and only includes the development area where the project is proposed as described further below.

Plans presented to local jurisdiction planning staff by private applicants for discretionary approval or a building permit process must identify the proposed impact area and general location of site design features (e.g., residence, access road, leach field, wells, vineyards, accessory structures, etc.). The site plan will show all improvements that will result in permanent land cover impacts (e.g., home, driveway, barn, pool, patio, landscaping, and utilities, etc.), including a 50-foot buffer around all proposed site improvements. The project area plus the 50-foot buffer is called the *development area*. This site plan will also show all site improvements that will result in temporary land cover impacts during construction but that will be returned to the pre-project land cover type within 1 year of completing construction (e.g., leach fields, well pipelines that do not result in permanent habitat disturbance), including a 10-foot buffer around the proposed footprint of the site improvements. Plans do not need to show buffer areas (50 feet for permanent improvements and 10 feet for

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<sup>1</sup> Modeled habitat types may change throughout the permit term based on the best available scientific data. For example, the Habitat Agency will be conducting annual surveys or collecting annual survey data of other organizations in occupied nesting habitat throughout the permit area to determine the annual status of known nesting areas and the number of adult breeding owls present.

temporary improvements) that cross property boundaries (e.g., a house 30 feet from a property line only needs to show the buffer area up to the property line). Habitat Plan Figure 6-1 provides an example map of the information required on the site plan. (Habitat Plan Figure 6-1 also defines the development area for the purposes of determining survey areas [see Habitat Plan Section 6.8.5 *Item 5: Results of Applicable Species Surveys and Monitoring*] and calculating development fees [see Habitat Plan Chapter 9, Section 9.4.1 *Habitat Plan Fees*], Habitat Plan page 6-31.)

Survey zones: Prior to any ground disturbance related to covered activities, a qualified biologist will conduct preconstruction surveys in all suitable habitat areas as identified during habitat surveys. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity (Habitat Plan page 6-63).

4. **Survey areas:**

**a) What are requirements for developers regarding burrowing owl passive relocation on project sites?**

Passive relocation would not be allowed under the Plan until the positive growth trend described in Habitat Plan Section 5.4.6 is achieved. Once this occurs, passive owl relocation may be allowed, with the approval of the Wildlife Agencies, on project sites in the non-breeding season (September 1–January 31) if the other measures described in Condition 15 do not allow work to continue. Passive relocation would only be proposed if the burrow needed to be removed, or had the potential of collapsing (e.g., from construction activities), as a result of the covered activity.

If passive relocation is eventually allowed, a qualified biologist can passively exclude birds from their burrows during non-breeding season only by installing one-way doors in burrow entrances. These doors will be in place for 48 hours to ensure owls have left the burrow, and then the biologist will excavate the burrow to prevent reoccupation. Burrows will be excavated using hand tools. During excavation an escape route will be maintained at all times. This may include inserting an artificial structure into the burrow to avoid having the overburden collapse into the burrow and trapping owls inside. Other methods of passive relocation, based on best available science, may be approved by the Wildlife Agencies during Plan implementation (Habitat Plan page 6-66)

Developers can request an exception to the prohibition of passive owl relocation, which is further described in Habitat Plan Condition 15 in Chapter 6.

**b) What is the Habitat Plan's relationship with the burrowing owl breeding program? How does the breeding program relate to Condition 15?**

Burrowing owl breeding programs are described as part of Tier 3 conservation actions in Appendix M of the Habitat Plan, Western Burrowing Owl Conservation Strategy.

If the conservation strategy is implemented as planned but the number of adult burrowing owls fails to meet the annual increase of at least three adult owls each year at the annual survey sites described in Section 7.3.3 *Species Level Actions* subheading *Western Burrowing Owl (Group 1)* the Habitat Agency will propose more active conservation methods to the Wildlife Agencies, such as population augmentation to provide a boost to local population numbers. Active methods utilized will be supported by data gained from pilot studies. Any changes to the conservation strategy (i.e., adaptive management) must be approved by the Wildlife Agencies prior to implementation.

Tier 3 conservation actions consist of more experimental and active methodologies such as population augmentation and owl relocation within the permit area to increase owl numbers and expand distribution. Tier 3 actions will be implemented in response to population performance at the three index sites (Shoreline Park, San José International Airport, and Moffett Airfield) but these actions could occur in any of the burrowing owl conservation regions. These actions will be coordinated with the Wildlife Agencies and will only be implemented upon their approval (Habitat Plan Appendix M, page M-12).

Tier 3 conservation actions are not described in Condition 15, only passive relocation activities.

5. **When an occupied Owl nest is found outside the green areas on the fee map, when does a Burrowing Owl impact fee get triggered? When will the fee map get updated for owl nesting habitat?**

The burrowing owl fee will be imposed on impacts to occupied nesting habitat based on the most recent modeled habitat map maintained by the Habitat Agency (Page 9-33). Avoidance and minimization measures will apply to occupied nests regardless of site location. However, fees will only apply to areas within the Burrowing Owl Fee Zone, as shown in the Geobrowser. The Habitat Agency will make available updates to these maps when they occur.

The burrowing owl fee map will be updated annually based on updated survey information.

6. **For Communications Hill, Audubon has documentation of an owl nest last year---how does that information, if at all, get incorporated into the Habitat Plan and the Plan's fees?**

The Habitat Agency and other local organizations (including Audubon) are currently in the process of conducting annual breeding owl surveys throughout historical and recently occupied nesting areas within the Plan Area and the Extended Burrowing Owl Conservation Area. These data will be used to refine the current burrowing owl occupied habitat map which will also refine the area where burrowing owl fees will be charged. The Communications Hill area is part of this survey effort and any data collected there will be incorporated into updated maps and fee zones. However, a schedule for updating burrowing owl maps has not yet been determined.

7. **For a site that gets a grading permit before July 31, 2014, how much of the site needs to be graded to establish avoidance of the Habitat Plan?**

The Plan specifies criteria for private developers to be considered as “pipeline” projects that do not need to acquire permits under the Habitat Plan. This included obtaining a building or grading permit before July 31, 2014. Per Section 2.3 of the Plan (page 2-37), the pipeline provision applies only to the portion of the project that is issued a grading permit. In effect, only the portions of the site that are subject to the grading permit that was issued would fall under the “pipeline” definition. Areas not affected by the grading permit would not fall under this provision.

8. **When is land disturbed beyond original habitat value? More specifically, if the Geobrowser shows a land cover type as annual grassland but it is currently a ruderal area, would the annual grassland land cover fees apply?**

The application for private projects includes a section under Part II titled “Verification of Land Cover” that describes the process for verifying land cover types within a project area:

The mapped land cover shown on the project site plan and listed in the Natural Communities/Land Cover and Impacts Table, Table 1 in the private project application, will be verified at the time of project application submittal.<sup>2</sup> Depending on the land cover type impacted by development, verification will be conducted by a qualified biologist<sup>3</sup>, arborist/forester, or planning or building office staff member.<sup>4</sup> The Natural Communities/Land Cover and Impacts Table shows what type of land cover verification is required for this project.

- If there is evidence that a natural land cover may exist on the project site (but is not shown on the Habitat Plan Land Cover Maps), the planning or building office may require mapping by a qualified biologist or arborist/forester.
- Additions to existing development encompassing an area of 10,000 square feet or less on any land cover type do not require land cover mapping by a qualified biologist or other professional. These projects may be mapped based on aerial photos by planners or applicants.
- Any development on stream, riparian, serpentine, pond, or wetland land cover types will require verification by a qualified biologist.

**9. Who is responsible for collecting fees?**

Under the Habitat Plan, the Habitat Agency is the receiver of all Habitat Plan fees and reporting information associated with covered projects conducted or permitted by each of the Local Partners. The Local Partners will be transferring fees and information received from private developers to the Habitat Agency. Therefore, private developers will need to submit application materials along with Habitat Plan fees directly to the permitting agency (County of Santa Clara, City of San Jose, City of Morgan Hill, or City of Gilroy).

**10. Fees & Conditions Worksheet: Page 5, Step 6, - Determine Habitat Plan Conditions –Condition 1 / Avoid Direct Impacts on Protected Plant and Wildlife Species states “This condition applies to projects that impact wetlands, certain riparian areas, and large trees.”**

**Concern raised that this language could be interpreted by Planning Staff of the Local Partners to mean that the Habitat Plan prevents the removal of [large] trees.**

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<sup>2</sup> The mapping of land cover for all properties within the Habitat Plan Area was conducted at 10-acre mapping units and may not have accounted for the specific characteristic and habitat types found on each property per Section 3.3.2 of the Habitat Plan.

<sup>3</sup> 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 the qualifications of the biologist. 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.

<sup>4</sup> Santa Clara Valley Habitat Plan, Section 6.8.3

To clarify, the statement regarding “large trees” under Condition 1 is only intended to disclose when Condition 1 applies and does not imply that tree removal cannot occur. The sentence prior to the one shown above states “This condition requires that development projects avoid impacting protected plant and mammal species, and several protected bird species.” In short, if there is a proposal to remove large trees this Condition (Condition 1) would apply which requires the protection of bird species. This condition is consistent with the Migratory Bird Treaty Act, which applies separate from the Santa Clara Valley Habitat Plan, and ensures that projects do not affect nesting migratory birds.

In practice, applicants are required to avoid removing trees that have active bird nests or wait until the non-nesting season for tree removal.

11. Does the 50 foot buffer apply to projects within the Urban Service Area?

The method of showing and calculating the size of the proposed development area is:

- i. If the subject property is located ***inside the urban service area*** and is ***smaller than 10 acres***, the development area is defined as the full area within the boundary of the property where the project is proposed (entire parcel and all proposed on- and off-site improvements).
- ii. If the subject property is located ***inside the urban service area*** and is ***10 acres or larger***, the development area is defined as all permanent improvements plus a 50-foot buffer, ***and*** temporary improvements plus a 10-foot buffer.

In all cases, the buffer ends at the subject property boundary and does not extend onto the neighboring parcel.