



Santa Clara Valley Habitat Plan CLARIFICATION AND INTERPRETATION

Subject	Projects that Received Species Take Permits Prior to Habitat Plan Approval and Species Was Subsequently Listed As Endangered
Clarification Number	2013-007
Approved	Edmund Sullivan 
Effective Date	June 24, 2015
Revision Date <i>(If applicable)</i>	

Category

Previous Endangered Species Act/Covered Species Permits

Topic

Projects that received species take permits prior to Habitat Plan approval and species was subsequently listed as endangered.

Issue/Question/Problem Statement

Is a project covered under the Habitat Plan if it received species take permits from Wildlife Agencies prior to Habitat Plan approval and the new species has since been listed as endangered?

Plan Guidance

The Habitat Plan allows for California Endangered Species Act (CESA) or Endangered Species Act (ESA) compliance to occur without going through the Habitat Plan if written confirmation is

provided to the Implementing Entity. Habitat Plan page 6-4 describes projects with exemptions from fees and conditions:

A project proponent of a covered activity in the Plan will not be required to comply with the conditions in this chapter or pay any Habitat Plan fees if the proponent of the activity provides written confirmation to the Implementing Entity that the CDFG and USFWS have determined that the activity is not subject to CESA and ESA, respectively; or has already received the necessary take authorizations under CESA and ESA; or has otherwise complied with CESA and ESA. An activity will be deemed to be in compliance with CESA and ESA by the Implementing Entity and thus be exempt from the conditions in this chapter and otherwise comply with the Habitat Plan if the proponent provides the following:

1. Letters from both USFWS and CDFG that specifically refers to the activity and states that the activity is not likely to result in take of any federally or state listed species and will not preclude successful implementation of the conservation strategy for all covered species, or
2. A copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by USFWS that authorize the incidental take associated with the proposed activity.

Determination/Justification

The project proponent would need to provide written confirmation that it has received the appropriate endangered species permits from the Wildlife Agencies. It would be the discretion of the Wildlife Agencies to require additional mitigation for species that have been listed since project permitting. If the species is covered by the Habitat Plan, the project proponent may eligible to receive coverage under the Habitat Plan. Habitat Plan coverage determinations are ultimately at the discretion of the Co-Permittees. However, the Wildlife Agencies would determine that projects of this nature have not met their permitting requirements and would not qualify as a pipeline project or exempt project.

As an example, the California tiger salamander was listed by the State of California in May 2010, and take authorization was not issued to the Coyote Valley Research Park by the California Department of Fish and Wildlife (CDFW). Given the local distribution of California tiger salamander, it is likely that buildout of the Coyote Valley Research Park will result in take of California tiger salamander. As such, this project does not meet the requirements of a pipeline project or exempt project.