



Santa Clara Valley Habitat Plan CLARIFICATION AND INTERPRETATION

Subject	Covered Activities: Fee and Impact Assessment on Linear Public Projects
Clarification Number	2013-012
Approved	Edmund Sullivan, Executive Office 
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Category

Covered Activities

Topic

Fee and Impact Assessment on Linear Public Projects

Issue/Question/Problem Statement

How linear public projects located outside the urban service area should pay fees is not clearly addressed in the Habitat Plan. This memorandum clarifies how fees are paid—and, therefore, impacts are assessed—on linear public projects outside the urban service area for projects covered by the Santa Clara Valley Habitat Plan (Habitat Plan or Plan).

Plan Guidance

The following sections, listed by Habitat Plan chapter number, provide excerpts that are relevant to how to calculate impacts for linear public projects. Excerpts include language related to how covered activities must be found consistent with the impact analysis (Chapter 2), methods for developing the Habitat Plan impact analysis (Chapter 4), and methods for calculating fees (Chapter 6 and Chapter 9). Underlining has been added for emphasis.

Chapter 2

Chapter 2, Section 2.3, *Covered Activities*, describes the key criteria used to evaluate whether a project or activity may be covered by the Habitat Plan.

A described activity or project will be covered under the Plan if:

- The activity or project does not preclude achieving the biological goals and objectives of the Plan (see Chapter 5, *Conservation Strategy*) as determined by the Implementing Entity at the time the covered activity is proposed. For projects where there is some question whether or not the biological goals and objectives of the Plan may be precluded, the determination will be made by the Implementing Entity in coordination with the Wildlife Agencies;
- The activity or project is conducted by, or is subject to the jurisdiction of, one of the Permittees (see Chapter 8, *Plan Implementation*, for a mechanism for a non-permittee to receive coverage under the Plan);
- The activity or project is a type of impact evaluated in Chapter 4 of the Plan; and
- Adequate take coverage¹ under the permits remains available for other covered activities. (page 2-37)

Chapter 4

Chapter 4, Section 4.4.1, *Direct Effects*, subheading *General Method*, of the Habitat Plan describes how impacts were calculated for the Plan (page 4-52).

The analyses for In-Stream Capital Projects, In-Stream Operations and Maintenance, Rural Capital Projects, and Rural Operations and Maintenance were conducted in the same general manner. Wherever possible, the impacts of specific covered activities on land cover were modeled using GIS software. The general approach was to utilize a GIS overlay of project footprints or infrastructure on the mapped land cover and assess affected acres. To assess construction and operations and maintenance impacts, buffers were applied to GIS-mapped infrastructure or projects. The assumption is that some amount of surrounding acreage would be the target area for operations and maintenance and construction activities, such as vegetation management and staging, respectively. The same approach was used to assess miles of stream affected by covered activities.

Tables 4-5a through 4-5g illustrate this approach. For example, Table 4-5d, in the row titled “County Roads Safety Projects and Turn Lanes,” describes the assumptions that were used to conduct the permanent impact analysis, including analysis for 33 miles of safety projects, with each project

¹ Take coverage is defined in this Plan in terms of land cover type, modeled habitat (see Tables 4-2 and 4-4), and occurrences of covered plants (see Table 4-6) that would be adversely affected as a result of covered activities.

adding 8 new feet of road width. Table 4-5e describes the estimated temporary construction impact of this project as a 4-foot-wide area along the 33 miles. As such, the total impact of County road safety projects in the Habitat Plan is 32 acres of permanent impact and 16 acres of temporary impact (note that this is total impact and does not exclude areas where impacts and fees are not assessed because the land cover is already developed).

Chapter 6

Chapter 6, *Condition 7 Rural Development Design and Construction Requirements*, applies to “projects, including capital projects, implemented by Permittees outside the urban service area.” The Plan further states,

Projects subject to this condition are required to follow the following measures:

- 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. (page 6-31)

Chapter 6, Section 6.8.3, *Item 3: Land Cover Types on Site*, describes how fees are paid.

All fees are paid on the development area (see Figure 6-1) except for land inside the urban service area designated with a land use of Urban Development or Rural Residential (see Figure 2-2) 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. (page 6-87)

Chapter 9

Chapter 9, Section 9.4.1, *Habitat Plan Development Fees*, subheading *Land Cover Fee*, subheading *Inside the Urban Service Area*, describes how fees are paid inside the urban service area.

Within the urban service area, land cover fees on private and public projects will be assessed on the development area (see Figure 6-1) except for land designated with a land use of Urban Development or Rural Residential (see Figure 2-2) on a parcel that is less than 10 acres in which case, the land cover fee is assessed on the entire parcel. The fee will not be paid on any land set aside for the Reserve System (i.e., conservation easement) or for stream setback that is avoided. Fees assessed based on the parcel will be assessed on the entire parcel regardless of how much land disturbance is proposed at the time of the permit application to the local jurisdiction (i.e., regardless of the project footprint). One exception to this is linear public projects (e.g., in stream and utility corridors), which will be assessed the land cover fee based on the project footprint. In these cases, the project footprint for the purposes of assessing the land cover fee is defined as the area where ground disturbance is conducted or vegetation removal occurs. (page 9-27)

Chapter 9, Section 9.4.1, *Habitat Plan Development Fees*, subheading *Land Cover Fee*, subheading *Outside the Urban Service Area*, describes how fees are paid outside the urban service area.

Outside the urban service area, the land cover fee will be assessed on private and public projects based on the development area, as defined in Chapter 6, Section 6.4.4, subheading Condition 7 Rural Development Design and Construction Requirements (also see Figure 6-1 for an illustration). The development area is roughly equivalent to the project footprint but includes a 50-foot buffer around permanently disturbed areas and a 10-foot buffer around temporarily disturbed areas. (page 9-28)

Discussion

The direction on how fees for linear projects are calculated in Chapter 6, which does not distinguish between inside vs. outside the urban service area, is inconsistent with the direction provided in Chapter 9, which includes a distinction regarding inside or outside the urban service area. In other words, Chapter 6 allows the determination of impacts, and therefore the calculation of fees, for public linear projects outside the urban service area based on the project footprint, while Chapter 9 requires impacts for linear public projects outside the urban service area to be calculated based on the development area. The Habitat Agency had to determine which approach should be used.

The method selected needed to be consistent with other parts of the Habitat Plan, including how overall impacts were estimated for the Habitat Plan. Requiring public projects to use the development area to define the area of impact for linear projects would result in impacts for covered activities being substantially higher than anticipated in the Plan's impact analysis (described briefly above and in detail in Chapter 4 of the Habitat Plan). Applying a buffer of 50 feet to the area of permanent impact (consistent with the definition of development area) in the example above for County road safety projects would result in more than six times the area of impact being included in the Plan's impact analysis (200 acres of impact instead of 32 acres). This approach also does not make logical sense because very few linear projects have an available right-of-way that is 50 feet on either side of the area of permanent impact, regardless of location inside or outside of the urban service area. As such, calculating impacts for public linear projects based on the development area would be inconsistent with the Habitat Plan impact analysis and would result in greater impacts being associated with certain projects assumed in Chapter 4 and would reduce the amount of available take for other covered activities described in Chapter 2 of the Habitat Plan.

Determination/Justification

In order to maintain consistency with the impact analysis discussed in Chapter 4 of the Habitat Plan, fees and impacts for covered activities of linear public projects shall be based on the "project footprint" both inside and outside the urban service area. This applies to both Co-Permittee projects and Participating Special Entity (PSE) projects.