




Santa Clara Valley Habitat Plan CLARIFICATION AND INTERPRETATION

Subject	GRADING VIOLATIONS AND ABATEMENTS – PAYMENT OF HABITAT PLAN FEES	
Clarification Number	2016-001	
Approved	Edmund Sullivan, Executive Officer	
Effective Date	May 10, 2016	05/10/2016
Revision Date <i>(If applicable)</i>		

Category

Habitat Plan Fees. Application of Temporary or Permanent Fees Interpretation.

Topic

Habitat Plan Fees – Applicability and calculation for grading violations and abatement.

Issue/Question/Problem Statement

How do Habitat Plan fees apply to grading violations and permits issued to abate violations?

Grading violations entail the discovery of illegal grading activity as a result of City or County inspections. Once the violation is identified, the owner/applicant has an option to address the violation using one of two methods, 1) Apply for permit to “legalize” the unpermitted grading, or 2) Obtain an approval to restore the site (abate the violation). These grading applications are subject to Habitat Plan fees. Typically, grading abatement applications will restore the site to pre-grading conditions. The applicability of permanent or temporary land cover fees for Habitat Plan “covered activities” which return a site with a grading violation to pre-graded conditions is not clearly defined. Under the Habitat Plan, temporary impacts are distinguished from permanent impacts as encompassing “activities for which direct impacts that alter land cover for less than one year and

that allow the disturbed area to recover to pre-project or ecologically improved conditions within one year”

Three potential approaches are available for applying Habitat Plan fees to covered activities that entail the abatement / restoration of sites with illegal grading:

1. No impact fees apply to the grading abatement / restoration of the site to pre-graded conditions.

This approach uses a logic that the grading abatement permit issued by the jurisdiction only encompasses site restoration. Ecological restoration activities are not normally subject to Habitat Plan fees.

2. Permanent impact fees apply if unpermitted grading exists 2 years or longer.

This approach uses a logic that if the illegal grading subject to the grading abatement entailed land disturbance for longer than 2 years, which is classified as a permanent impact under the Habitat Plan, permanent impact fees are appropriate. If the duration of grading was less than 2 years, temporary impact fees would apply.

3. Temporary impact fees apply for the duration for which the illegal grading occurred – with a cap of 2 years or less (1 year for disturbance, 1 year for return to natural condition), maintaining any Habitat Plan fees required as temporary impact fees.

This approach uses the same logic as #1, but caps the duration of fee payment within the temporary impact window, not applying permanent impact fees.

Fee Type	Pros	Cons
No Fees	<ul style="list-style-type: none"> • Encourages abatement • Allows abatement to happen in timely manner • Provides a clear path to abatement 	Does not accurately reflect the Plan with respect to impacts and fees
Permanent Fees	Accurately reflects the Plan with respect to impacts and fees	<ul style="list-style-type: none"> • Uncertain timing of unpermitted grading occurrence • Deterrent to abate unpermitted grading (property owner will restore site but pay “permanent impact fees”)
Temporary Fees	<ul style="list-style-type: none"> • Encourages abatement 	Does not accurately reflect the two year “cap” on temporary impact fees if the illegal grading

	<ul style="list-style-type: none"> • Reflects intent of Plan to capture land disturbance. 	occurred for longer than 2 years.
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Plan Guidance

- Chapter 9, Page 9-24. "Public and private covered activities are subject to the land cover fee for permanent impact on any land cover types besides urban-suburban, landfill, reservoir, or agricultural developed".
- Chapter 9, Page 9-37. "The applicant may pay the full land cover and retain the ability to disturb the area repeatedly during the permit term. Temporary impacts that occur in the same location repeatedly during the permit term and that pay the full land cover fee will be counted and tracked as a permanent impact. Temporary impact fees paid on a site can be credited towards any permanent fees that may be required on the same site in the future."
- Chapter 9, page 9-38. "To reduce administrative costs, temporary impact fees will not be assessed on any covered project with impacts of less than 0.25 acres, except to wetlands, ponds, riparian woodlands, streams, or serpentine."
- Chapter 9, Page 9-40. "The Implementing Entity, in consultation with the project proponent and the Wildlife Agencies, will determine an appropriate project impact area subject to the temporary impact fee. These types of activities may have both temporary and permanent effects (i.e., trenching through a wetland complex that permanently alters site hydrology would be considered a permanent impact). In these cases, the temporary impact fee along with other fees described in this chapter could be assessed."
- Appendices, Page A-9. Permanent impacts. Direct impacts that permanently remove or alter a land cover, or that affect a land cover for more than one year during covered activity implementation and/or more than one year after completion of the covered activity (e.g., creating a new road through grassland).
- Appendices, Page A-12. Temporary impacts. Direct impacts that alter land cover for less than one year and that allow the disturbed area to recover to pre-project or ecologically improved conditions within one year (e.g., prescribed burning, construction staging areas) of completing construction.

Determination/Justification

Grading Abatement applications are the mechanism in which grading violations are corrected and, in many cases, expunged. In all cases, the property owner is subject to fees associated with the violation, grading abatement application, plan preparation, and subsequent conditions of approval to correct the violation.

Option #3 shall be used as the approach in applying Habitat Plan fees to grading violation / abatement projects – Temporary impact fees will apply for the known duration of the illegal grading activity. If the activity occurs for longer than 2 years, the temporary impact fees will be capped at 2 years.

This is a balanced approach that captures the intent of the Habitat Plan to recognize the temporary impacts of grading activity which is eventually restored, while providing an incentive for property owners to abate grading violations.