



Santa Clara Valley Habitat Plan CLARIFICATION AND INTERPRETATION

Subject	Condition 18 - San Joaquin Kit Fox Den Treatment Requirements
Clarification Number	2016-002
Approved	Edmund Sullivan, Executive Officer 
Date	January 25, 2017
Revision Date (if applicable)	

Category

Administrative Change to Conditions on Covered Activities

Topic

Condition 18 – San Joaquin Kit Fox Den Treatment Requirements.

Issue

- Condition 18 requires that unoccupied kit fox dens that are discovered within the development footprint of a project or in areas of ongoing operations and management activities shall be destroyed immediately to prevent re-entry.
- Concerns have been expressed that destruction of unoccupied dens may be unnecessary and could result in impacts to habitat by destroying dens that could be used by other species after completion of the project.

Plan Guidance

The following text is comprised of direct excerpts from Habitat Plan Chapter 6, taken from Condition 18 (beginning on page 6-71).

Condition 18. San Joaquin Kit Fox

Avoidance and Minimization

The goal of the avoidance and minimization measures for San Joaquin kit fox are to avoid all injury or death to kit fox in the study area, and to minimize harm or harassment to the species. No take authorization for injury or death to kit fox is provided by this Plan due to the rarity of the species in the study area. The following avoidance and minimization conditions will be applied to projects that do not fully avoid suitable dens or kit fox individuals.

- If a suitable San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS- and CDFG-approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.
- Unoccupied dens will be destroyed immediately to prevent subsequent use.
- If a natal or pupping den is found, USFWS and CDFG will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFG.
- If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated by hand when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities). If at any point during excavation a kit fox is discovered inside the den, the excavation activity shall cease immediately and monitoring of the den as described above will be resumed. Destruction of the den may be completed when, in the judgment of the biologist, the animal has escaped from the partially destroyed den.
- Construction and on-going operational requirements from *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox prior to or during Ground Disturbance* (U.S. Fish and Wildlife Service 2011) or the latest guidelines will be implemented.
- If active or suitable dens are identified within the proposed disturbance footprint or outside the proposed project footprint but within a 250-foot buffer, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones will be circular, with a radius measured outward from the den entrance(s). No covered activities

will occur within the exclusion zones. Exclusion zone radii for atypical dens and suitable dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by the foxes.

Analysis

As the Habitat Plan is becoming more widely used, concerns are being identified where Plan Conditions require actions that can be unnecessary or even detrimental to conservation efforts. A project within the kit fox survey area was required to destroy a potential den within the *development area*, outside the *project footprint*. In this case, the project proponent consulted with the Wildlife Agencies and monitored the den rather than destroy. Their concern was that the likelihood that it was a kit fox den was low; however the likelihood it supported other covered or rare species was high (e.g., California tiger salamander). TAC discussed the possibility of inadvertent impacts should Condition 18 be implemented as it is currently worded in regard to the treatment of unoccupied dens that occur on a project site.

Of particular concern is the second bullet point under Condition 18, which mandates destruction of unoccupied kit fox dens to prevent subsequent use by the species. When taken individually, this bulleted item appears to apply to all kit fox dens discovered anywhere on a project site. However, that is not the intent of the condition. The second bullet point is meant to tier off the first bullet point, and would thus apply only under one particular circumstance. Specifically, as noted in the first bullet point, the requirement for destruction of unoccupied dens is intended to apply only to those dens that occur within the actual development footprint (i.e., *project footprint*--those dens that exist beneath proposed ground disturbance that would ultimately be destroyed by the project at some point in the future), and not to those dens that simply exist within the *development area* or project vicinity.

Because an unoccupied den within the development footprint will, at a minimum, be significantly impacted by construction activities, it was determined that such dens should be destroyed prior to project site disturbance in order to avoid the potential re-entry of the den by a kit fox during the project implementation period. This situation could endanger the individual in the event it should be within the den at the time ground disturbance occurs. Based on this reasoning, if a den is discovered on a project site, and it is determined to be unoccupied, then it should be destroyed to eliminate the potential for harm to the species on the project site.

If an unoccupied den is discovered within the *development area*, outside the *project footprint* or within the project vicinity and would not be *directly* impacted by the project, then it should not be required to be destroyed as stated in the second bullet point. Rather, the discovery of a kit fox den within 250 feet of the project development footprint that would not be directly impacted by project implementation, shall continue to be addressed as set forth in the sixth bullet point, with the establishment of exclusion zones.

Determination

The second bullet point of Condition 18 is intended to follow the first bullet point and not be taken as a separate and distinct requirement. The administrative modification proposed below will clarify this connection and provide consistency in the application of the condition. As intended, the requirement to destroy unoccupied kit fox dens shall only become effective if the den(s) in question would clearly be significantly impacted or destroyed by implementation of the proposed project. The following guidance will be applied to the treatment of all unoccupied kit fox dens that are discovered in compliance with Condition 18. All other requirements of Condition 18 will also be applied. In summary, if an unoccupied kit fox den is found to occur on a project site, it shall only be destroyed in the event that the proposed project implementation or ongoing operations and maintenance would clearly lead to the ultimate destruction of the den in the course of site activity.

Administrative Modification

As provided for in Section 10.3.1 of the Habitat Plan, administrative changes to correct “errors in the Plan that do not change the intended meaning or obligations” of the Plan may be processed internally and require no formal approval. Administrative changes must be made in writing and documented by the Implementing Entity (Habitat Agency). Thereafter, the Wildlife Agencies will be provided a summary of administrative changes in each annual report.

The specific change being proposed at this time is the consolidation of the first and second bullet point in Condition 18 in order to unify the concept. In addition, the administrative change provides a brief clarification that the destruction of unoccupied dens is only applicable within the development footprint. The final bulleted list in Condition 18 will now read as follows (changes underlined):

Avoidance and Minimization

The goal of the avoidance and minimization measures for San Joaquin kit fox are to avoid all injury or death to kit fox in the study area, and to minimize harm or harassment to the species. No take authorization for injury or death to kit fox is provided by this Plan due to the rarity of the species in the study area. The following avoidance and minimization conditions will be applied to projects that do not fully avoid suitable dens or kit fox individuals.

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- If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated by hand when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities). If at any point during excavation a kit fox is discovered inside the den, the excavation activity shall cease immediately and monitoring of the den as described above will be resumed. Destruction of the den may be completed when, in the judgment of the biologist, the animal has escaped from the partially destroyed den.
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- If active or suitable dens are identified within the proposed disturbance footprint or outside the proposed project footprint but within a 250-foot buffer, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones will be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones. Exclusion zone radii for atypical dens and suitable dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by the foxes.