




Santa Clara Valley Habitat Plan

CLARIFICATION AND INTERPRETATION

Subject	Riparian Habitat Temporary Impact Fee Determination
Clarification Number	2017-003
Approved	
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Category

Habitat Plan Fee Assessment

Topic

Fee assessment for riparian impacts resulting from projects that propose restoration of degraded habitat.

Issue

- Projects that impact riparian habitat may occur on previously disturbed land, which exists in a degraded condition, and which is unlikely to return to native ecological value through natural processes.
- When project impacts occur on previously degraded riparian habitat and post-project site restoration can improve biological function, then there may be an opportunity to restore historical native ecological values.
- If it can be demonstrated, through a report by a qualified ecologist (or biologist who specializes in restoration), approved by the Habitat Agency and Wildlife Agencies, that a degraded site can be returned to a native ecological condition and that the restored condition will be self-sustaining, there is value in combining a restoration plan with impact mitigation and providing incentive to the applicant to do so.

- The Habitat Agency proposes an assessment methodology to combine a restoration plan with impact mitigation in appropriate cases and charging the temporary impact fee, even where preconstruction ecological condition would not be restored in under a year.

Background

Throughout the Plan area, human activities have resulted in degradation of native land covers from causes such as invasive plant and animal species, modified hydrology and accelerated erosion. As the Habitat Plan provides protection for special status plant and animal species, the human-altered environment presents a challenge to maintaining the optimal conditions to support the regeneration of these species.

Occasionally a project or activity within the Plan area is proposed on land that has been previously degraded and where the site cannot restore without intervention. Although not the primary purpose of most projects, post-project site restoration can actually improve the ecological function of the site through re-establishment of native vegetation, correction of site drainage or other restorative features. Currently, when projects occur in riparian habitat, the area of impact is assessed a permanent impact fee if the habitat is not restored to the pre-project ecological condition of the site within one year before the project began. This is particularly a problem with multi-year projects, where it is impossible to meet the one-year standard and there is therefore no incentive to do a full restoration to full native ecological values. Since multi-year projects are often very large in scope and area, a significant opportunity for large scale riparian restoration (not simply impact mitigation) is being lost.

Analysis

Permanent impact fees are intended to mitigate for projects that result in irreversible changes to the environment, such as the development of a residential subdivision or construction of a new roadway. Permanent impact fees are also assessed for projects which result in no permanent physical improvements, but where the land is significantly impacted through direct or indirect actions and thus loses ecological function. These impacts can be considered temporary when the site can be completely restored to ecological function within one year of completion of the project. This can be achieved easily in annual grassland, ruderal or agricultural land types, but is more difficult to accomplish in riparian habitats. Where existing riparian habitat is degraded, there may be a benefit from site restoration as opposed to simply compensating for the impact. If conditions are favorable for a self-sustaining habitat restoration, there may be considerable value in giving the applicant the option of carrying out a site restoration and reducing the impact fee to the temporary category to compensate for the temporal loss. In cases where significant benefit is provided, as determined by the Habitat Agency and Wildlife Agencies, the impact fee could be waived completely.

It is important to note that independent restoration projects are exempt from Habitat Plan mitigation fees entirely, because they are seen to advance the goals of the Plan and do not

conflict with it in any way. This sentiment is carried further in the Plan's assessment of indirect project impacts to wetlands where the wetlands in question are "highly degraded". In such cases, Plan fees are waived, as discussed in Condition 12 (pages 6-56 to 6-57).

Wetlands that are not completely avoided, including indirect effects, will be considered permanently impacted and will count towards the impact caps described in **Table 4-2** and will be assessed fees as described in Chapter 9. If however, the local jurisdiction demonstrates to the Wildlife Agencies that the wetlands to be indirectly affected are highly degraded prior to project impacts, and the Wildlife Agencies agree, impacts will not be counted toward the impact caps described in **Table 4-2** and fees will not be assessed. "Highly degraded" wetlands could include, but are not limited to, those that are indirectly affected by surrounding development or agriculture to the extent that hydrology, water quality, or habitat for covered species is adversely affected.

The Habitat Agency does not propose to waive impact fees entirely for projects that incidentally restore previously degraded riparian habitat, but only to reduce the fees from "permanent" to "temporary", which is a varying fraction of the "permanent" fee.

Although the Habitat Plan emphasizes avoidance over mitigation for project impacts, in some cases, the mitigation may actually be a better alternative than strict avoidance of features. In particular, degraded riparian habitat which would remain degraded and perhaps degrade further if a project in the vicinity were never proposed, might now be restored to natural function as an outcome of a project that didn't simply avoid the degraded resource area. Based on this analysis, it is evident that projects which result in the restoration of degraded riparian habitat should be assessed only the temporary impact fees for the restoration areas, even if the project duration exceeds one construction season.

Determination

The Habitat Agency has developed a review methodology to ensure that multi-year projects resulting in riparian impacts to previously degraded habitat, which restore the project site to a better-than-existing condition, may be assessed fees at the reduced rate of "temporary" impacts. The following steps have been identified to assist land use planners, environmental consultants and property owners in determining how and when land cover fees for multi-year projects in riparian habitat may be considered "temporary".

1. Applicant shall provide an assessment of the baseline condition, prepared by a qualified ecologist, of the land cover which will be affected by the project. The assessment should include, at a minimum, a description of the probable historical vegetative assemblage; the current vegetative assemblage; a description of the factors which led to site degradation; the ability to remove or compensate for those degrading factors; the target vegetative assemblage after restoration is complete; the likelihood that the restored habitat will be self-sustaining and any measures necessary to ensure that occurs; the estimated timeline for restoration of degraded habitat to better than pre-project conditions; and a monitoring plan with success criteria .

2. Applicant shall provide restoration plans, prepared by a qualified ecologist (or biologist who specializes in restoration), for review and approval by the Habitat Agency and wildlife agencies.
3. Post-project, the site must be restored to the appropriate naturally occurring land cover and functional habitat in cases where the existing habitat is degraded by invasive species to some degree. Removal and/or treatment of invasive species shall be conducted in a manner consistent with the Management Considerations set forth in Table 5-20.
4. Establish project-specific protocol to inspect and monitor the success/failure of the restoration effort. The minimum monitoring visits will be at years 1, 2, 5 and 10 but may be required more frequently, depending on site conditions.
5. Temporary impact fees can be calculated by determining the prorated amount based on the duration of the activity. This fee is calculated by multiplying the total calculated fee amount (development area x fee rate) x (the number of calendar years for disturbance + number of calendar years for the site to return to pre-project conditions, all divided by 50). For example, if disturbance is 1 year and the time it takes to return to better than pre-project conditions is 1 year, multiply the calculated fee amount by 0.04 $([1+1]/50)$.
6. Fees will be assessed at the temporary rate and collected in advance for the amount of time that it is determined for a site to be considered restored

Restrictions and Limitations

In addition to the list of protocol above, the following restrictions and limitations shall apply to all in-stream riparian projects that propose temporary impacts based on restoration of degraded habitat to better-than-existing conditions:

- Site must be restored to better than existing conditions as determined by a qualified ecologist or biologist who specializes in restoration, in concurrence with the Habitat Agency and the Wildlife Agencies.
- Removal and/or treatment of invasive species shall be conducted in a manner consistent with the Management Considerations set forth in Table 5-20.
- Restoration of habitat that is classified as annual grassland and/or is dominated by invasive plants, and where the plant has been classified by the California Invasive Plant Council as having a high potential to negatively impact the native ecosystem, would be applicable for temporary fee consideration.

Applicants considering the use of this approach should discuss potential sites and design with the Habitat Agency and Wildlife agencies before expending resources on a specific project. Preliminary discussions about the suitability of a project will ensure that the project can meet the assessment criteria, restrictions and limitations set forth in this determination.