




## Santa Clara Valley Habitat Plan CLARIFICATION/INTERPRETATION MEMO

Subject	Integrating Lake or Streambed Alteration Agreement Review with NCCP Coverage
Clarification Number	2017-006
Approved	

### Category

Santa Clara Valley Habitat Plan Clarification

### Topic

The Santa Clara Valley Habitat Agency (Habitat Agency) recommended guidance to Co-Permittees for covered projects that require California Department of Fish and Wildlife (CDFW) Fish and Game Code section 1600 et seq. permitting under a Lake or Streambed Alteration Agreement (LSAA). Please note that a LSAA is synonymous with the term 1600, which is in reference to the Fish and Game Code section.

### Issues

- Projects covered by the Santa Clara Valley Habitat Plan (Habitat Plan) pay land cover and specialty fees (Habitat Plan fees) as mitigation and recovery for impacts resulting from project implementation. The Habitat Plan fees contribute to the purchase of off-site compensatory habitat, such that additional mitigation for permanent or temporary impacts is not necessary. Applicants may, in limited circumstances and with Habitat Agency and Wildlife Agency approval, propose on site enhancement that can substitute for fees (See: Riparian Habitat Temporary Impact Fee Determination – Clarification Number 2017-003).
- If a Habitat Plan-covered project is subject to coverage under a CDFW LSAA for the same impacts to Land Cover Types covered by the Habitat Plan, the impacts may be considered mitigated by the payment of the fees or proposal of an enhancement project in advance, fulfilling the project's

mitigation requirements for the LSAA. This possibility applies only to species and habitats covered by the Habitat Plan; non-covered species or habitats would be addressed separately in the LSAA and may be subject to additional mitigation requirements.

- Habitat Plan Applicants or Co-Permittees should provide information regarding payment of Habitat Plan fees for mitigation and the relevant avoidance and minimization measures that will be used with their LSAA Notifications to facilitate CDFW review.

## Background

The purpose of this memo is to clarify the extent of mitigation coverage Co-Permittees can expect from their participation in the Habitat Plan and to identify those circumstances where additional mitigation for land cover impacts could potentially be required in the LSAA for a project.

The Habitat Plan defines “in-stream” as the streambed and bank and the adjacent riparian corridor. The adjacent riparian corridor encompasses all mapped riparian land cover types immediately adjacent to a stream (see Figure 3-10 for land cover types). Project impacts covered under a LSAA may therefore apply to various land cover types, as defined within the Habitat Plan, such as *riparian forest and scrub* (i.e., willow riparian forest and scrub, Central California sycamore alluvial woodland, and mixed riparian woodland and forest) and *riverine/streams* (lineal feet). It may also include *grasslands* and *wetlands*. The Habitat Plan also states that all in-stream projects must be designed to minimize adverse impacts on stream morphology, aquatic and riparian habitat, and flow conditions. This memo will therefore rely on the existing definition of “in-stream” with the expectation that the term will account for all riparian and associated habitat.

Under those circumstances, this memo will apply solely to a proposed project involving an aquatic feature and associated habitat(s) that is subject to coverage under an LSAA. A CDFW LSAA is required for any activity that may “substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, bank, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake...” [FGC 1602(a)]. Applicants are directed to contact the CDFW regional representative with any project-specific questions on LSAA coverage and the permitting process (information is also available on the CDFW website at <https://www.wildlife.ca.gov/Conservation/LSA>).

## Analysis

The Habitat Plan is implementing both a federal Habitat Conservation Plan (HCP) and a state Natural Community Conservation Plan (NCCP), the terms of which have been agreed to by all parties. Accordingly, it provides mitigation and recovery for impacts to certain special status species and covered habitats that are protected by the State and Federal Endangered Species Acts and other laws and policies. This mitigation includes permanent protection and restoration of compensatory habitat. Depending on the amount and extent of a project’s impacts on resources, CDFW may require compensatory mitigation in a LSAA. If a LSAA is issued for a project that is covered under the Habitat

Plan, the compensatory mitigation may be fulfilled through payment of appropriate fees to the Habitat Agency. However, if a project may impact a plant or wildlife species or habitat type that is not covered by the Habitat Plan, then the payment of Habitat Plan fees and compliance with the applicable measures may not provide sufficient protection or compensation for the project's permanent or temporary impacts under the LSAA. In such cases, CDFW may include additional requirements in the LSAA for the project, including, but not limited to, additional avoidance, minimization or mitigation measures.

This instance notwithstanding, Co-Permittees to the Habitat Plan have an expectation that their payment of appropriate Habitat Plan fees for covered projects generally meets the compensatory mitigation requirements of the LSAA for a project's permanent or temporary impacts to species or habitats. However, in review of LSAA Notifications for Habitat Plan-covered projects, CDFW will ultimately determine the sufficiency of mitigation assigned to a project through the payment of fees for off-site compensatory habitat or restoration.

To assist CDFW permitting staff in the review of LSAA Notifications for projects and, later, in the preparation and issuance of the LSAA for Habitat Plan-covered projects, Co-Permittees should include the following information in the LSAA Notification package:

- 1- Habitat Plan application package, including the Habitat Plan Application File Number and identification and quantification of all habitat impacts. Applications should include the *Reporting Form for Public Projects* for Co-Permittee projects, the *Application for Private Projects* for private applicants, and the *Application for Participating Special Entities* for Participating Special Entities (public entities).
- 2- Certificate of Approval for Co-Permittees or private applicants, or the Certificate of Inclusion for Participating Special Entities.
- 3- Description of all Habitat Plan conditions and measures applicable to the project.
- 4- Any potential impacts to species and/or habitat types which are not covered by the Habitat Plan

## Habitat Agency Guidance to Co-Permittees

The Habitat Agency recommends that Co-Permittees adopt or modify a standard condition of approval for all projects which are subject to Habitat Plan fees and which may also require issuance of a LSAA by CDFW. Applicants seeking approval under the Habitat Plan for a project that requires a LSAA should provide as complete information as possible in the LSAA Notification package submitted to CDFW. Information that should be included in the LSAA Notification package includes all relevant conditions from the Habitat Plan that will be implemented for the project, types of impacts (temporary and/or permanent), and proof of payment of Habitat Plan fees, if available at the time the Notification is submitted. If proof of payment of fees (see Analysis section above), is not available at the time the Notification is submitted, CDFW will require it in the Final LSAA prior to the start of project activities.

The new or modified condition should clarify the responsibility of the Co-Permittee to provide the appropriate documentation to applicants and that applicants need to provide such documentation when sending a LSAA Notification to CDFW.