



Santa Clara Valley Habitat Plan

MINOR MODIFICATION

Subject	Definition Temporary Impacts for In-Stream Projects
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Category

Habitat Plan Definitions

Topic

Definition of temporary impacts for in-stream projects that require temporary dewatering and construction activities occurring beyond one year

Issue

- The Santa Clara Valley Habitat Plan defines temporary impacts as impacts to land cover that occur over less than one year's time, with the requirement that the project/activity site must return to ecological function (or better) within one calendar year from the date of completion of the project.
- Certain in-stream projects that require the temporary dewatering of a creek or stream must comply with permitting and conditioning protocol on account of the resource sensitivity. Compliance with the various regulations and conditions of project approval can lengthen the duration of the construction activities. In some cases, the channel disturbance may only occur for a few months per year and the total duration of impacts may last less than one year in total. But because the entire project may take more than one year to complete (from the time construction begins), its impacts would be considered permanent, not temporary, in accordance with the Plan.
- The Habitat Plan fees assessed for projects that result in permanent impacts to stream channels are significantly higher than the fees assessed for temporary impacts for the same type and scale of project.

Plan Guidance

The Habitat Plan defines permanent and temporary impacts as shown below (pages 4-1 to 4-2).

Permanent impacts are 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). Permanent impacts also include indirect impacts to wetlands that result in a permanent (i.e., more than one year after completion of the covered activity) change to wetland functions (e.g., development around a wetland that reduces the surface water supply to a wetland that subsequently results in a reduction in the size of the wetland). Impacts that result in reduction of long-term viability of a plant occurrence are also considered permanent.

Temporary impacts are 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. For the purposes of this Plan, all impacts associated with covered activities that have a duration exceeding one year or that take more than one year to restore immediately following construction will be considered permanent.

During Plan development, the specific scenario of temporary as opposed to permanent impacts for dewatered stream channels was not fully addressed. Since stream channels are considered the wetland land cover type, the standard dewatering condition associated with work in or around streams has resulted in significant cost increases not commensurate with the actual impacts.

Analysis

For the purpose of assessing fees and documenting take in accordance with the Habitat Plan, land cover impacts can be categorized as either permanent or temporary based on the duration of the impact. In general, impacts are considered temporary if the project activities occur in a time period of less than one calendar year, and permanent where the impacts occur over a longer period of time. The Habitat Plan definition of impacts as either temporary or permanent has resulted in some seasonally-restricted projects, which may result in less than 12 total months of impact, to be considered permanent by virtue of their intermittent activities lasting longer than 12 consecutive months. This is particularly true for in-stream projects that require dewatering of the stream for access and protection of resources, and that cannot be completed in one construction season.

In-stream projects must comply with various permitting requirements (e.g., Habitat Plan, CDFW Streambed Alteration Agreements, Regional Water Control Board, U.S. Army Corps of Engineers) and CEQA to avoid and minimize impacts. Per the Habitat Plan, all covered in-stream projects must be designed to minimize adverse impacts on stream morphology, aquatic and riparian habitat, and flow conditions. These requirements are established in Condition 3 (Maintain Hydrologic Conditions and Protect Water Quality), Condition 4 (Avoidance and Minimization for In-Stream Projects) and Condition 12 (Wetland and Pond Avoidance and Minimization) of the Plan. These conditions identify

planning, design, and construction practices to ensure impacts to aquatic and riparian resources are avoided or minimized. Compliance with these and other requirements can significantly lengthen project duration beyond the actual site work. Oftentimes, in-stream projects must occur over multiple years simply to meet the time commitments typically associated with each of the practices. This results in seasonal and/or temporary impacts that extend into multi-year endeavors, which are then considered permanent in accordance with the Plan. When a project that results in truly temporary land cover impacts is assessed at a permanent fee rate, the project is not only more expensive for the Permittee, but is also mischaracterized in terms of the nature of the impact.

Determination

The Habitat Agency has developed a rationale for evaluating permanent and temporary impacts for seasonally-restricted, multi-year, in-stream projects on a case-by-case basis. In evaluating these projects, the seasonal and cumulative impact duration of the project or activity will be considered. Specifically, in-stream projects that require dewatering may meet the temporary impact definition if the seasonal duration of the impact is taken into account. As stated in the Plan, temporary impacts must be a year or less in duration and the site must be returned to pre-project conditions within one year of construction completion. As proposed, if the one-year duration of impacts resulting from stream channel dewatering cannot occur consecutively (i.e. within the same calendar year), then projects that occur over multiple years, and which return the area of impact to pre-project conditions in between each construction season, can meet the temporary impact definition provided the cumulative impact duration remains one year or less. For example, a three-year project may dewater a stream for four months at a time and return the stream to pre-project conditions after each four-month period. Using a non-consecutive temporary impact evaluation, the project would be assessed temporary impacts rather than permanent impacts as the cumulative duration of the impact is one year or less.

Modified Language

The definition of Temporary Impacts, found on page 4-1 of the Habitat Plan shall be amended as follows (new text added as double-underline):

Temporary impacts are 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. Certain in-stream projects that require multiple construction seasons to complete, but which result in less than 365 cumulative days of impact, are also considered temporary (see Habitat Plan Modification – HPM2017-01). For the purposes of this Plan, all impacts associated with covered activities that have a duration exceeding one year or that take more than one year to restore immediately following construction will be considered permanent.

Restrictions and Limitations

The following restrictions and limitations shall apply to all in-stream multi-year projects that require dewatering and propose temporary impacts based on total cumulative duration:

- Site must return to existing conditions (or better) within one year of project completion
- Total cumulative time for all in-stream construction activity shall not exceed 365 days
- Stream function must be restored between seasonal work periods
- Streams that have salmonid runs must be evaluated on an individual basis to ensure salmonid habitat is not affected by the dewatering.
- If the appropriate habitat has been determined to be present, pre-construction surveys for California red-legged frog and foothill yellow-legged frog may be required to ensure that potential project impacts to breeding or tadpole rearing habitat does not extend beyond one season.