




# Santa Clara Valley Habitat Plan

## CLARIFICATION AND INTERPRETATION

<b>Subject</b>	<b>Condition 11 Stream and Riparian Setback: Clarification on determining whether a watercourse is a stream under the Habitat Plan</b>
<b>Number</b>	2014-002
<b>Approved</b>	 Edmund Sullivan
<b>Effective Date</b>	June 24, 2015
<b>Revision Date</b> <i>(If applicable)</i>	

### Category

Land Cover Types and Conditions

### Topic

Stream definitions and categorization

### Issue/Question/Problem Statement

How does an individual reviewing an application determine if a watercourse is a stream under the Habitat Plan? Are irrigation ditches considered streams under the Habitat Plan? What if the Habitat Plan does not define a watercourse as a stream, but CDFW is taking jurisdiction over the watercourse under Section 1600 (Lake or Streambed Alteration Agreement) regulations?

## Plan Guidance

Condition 11 in the Habitat Plan identifies three types of streams: perennial stream, intermittent streams and ephemeral streams. Definitions are provided on in Chapter 6, pages 6-46 and 6-47.

**“Perennial stream:** A stream with year-round surface flow that is supplied by both rainfall runoff and groundwater, as well as by substantial dry-season inputs(e.g., runoff).

**Intermittent stream:** A stream that is supplied by both rainfall runoff and groundwater. Intermittent streams tend to be seasonal, with flow during the rainy season and into the late spring or early summer.

**Ephemeral stream:** A stream that flows only in response to rain events and receives no groundwater input. As defined in the Habitat Plan, ephemeral streams will not include irrigation ditches, underground streams, or drainages and swales that have neither defined bed and bank nor evidence of scour or sediment transport. All other ephemeral drainages that qualify as streams will be considered under the Habitat Plan.”

The definition for ephemeral streams excludes irrigation ditches.

The Habitat Plan also provides criteria (beginning on page 6-48) to assist in determining whether a watercourse is a stream under the Habitat Plan.

### Criteria to Verify or Identify a Watercourse as a Stream

“A watercourse which does not appear to fit into one of the two described stream categories [*Category 1 or Category 2 streams, described on page 6-47 of the Habitat Plan*] may be considered a stream if the director of the planning department of the local jurisdiction determines that the watercourse complies with all of the following three criteria:

1. the watercourse is hydrologically connected to a waterway above and below the site or is connected to a spring, headwaters, lake, and/or bay based on satisfying at least one of the conditions identified in paragraph (A) below; and
2. the watercourse is within a defined channel which includes a bed, bank, and exhibits features that indicate actual or potential sediment movement based on satisfying at least one of the conditions identified in paragraph (B) below; and
3. the watercourse occupies a specific topographic position based on satisfying at least one of the conditions identified in paragraph (C) below.

In determining whether the subject watercourse possesses these three features, the following criteria will be examined by the Local Partner with jurisdiction over the covered activity. If necessary, this determination may require the technical expertise and recommendations of a qualified biologist, hydrologist, or other qualified professional. In addition, the Local Partner with jurisdiction over the covered activity may require the project proponent to provide additional information as deemed necessary to determine if the watercourse satisfies the three criteria listed below.

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- A. **Hydrologic Connectivity**—Criterion #1 above will be considered met if any of the following conditions are present:
- 1) Stream headwaters, springs, in-channel culverts, underground seepage, or groundwater flow are present and capable of providing hydrologic connectivity to recognized watercourses. Sections of stream placed underground by manmade infrastructure (e.g., culverts) are not considered streams for the purpose of this condition except as noted in paragraph B item 4 below.
  - 2) Streams may become connected across or over manmade improvements such as roads (e.g., a temporary connection during a storm event). Except for stream channel improvements, water flowing across or over such improvements within the public right-of-way is not considered a stream. Sections above and/or below this connectivity are streams if they meet the other required features.
  - 3) Springs are present and are considered part of a stream if located above (uphill from) stream initiation.
- B. **Channel Form**—Criterion #2 above will be considered met if any of the following conditions are present:
- 1) The watercourse has a stream channel, beginning at the point of bed and bank initiation, which may be natural, altered, or engineered.
  - 2) The stream channel must have enough flow under present-day conditions to maintain channel form and to move sediment. A non-engineered stream channel bed and bank are created and maintained by erosion and sedimentation, thus the presence of a channel with bed and bank is itself evidence of sufficient flow. Flow volume or timing is not criteria for stream determination.
  - 3) The stream channel has evidence of scour, sedimentation, sediment sorting, undercut banks and/or other erosion, deposition, or transport features —all of which support sediment movement.
  - 4) Engineered or altered channels exist and are partially or wholly made of earth, concrete, rip rap, or other materials. The hardened nature of these channels bed and banks, and a lack of available sediment along the channel reach, may prevent signs of sediment movement or scour. Such channels need not have explicit evidence of sediment transport.
  - 5) A currently underground stream was filled without appropriate permits from all applicable regulatory agencies (federal, state, and local) or is underground due to a landslide.
- C. **Topographic Position**—Criterion #3 above will be considered met if any of the following conditions are present:
- 1) The watercourse is either a ‘U’ or ‘V’ shaped channel typically located at the low point of a macro-topographic feature.

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- 2) The watercourse consists of bowl, 'U', or 'V' shaped topography with high points draining to valley or ravine as part of a large drainage network leading to large streams, lakes and/or a bay.
- 3) The watercourse located on flatland consists of shallow bowl or 'U' shaped topography. Generally these streams flow from the hills toward a bay following the slope of the land.

Stream topography can be indicated on a topography map by a 'U' or 'V' shape pointed in the uphill direction."

## Other Considerations

As described above under *Criteria to Verify or Identify a Watercourse as a Stream*, in situations where there is some uncertainty as to whether a watercourse is a stream under the Habitat Plan, the decision on whether a watercourse is a stream lies with the planning director of the local jurisdiction.

While the Habitat Plan states that the above-described process will not be used to determine if a Streambed Alteration Agreement (Section 1600 et seq. of the California Fish and Game Code; regulated by CDFW) or a Section 404 Clean Water Act (CWA) permit (regulated by the Corps) will be required, a jurisdictional determination by one of these regulating agencies may provide additional guidance to the planning director on whether a watercourse should be determined to be a stream under the Habitat Plan. If an applicant will be required by the Corps or CDFW to mitigate impacts to the watercourse, then the applicant may desire to pay wetland fees under the Habitat Plan to address mitigation needs under Section 1600 or CWA. While this approach may be desirable to the applicant, the planning director should recognize defining a watercourse as an impacted stream reduces the remaining impacts available for other projects which may involve a more clearly defined stream and/or projects that are clearly specified as Covered Activities in Chapter 2 of the Habitat Plan.

## Determination/Justification

- Water courses are defined as streams under the Habitat Plan where three key criteria, discussed in detail above, apply: 1) the watercourse has hydrologic connectivity to recognized watercourses, 2) the watercourse has distinct channel form, and 3) the watercourse is topographically situated in a location where streams typically occur.
- Agricultural/irrigation ditches are not streams unless determined to be so by the local planning director.
- For a private applicant, the final decision as to whether a watercourse is a stream under the Habitat Plan will be made by the local planning director. If the covered activity for which the determination must be made is proposed by a PSE, the Habitat Agency will make the

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determination. If the covered activity for which the determination must be made is proposed by a Co-Permittee, the Co-Permittee will make its own determination.

- Local planning directors or Co-Permittees, when determining whether a watercourse is a stream, may consider whether the Corps, CDFW, or Regional Board is taking jurisdiction over the watercourse.