




Santa Clara Valley Habitat Plan CLARIFICATION AND INTERPRETATION

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| Subject | Riparian and Stream Setback Condition (Condition 11) Exceptions |
| Clarification Number | 2014-003 |
| Approved |  Edmund Sullivan |
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| Revision Date (If applicable) | |

Category

Riparian and Stream Setback Condition (Condition 11) Exceptions

Topic

Riparian and stream setback exception request and approval process.

Issue/Question/Problem Statement

Under Condition 11, applicants can request an exception to the riparian and stream setback requirements. What is the exception request-and-approval process for private, Co-Permittee, and Participating Special Entity (PSE) projects?

Plan Guidance

Condition 11 exceptions are discussed in the Plan on pages 6-54 and 6-55.

Definition of “Exception”

“The term exception means an allowance for reductions in mandated setback distances necessary to allow reasonable use and development of a property based on the variety of constraints and factors that may affect the property.”

Conditions of Exception

“Regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to less than a distance of 50 feet for new development or 35 feet for existing or previously developed sites with legal buildings and uses. All applicable fees must be paid for areas granted an exception.”

Factors Considered

“For all proposed exceptions to the stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following factors:

1. The existence of legal uses within the setback.
2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.”

Other considerations may be made based on:

“... the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objectives of the Plan, and potential effects on adjacent properties.”

The project will “(a)void and minimize impacts on covered species and natural land cover types to the maximum extent practicable on a regional scale, in compliance with federal and state endangered species laws.” (page 6-85)

Stream and Riparian Setback Exception Request and Approval Process

“Exceptions may be requested through the standard application process described in Section 6.8, or through a separate request process. Applicants must apply for a stream-setback exception through

their local jurisdiction. All private applications for stream-setback exceptions must be reviewed and approved by the local jurisdiction. For projects implemented by a local jurisdiction, exception requests must be made to the Habitat Agency. The findings required to approve the stream setback exception must be supported by factual information and judgments in the record.

As part of the review process, the local jurisdiction or the Habitat Agency must consider the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objective of the Plan, and potential effects on adjacent properties. The local jurisdiction or the Habitat Agency must make written findings that document these considerations and the rationale for the stream-setback exception.

Prior to granting the exception, the local jurisdiction will provide the exception request and proposed decision to both the Habitat Agency and the Wildlife Agencies for review and comment. The Habitat Agency and Wildlife Agencies will have 30 days to review the request and provide a written response. A local agency cannot take an action until after that 30-day-period.”

Determination/Justification

- Private applicants must submit stream and riparian setback exception requests to their local jurisdiction. Local jurisdictions will review the request and work with the applicant to make any adjustments. Local jurisdictions will then provide private applicant exception requests to the Habitat Agency and Wildlife Agencies for a 30-day period for review and comment. At the conclusion of the 30-day review period, local jurisdictions will consider any comments received and may approve the stream and riparian setback exception request.
- Co-Permittees and PSEs must submit exception requests to the Habitat Agency, which will review the request and work with the applicant to make any adjustments. The Habitat Agency will then provide Co-Permittee and PSE exception requests to the Wildlife Agencies for a 30-day period for review and comment. At the conclusion of the 30-day review period, the Habitat Agency will consider any comments received and may approve the stream and riparian setback exception request.
- Wildlife Agencies will be given the opportunity to review and comment on all the stream and riparian setback exception requests but do not have approval authority.
- Regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to less than a distance of 50 feet for new development or 35 feet for existing or previously developed sites with legal buildings and uses (Habitat Plan, Figure 6-3b).
- All applicable fees must be paid for areas granted an exception.