

ORDINANCE NO. 2021-25
(uncodified)

**(Adoption of the East Contra Costa County Habitat Conservation Plan/
Natural Community Conservation Plan Fees and Implementation Procedures)**

The Contra Costa County Board of Supervisors ordains as follows:

SECTION I. **SUMMARY.** This ordinance provides for the adoption of fees to be used for the conservation of habitat for covered species in mitigation of the impacts of development in eastern Contra Costa County and procedures to implement the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.

SECTION II. **AUTHORITY.** This ordinance is enacted pursuant to the Mitigation Fee Act (Gov. Code, § 66000 et seq.) and Article 11, section 7 of the California Constitution.

SECTION III. **NOTICE AND HEARING.** This ordinance was adopted pursuant to the procedure set forth in Government Code sections 54986 and 66017-66018 and all required notices have been properly given and public hearing held.

SECTION IV. **DEFINITIONS.** As used in this ordinance:

A. "Affected Development Projects" means the development projects to which this ordinance applies, as set forth in Section V of this ordinance.

B. "Covered species" means those species of plants and animals whose conservation and management are provided for by the HCP/NCCP for which limited take is authorized pursuant to the state and federal permits.

C. "Development Fee" means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section VIII.A of this ordinance.

D. "Development Fee Zones" means the three areas depicted as Zones I, II, and III on the map attached hereto as **Exhibit A** and in the detailed map data used to create Exhibit A, both of which are incorporated herein by reference. The Development Fee imposed on a development project is determined based on the Development Fee Zone in which the project is located.

E. "Development project" means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

F. "HCP/NCCP" means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, approved by the Board of Supervisors on December 19, 2006, as may be revised from time to time.

G. "HCP/NCCP implementation fees" means the Development Fee and the Wetland Mitigation Fee.

H. "Implementing Agreement" means the January 22, 2007, Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan by and between East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District, East Bay Regional Park District, United States Fish and Wildlife Service, and California Department of Fish and Game.

I. "Implementing Entity" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the County and the cities of Brentwood, Clayton, Oakley, and Pittsburg to oversee the implementation of the HCP/NCCP.

J. "Jurisdictional Wetlands and Waters" means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. § 1251 et seq.), from the State Water Resources Control Board under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act (California Water Code, § 13000 et seq.), or from the California Department of Fish and Game under section 1602 of the California Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.

K. "Project applicant" means a property owner, or duly designated agent of the property owner, who has submitted to the County a request for approval of a development project on the property.

L. "Public facilities" includes public improvements, public services, and community amenities.

M. "State and federal permits" means the permit issued by the California Department of Fish and Game to the County and other local agencies on August 6, 2007, authorizing take of covered species pursuant to the HCP/NCCP and the Natural Community Conservation Planning Act (permit number 2835-2007-01-03), and the permit issued by the United States Fish and Wildlife Service to the County and other local agencies on July 25, 2007, authorizing incidental take of covered species pursuant to the HCP/NCCP and the federal Endangered Species Act (permit number TE160958-0), as those documents may be amended from time to time.

N. "Take" has the same meaning provided by the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.) ("FESA") and its implementing regulations with regard to activities subject to that Act, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.). Specifically, take is defined in FESA to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"

(16 U.S.C. § 1532(18)) and in California Fish and Game Code section 86 as "to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, capture, or kill."

O. "Urban Development Area" means the areas designated for urban development that are either (1) within the area designated as the "Initial Urban Development Area" as generally depicted on the map attached hereto as **Exhibit B**, incorporated herein by reference, or (2) areas added to or removed from the Initial Urban Development Area according to the procedures set forth in Section 3.50 of the Implementing Agreement.

P. "Wetland Mitigation Fee" means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section VIII.B of this ordinance.

SECTION V. APPLICATION OF ORDINANCE

A. This ordinance applies to all development projects in unincorporated Contra Costa County that are within the Urban Development Area except for the following:

1. Any development project that will permanently disturb less than one acre. The "acreage of land permanently disturbed" by a project, as that term is defined in Chapter 9.3.1 of the HCP/NCCP, shall be determined by the Community Development Director or his designee.

2. Any development project that the Community Development Director or his designee determines is contained entirely within an area mapped as urban, turf, landfill, and/or aqueduct land cover types in the HCP/NCCP, as generally depicted on **Exhibit A** and in the map data used to create Exhibit A.

3. Any development project of a type not covered by the HCP/NCCP within the Urban Development Area, as set forth in Chapter 2.3.1 of the HCP/NCCP.

4. Development projects with vested rights pursuant to an agreement by and between the project applicant and the County.

5. Development projects exempt under any provision of law.

6. Development projects where the County determines based on written evidence submitted by the project applicant that application of the ordinance would deprive the project applicant of all reasonable economic use of the property in violation of federal or state constitutional prohibitions against the taking of property without just compensation.

B. The development projects to which this ordinance applies, as set forth above, may be referred to as the "Affected Development Projects."

SECTION VI. PURPOSE OF FEES; USE OF FEE REVENUE

A. The purpose of the Development Fee is to mitigate for impacts to open space, habitat and species covered by the HCP/NCCP. The Development Fee revenues will be used to fund the acquisition of land that does or could provide habitat for covered species, the management and enhancement of that land and habitat, and the administrative actions necessary to accomplish these tasks, as more particularly set forth in the HCP/NCCP, incorporated herein by reference.

B. The purpose of the Wetland Mitigation Fee is to mitigate for impacts to Jurisdictional Wetlands and Waters, riparian woodland/scrub, or stream buffers. The Wetland Mitigation Fee revenues will be used to fund the restoration, creation and management of Jurisdictional Wetlands and Waters and riparian woodland/scrub, and the administrative actions necessary to perform these tasks, as more particularly set forth in the HCP/NCCP.

SECTION VII. **FINDINGS.** The Board of Supervisors finds and determines as follows:

A. There is a need to establish a comprehensive framework to protect and conserve species, wetlands, natural communities, and ecosystems in East Contra Costa County, while improving and streamlining the environmental permitting process for impacts of future development on rare, threatened, and endangered species.

B. To meet the need identified in Section VII.A, the County participated as a member of the East Contra Costa County Habitat Conservation Plan Association, a joint exercise of powers authority, to develop the HCP/NCCP and the Implementing Agreement. The Board finds that the HCP/NCCP, implemented in accordance with the Implementing Agreement, will provide comprehensive species, wetlands, and ecosystem conservation and contribute to the recovery of endangered species within East Contra Costa County; balance open space, habitat, and urban development; reduce the cost and increase the clarity and consistency of federal and state permitting; consolidate and streamline these processes into one, locally controlled plan; encourage, where appropriate, multiple uses of protected areas; share the costs and benefits of the HCP/NCCP as widely and equitably as possible; and protect the rights of private property owners.

C. Adoption and implementation of this Ordinance will enable the County to promote the health, safety and welfare of all of its residents by helping to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing Agreement, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act, the California Environmental Quality Act, the Federal Endangered Species Act, the California Endangered Species Act, the California Natural Community Conservation Planning Act, and other applicable laws.

D. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the use of the HCP/NCCP implementation fees and the type of development projects subject to the fees. The Development Fee will be used to implement the HCP/NCCP by funding the acquisition of land, the enhancement and management of habitat, and the other public facilities identified in Section VI.A in order to mitigate for impacts to open space, habitat, and covered species caused by Affected Development Projects. The Wetland Mitigation Fee will be used to implement the HCP/NCCP by funding the restoration, creation, and management of Jurisdictional Wetlands and Waters and riparian woodland/scrub, and the other public facilities identified in Section VI.B in order to mitigate for impacts to Jurisdictional Wetlands and Waters and riparian areas caused by Affected Development Projects. The HCP/NCCP implementation fees will not apply to all types of development projects, but only to

those that impact open space, habitat suitable for one or more covered species, Jurisdictional Wetlands and Waters, or riparian areas. In this way, the HCP/NCCP implementation fees will be used only for purposes reasonably related to the types of development projects that will be subject to the fees.

E. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the need for the public facilities to be funded by the HCP/NCCP implementation fees and the type of development projects on which the fees are imposed because the need for these facilities, which include the acquisition of land and the management, enhancement, restoration, and creation of habitat, arises from the development projects to which the fees will apply, i.e., development projects of all types that disturb open space, habitat, Jurisdictional Wetlands and Waters or riparian areas.

F. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the amount of the HCP/NCCP implementation fees and the cost of the public facilities or portion of the public facilities attributable to the development projects on which the fees will be imposed. The costs of the public facilities needed to mitigate cumulative impacts from development projects subject to the fees were estimated by projecting the extent of future development impacts, calculating the open space or habitat acreage to be acquired, managed, enhanced, restored, and created to offset these impacts, and estimating the overall costs of acquiring and preserving this acreage for the 30-year term of the state and federal permits. The fees were then calculated based on these costs, as follows:

1. The method of calculating the Development Fee amount for individual Affected Development Projects reflects the cost of the public facilities attributable to individual Affected Development Projects based on:

a. Area of the Affected Development Project, as the cost of acquiring sufficient open space or habitat land to mitigate for the impacts of a particular development project is directly proportional to the acreage of that project; and

b. Location of the Affected Development Project, as the need for the public facilities varies in proportion to the intrinsic habitat or open space value of the land impacted by the project. Thus, fees are tiered so that the highest fee amounts are imposed in Development Fee Zone II, which is deemed to have the highest intrinsic value per acre. A fee equal to 50 percent of the highest fee amount is imposed in Development Fee Zone I, which is deemed to have substantial but lower intrinsic value per acre, and a fee equal to 25 percent of the highest fee amount is required in Development Fee Zone III, which is deemed to have the lowest intrinsic value per acre.

2. The method of calculating the Wetland Mitigation Fee amount for individual Affected Development Projects reflects the cost of the public facilities attributable to those individual Affected Development Projects based on:

a. Type of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be impacted by the Affected Development Project, as the type of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be restored or created must effectively replace the type being impacted by the particular project. The cost of restoring or creating Jurisdictional Wetlands and Waters and riparian woodland/scrub depends on (1) the

specific construction tasks necessary to restore or create these areas and (2) the different mitigation ratios applicable to the restoration or creation of various types of Jurisdictional Wetlands and Waters and riparian woodland/scrub, these ratios having been established in the HCP/NCCP to require relatively more restoration or creation of those types of Jurisdictional Wetlands and Waters and riparian woodland/scrub that have a higher habitat value and function for covered species and/or are more difficult to restore or create, and therefore must be restored or created in larger amounts to offset the anticipated failure of a portion of the acreage restored or created; and

b. Area of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be impacted by the Affected Development Project, as the cost of restoring or creating Jurisdictional Wetlands and Waters and riparian woodland/scrub is directly proportional to the acreage being restored or created, which in turn is directly proportional to the acreage being impacted by the project.

SECTION VIII. HCP/NCCP IMPLEMENTATION FEES. HCP/NCCP implementation fees are hereby adopted to fund the public facilities identified in Section VI of this ordinance, as follows:

A. Development Fee

1. Except as otherwise provided in Sections VIII.D and VIII.F of this ordinance, a Development Fee shall be imposed upon and collected from any and all Affected Development Projects for each acre of land permanently disturbed, as follows:

<u>Location of Affected Development Project</u>	<u>Development Fee</u>
Development Fee Zone I	\$16,890.46 per acre
Development Fee Zone II	\$33,780.93 per acre
Development Fee Zone III	\$8,445.23 per acre

2. The Conservation and Development Director, or his designee, shall determine in which of the three Development Fee Zones an Affected Development Project is located, pursuant to **Exhibit A** and the map data used to create Exhibit A.

3. The Development Fee for each Affected Development Project shall be calculated by multiplying the fee for the applicable Development Fee Zone by the acreage of the site permanently disturbed by the Project, as determined by the Conservation and Development Director or his designee pursuant to Chapter 9.3.1 of the HCP/NCCP.

4. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the project applicant shall either (1) pay the entire Development Fee or, (2) with the prior written approval of the County, pay at least 67 percent of the Development Fee and execute an agreement with the County, in a form approved by County Counsel, to provide additional funding payments through assessments on the subject parcels or other mechanisms, provided that assessments or other funding mechanisms are legally authorized for this purpose, pursuant to the requirements of Chapter 9.3.1 of the HCP/NCCP.

5. The Development Fee amount applicable to an Affected Development Project shall be the Development Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first building permit is issued for the project. Notwithstanding the foregoing, a project applicant may request to pay the Development Fee in a calendar year prior to the calendar year in which the grading permit or first building permit is issued. This request may be granted by the Conservation and Development Director or his designee only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If such request is granted, the applicable Development Fee shall be the Development Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to Section IX of this ordinance.

B. Wetland Mitigation Fee

1. Except as otherwise provided in Sections VIII.E and VIII.F of this ordinance, in addition to a Development Fee, a Wetland Mitigation Fee shall be imposed upon and collected from any and all Affected Development Projects that will fill, dredge, or remove Jurisdictional Wetlands and Waters or riparian woodland/scrub, and from any and all Affected Development Projects that have been granted an exception to the stream setback established pursuant to Conservation Measure 1.7 of the HCP/NCCP.

2. The Wetland Mitigation Fee applicable to Affected Development Projects that will fill, dredge, or remove Jurisdictional Wetlands and Waters or riparian woodland/scrub varies by the land cover type impacted by those projects. The Conservation and Development Director or his designee shall determine which of the land cover types will be impacted by an Affected Development Project and the corresponding fee amounts in accordance with **Exhibit C**, incorporated herein by reference, and in accordance with Chapter 9.3.1 of the HCP/NCCP. The Wetland Mitigation Fee applicable to an Affected Development Project that has been granted an exception to the stream setback shall be determined by the Conservation and Development Director or his designee based on the acreage of setback encroachment, in accordance with Chapter 9.3.1 of the HCP/NCCP and **Exhibit C**.

3. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the project applicant shall pay the Wetland Mitigation Fee determined for the Affected Development Project.

4. The Wetland Mitigation Fee amount applicable to an Affected Development Project shall be the Wetland Mitigation Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first building permit is issued for the project. Notwithstanding the foregoing, a project applicant may request to pay the Wetland Mitigation Fee in a calendar year prior to the calendar year in which the grading permit or first building permit is issued. This request may be granted by the Conservation and Development Director or his designee only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If this request is granted, the applicable Wetland Mitigation Fee shall be the Wetland Mitigation Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to Section IX of this ordinance.

C. Condition of Approval

Compliance with this ordinance, including but not limited the payment of the fees specified herein, as applicable, shall be a condition of approval of all Affected Development Projects.

D. Dedications

1. On a case-by-case basis, and upon a voluntary offer by the project applicant, the County may accept a dedication of land in lieu of some or all of the Development Fee that would otherwise be imposed upon a development project. Any offer of dedication may be considered for acceptance only if the land dedication is considered by the Conservation and Development Director or his designee to be consistent with the HCP/NCCP and Implementing Agreement. The amount of the Development Fee for which the dedication would substitute shall be determined by the County pursuant to Section 13.2.2.2 of the Implementing Agreement and Chapters 8.6.7 and 9.3.1 of the HCP/NCCP.

2. If required to comply with the Stay Ahead provision set forth at Chapter 8.6.1 of the HCP/NCCP and Section 9.2 of the Implementing Agreement, the County may require that some or all Affected Development Projects offer a dedication of land in lieu of some or all of the Development Fee that would otherwise be imposed.

E. Creation/Restoration of Habitat

On a case-by-case basis, and upon a voluntary offer by the project applicant, the County may accept the restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some or all of the Wetland Mitigation Fee that would otherwise be imposed on an Affected Development Project. The offer of restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some all or a portion of the Wetland Mitigation Fee may be considered for acceptance only if the restoration or creation is determined by the Conservation and Development Director or his designee to be consistent with the HCP/NCCP and Implementing Agreement. The amount of the Wetland Mitigation Fee for which such restoration or creation would substitute shall be determined by the County pursuant to Conservation Measures 2.1 and 2.2 and Chapter 9.3.1 of the HCP/NCCP.

F. Separate Take Authorization

On a case-by-case basis, a project applicant that possesses separate and final approval from the United States Fish and Wildlife Service and/or California Department of Fish and Game for incidental take of all federally or state listed species that may be adversely affected by the development project may apply to the County to pay a fee, the amount to be negotiated by the project applicant with the County, to support the conservation of habitat and open space under the HCP/NCCP in lieu of the HCP/NCCP implementation fees. If the Conservation and Development Director or his designee determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, the County may determine that no further fees are required for purposes of complying with the HCP/NCCP, in which case the HCP/NCCP implementation fees described herein shall not be required of the project.

G. Fee Transmittal

All fees collected hereunder shall be transmitted to the County Auditor-Controller quarterly, within thirty (30) days of the end of the quarter within which the fee was collected, for deposit into a separate account or fund, and for investment, accounting and expenditure in accordance with the provisions of this ordinance and the Mitigation Fee Act.

SECTION IX. ADJUSTMENTS TO FEES. The Development Fee and Wetland Mitigation Fee shall on March 15 of each year be automatically adjusted automatically as follows:

A. The Development Fee shall be adjusted as provided in **Exhibit D** and based on the formula in **Exhibit E**, as explained in Chapter 9.3.1 of the HCP/NCCP. As shown in **Exhibit D** and **Exhibit E**, both of which are incorporated herein by reference, one portion of the Development Fee amounts in effect before March 15 of each year shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Office of Federal Housing Finance Agency Annual Home Price Index for the Oakland-Berkeley-Livermore, California Metropolitan Division for the 12-month period ending December 31. The remaining portion of the Development Fee amounts shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Consumer Price Index for the San Francisco-Oakland-Fremont Combined Statistical Area (U.S. Bureau of Labor Statistics) for the 12-month period ending December 31.

B. The Wetland Mitigation Fee shall be adjusted as provided in **Exhibit D**. As shown in **Exhibit D**, the Wetland Mitigation Fee amounts in effect before March 15 of each year shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Consumer Price Index for the San Francisco-Oakland-Fremont Combined Statistical Area Bureau of Labor Statistics) for the 12-month period ending December 31.

SECTION X. TAKE AUTHORIZATION APPLICATION AND REVIEW PROCEDURES

A. The County shall require project applicants for any and all Affected Development Projects to submit an application for take authorization to the Conservation and Development Director for review simultaneously with the submittal of the request for approval of the project. The Conservation and Development Director may require that the application be submitted on one or more standard application forms. The application for take authorization must include the following information:

1. A description of the Affected Development Project, including maps, detailed information on the project footprint, extent of construction, and extent of any ongoing maintenance activities subject to the HCP/NCCP.
2. One or more reports documenting the methods and results of planning surveys and the methods of applicable preconstruction surveys and construction monitoring, in accordance with Chapter 6 of the HCP/NCCP. The Conservation and Development Director or his designee may allow specific components of the required surveys, including some or all of the results of planning surveys and the methods of applicable preconstruction surveys and construction monitoring, to be provided after the submittal of the initial application and prior to

approval of the development project; however, the application for take authorization is not complete until all items in this Section X.A have been submitted.

3. Evidence of compliance or planned compliance with applicable avoidance and minimization measures, in accordance with Chapter 6 of the HCP/NCCP.
4. Quantification of the anticipated acreage of land permanently disturbed, consistent with Chapters 6.2 and 9.3.1 of the HCP/NCCP.
5. Estimated HCP/NCCP implementation fees due and/or documentation of proposed land dedication and/or proposed habitat restoration or creation, consistent with Section VIII of this ordinance.
6. Other information as directed by the Conservation and Development Director in accordance with the HCP/NCCP.

B. The County may grant take authorization to a project applicant only upon satisfaction of all of the following conditions:

1. The application for take authorization is deemed by the Conservation and Development Director to be complete.
2. The conditions of approval for the project require the project applicant to comply with all terms and conditions of the implementing Agreement, the HCP/NCCP, and the state and federal permits that apply to the project. These terms and conditions include but are not limited to the following:
 - a. Payment of the required HCP/NCCP implementation fees and/or approval by the County of an offer of land dedication and/or habitat restoration or creation, pursuant to the requirements of Section VIII of this ordinance.
 - b. Compliance with all relevant surveys, monitoring, avoidance, minimization and conservation measures determined by the Conservation and Development Director to apply to the project, pursuant to Chapter 6 of the HCP/NCCP.
 - c. The County determines that extension of take authorization is consistent with the HCP/NCCP, implementing Agreement, the state and federal permits, and all applicable federal, state, and local laws and regulations.

SECTION XI. JUDICIAL REVIEW. Any judicial action or proceeding to attack, review, set aside, void, or annul the fees established by this ordinance must be commenced within one hundred twenty (120) days after the effective date of this ordinance. Any action to attack an increase adopted pursuant to Section IX must be commenced within one hundred twenty (120) days after the effective date of the increase.

SECTION XII. REPEAL. Except as specified in this Section XII and Section XIII, below, Ordinance No. 2007-53 is hereby repealed and superseded by this ordinance, as of the effective date of this ordinance. However, this repeal does not affect any fees that were imposed prior to the effective date of this ordinance, which fees shall be paid and collected under the provisions of Ordinance No. 2007-53.

SECTION XIII. SEVERABILITY. If any individual component of the HCP/NCCP implementation fees or any provision of this ordinance is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not affect the validity or enforceability of the remaining fee components and/or ordinance provisions, and the Board declares that it would have adopted each part of this ordinance irrespective of the validity of any other part.

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Notwithstanding any other provision of this ordinance to the contrary, if a court of competent jurisdiction determines any fee set forth in Section VIII of this ordinance is invalid or unenforceable, the corresponding fee adopted by Ordinance No. 2007-53 shall be deemed not to have been repealed and shall remain in effect and subject to the remaining provisions of this ordinance. Notwithstanding any other provision of this ordinance to the contrary, if a court of competent jurisdiction determines this ordinance is invalid or unenforceable, Ordinance No. 2007-53 shall be deemed not to have been repealed and shall remain in full force and effect.

SECTION XIV. **EFFECTIVE DATE.** This ordinance becomes effective 60 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the East Bay Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: MONICA NINO,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

KCK:
Ordinance No. 2021-25 HCP.NCCP Fee Update.docx

Exhibit A

Development Fee Zones

(adapted from Figure 9-1 of the HCP/NCCP)

Figure 9-1: Development Fee Zones

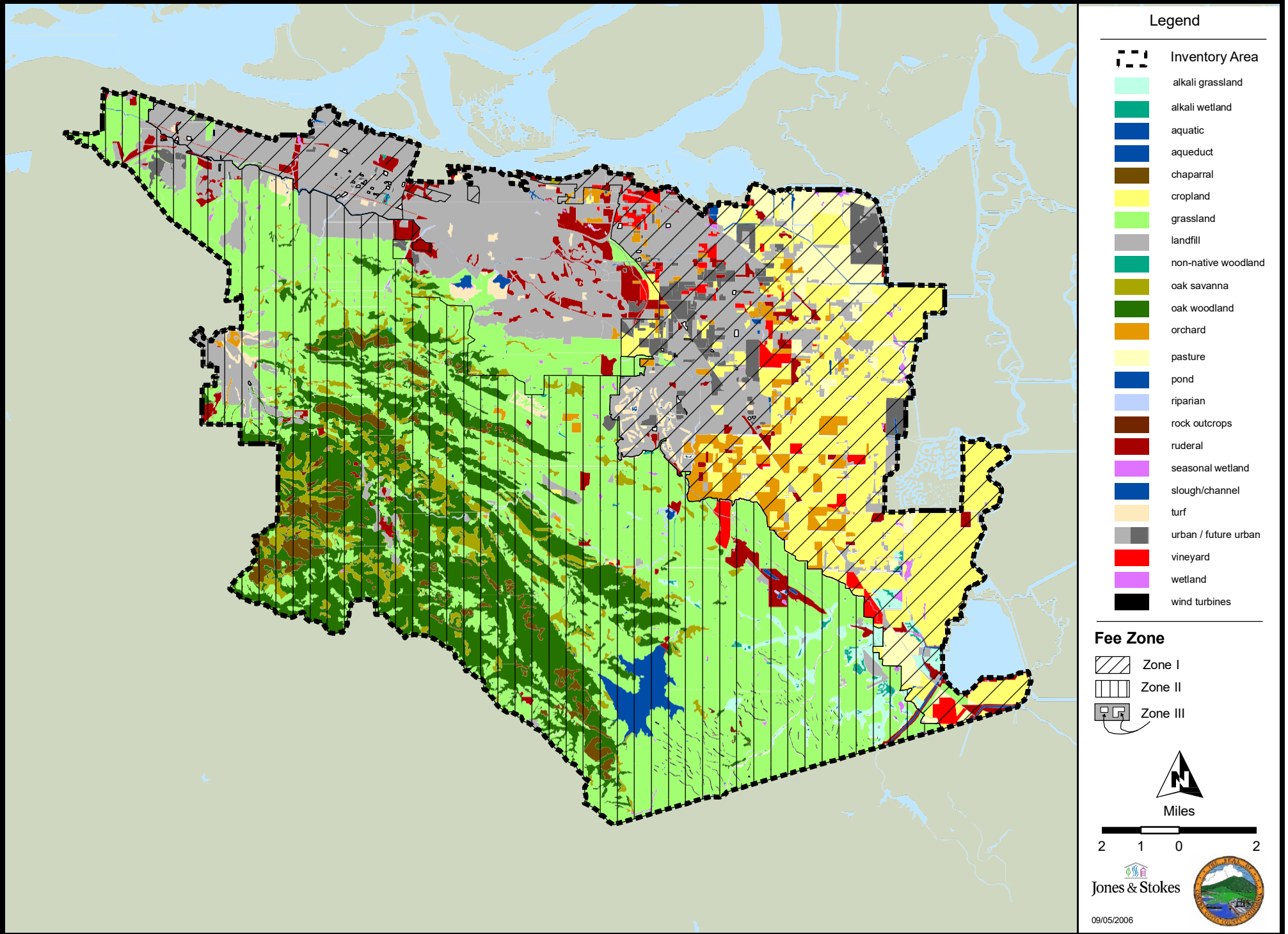
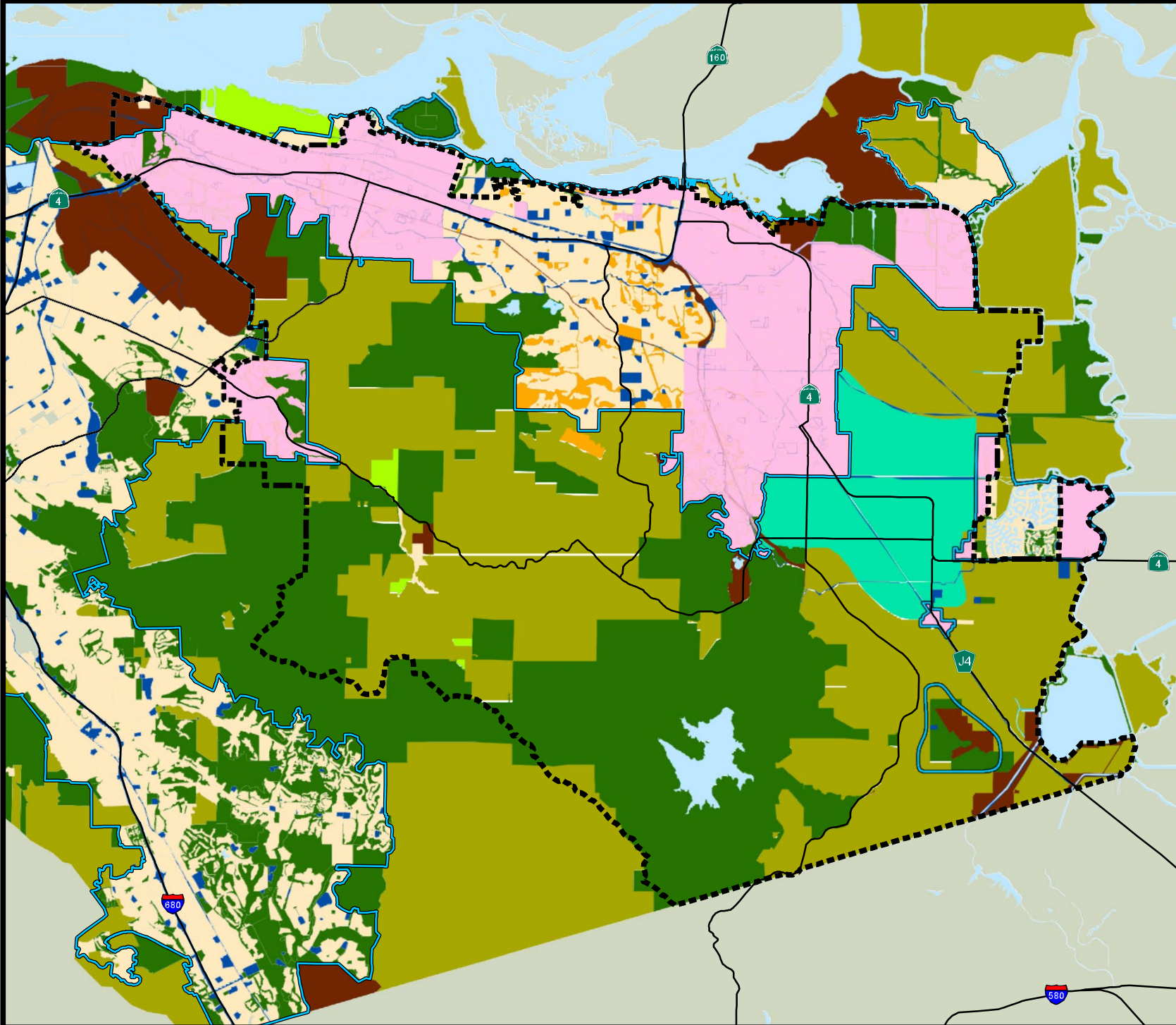





Exhibit B

Initial Urban Development Area
(Figure 2-3 of the HCP/NCCP)

Figure 2-3: Initial Urban Development Area



Legend

-  Inventory Area
-  County Urban Limit Line
-  Initial Urban Development Area

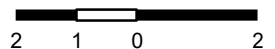
Land Use Designations *
For Areas Outside
Initial Urban Development Area

-  Agricultural Core
-  Agriculture
-  Development
-  Open Space (Designated in General Plan)
-  Parks, Public Watershed Lands, and Deed Restricted Open Space
-  Urban Parks & Open Spaces (in Inventory Area)
-  Public Facilities
-  Public Facilities with Undeveloped Land
-  Water

* Land Use Designations were derived from County and City General Plan Maps. Designations were combined to create a simpler map.



Miles



Jones & Stokes



Exhibit C

Wetland Mitigation Fee and Acreage Determination Methods (adapted from Table 9-5 of the HCP/NCCP to reflect the fee amounts applicable after the effective date of this Ordinance 2021-25)

Land Cover Type	Fee per unit of Impact	Method for Determining Fee Boundary
Riparian woodland/scrub	\$101,220.24/acre	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$153,401.41/acre	Jurisdictional wetland boundary of state or federal government ¹ , whichever is greater
Seasonal wetland	\$358,985.11/acre	Same as above
Alkali wetland	\$362,908.51/acre	Same as above
Ponds	\$197,540.18/acre	Jurisdictional waters boundary of state or federal government ¹ , whichever is greater
Aquatic (open water)	\$98,770.65/acre	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$141,043.28/acre	Area of impact within banks
Streams		
Streams 25 feet wide or less	\$520.50/linear foot	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide ²	\$781.31/linear foot	Stream length measured along stream centerline. Stream width measured between top of bank.

¹ Using methods for determining state and federal jurisdictional wetlands and waters at the time of HCP/NCCP approval.

² Impact fee for wider streams is 1.5 times the base stream fee to account for higher construction costs on wider streams.

Exhibit D

Fee Adjustment Indices

(adapted from Table 9-7 of the HCP/NCCP to reflect the fee adjustment procedures applicable after the effective date of this Ordinance 2021-25)

Fee	Annual Adjustment Index ¹	Average Annual Rate (2006-2020) Example
Development Fee		
Portion for Land Acquisition ² (62.52 % initially ³)	Change in the annual Home Price Index (HPI) for the Oakland-Berkeley-Livermore, CA Metropolitan Division (MSAD) for the prior calendar year (Office of Federal Housing Finance Agency) ⁴	3.05%
Portion for Preserve System Operation, Restoration, and Maintenance (37.48% initially ³)	Change in the Consumer Price Index for the San Francisco-Oakland-Fremont Combined Statistical Area for all urban consumers for the prior calendar year (U.S. Bureau of Labor Statistics) ⁵	2.64%
Wetland Mitigation Fee	Change in the Consumer Price Index for the San Francisco-Oakland-Fremont Combined Statistical Area for all urban consumers for the prior calendar year (U.S. Bureau of Labor Statistics) ⁵	2.64%

Note:

¹ HCP/NCCP fees to be adjusted automatically by March 15 of every year based on the indices for the prior calendar year. See Appendix G of the HCP/NCCP for more details on methodology and sources.

² Direct land acquisition costs only. Excludes costs associated with land transaction, site improvements, and due diligence (e.g., pre-acquisition surveys).

³ The portion of the Development Fee that will be adjusted according to the HPI and CPI will vary over time. For the first annual automatic adjustment following the effective date of this Ordinance No. 2021-25, 62.52% of the initial fees will be adjusted according to the HPI and 37.48% will be adjusted according to the CPI. The apportionment in subsequent years will depend on the relative values of the indices, in accordance with the formula provided in Exhibit E.

⁴ See <https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index-Datasets.aspx#atvolData>. Data for the prior calendar year are published in March. To calculate automatic adjustments, the change in the HPI for the prior calendar year will be used.

⁵ Consumer Price Index, All Items, with base data year of 1982-1984 (i.e., 1982-1984 = 100), for all urban consumers (CPI-U), not seasonally adjusted. See http://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm.

Exhibit E

Automatic Development Fee Increase Formula

(adapted from Table 9-7 of the HCP/NCCP to reflect the fee amounts applicable after the effective date of this Ordinance 2021-25)

$$Fee_n = [[L_{n-1} * (HPI_{n-1}/HPI_{n-2})] + [S_{n-1} * (CPI_{n-1}/CPI_{n-2})]] * Z$$

Where:

n = year of HCP/NCCP Implementation [year 1 (n=1) is 2007, the calendar year in which the HCP/NCCP implementation ordinance was adopted; year 2 (n = 2) is 2008; etc. Year 0 (n=0) is 2006. Year 15 (n=15) is 2021.]

Fee_n = Development Fee for year n (the Development Fee for year n applies from March 15 of year n through March 14 of the following year)

Fee₁₅ = \$33,780.93 for Zone II; \$16,890.46 for Zone I; and \$8,445.23 for Zone III

$$L_n = [L_{n-1} * (HPI_{n-1}/HPI_{n-2})] * Z$$

L_{n-1} = Land acquisition portion of development fee for the year prior to year n

$$L_{15} = 62.52\% \text{ of } \$33,780.93 = \$21,119.94$$

HPI_{n-1} = Home Price Index (HPI) for the Oakland-Berkeley-Livermore, CA Metropolitan Division (MSAD) at the end of the calendar year prior to year n as published by the Office of Federal Housing Finance Agency

$$S_n = [S_{n-1} * (CPI_{n-1}/CPI_{n-2})] * Z$$

S_{n-1} = Non-land acquisition portion of development fee for the year prior to year n

$$S_{15} = 37.48\% \text{ of } \$33,780.93 = \$12,660.99$$

CPI_{n-1} = Consumer Price Index for the San Francisco-Oakland-Fremont Combined Statistical Area for all urban consumers at the end of the calendar year prior to year n as published by U.S. Bureau of Labor Statistics

Z = Fee zone factor (based on which fee zone the project is in (see Figure 9-1 in the HCP)). The fee zone factors for the three zones are as follows:

Z = 1 for Zone II, the Natural Lands Zone

Z = 0.5 for Zone I, the agricultural lands zone

Z = 0.25 for Zone III, the infill zone