



CITY COUNCIL AGENDA ITEM NO. F.2
11/14/2023

SUBJECT: Consideration of a resolution amending the Cost Allocation Plan and Schedule of City Fees to update mitigation fees implementing the East Contra Costa County HCP/NCCP

DEPARTMENT: Community Development Department

STAFF: Alexis Morris, Director of Community Development
Erik Nolthenius, Planning Manager

TITLE/RECOMMENDATION

Adopt a resolution amending the FY 2023/24 Cost Allocation Plan and Schedule of City Fees to update mitigation fees implementing the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), and repeal and replace Resolution No. 2022-56, which updated the HCP/NCCP fees on April 26, 2022.

FISCAL IMPACT

The proposed fee update will result in the City collecting updated mitigation fees that are passed through to the East Contra Costa County Habitat Conservancy to be used only for public facilities related to the conservation of covered species, as set forth in the HCP/NCCP and the proposed resolution. The cost of City staff time to administer the ordinance is calculated in the Cost Allocation Plan and Schedule of City Fees, and a fee for the costs is collected on a per project basis. The base flat fee per project is currently set at \$1,844.67, with an option to collect a deposit of \$3,000 for more complex projects. The proposed fee update will not impact the General Fund or other City funds, nor will any unreimbursed ongoing costs be incurred. Approval of this item would require an amendment to the FY 2023/24 Cost Allocation Plan and Schedule of City Fees, as well as the repeal and replacement of Resolution No. 2022-56.

BACKGROUND

In December 2006, the Contra Costa County Board of Supervisors approved the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). Under the HCP/NCCP, the County and the other participating local agencies were issued state and federal permits for impacts to endangered species



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and their habitats, also referred to as “take permits.” This enables the County and the other participating local agencies to control endangered species permitting for activities and projects in the region that they perform or approve.

In February 2007, the East Contra Costa County Habitat Conservancy (Conservancy) – a joint powers authority composed of the County and the cities of Brentwood, Clayton, Oakley, and Pittsburg – was formed for the purpose of implementing the HCP/NCCP. Among other responsibilities, the Conservancy conducts periodic fee audits and refers the results to the participating cities and the County.

In October 2007, the Board of Supervisors adopted Ordinance No. 2007-53 to establish the mitigation fees and procedures to implement the HCP/NCCP within the portion of the unincorporated County covered by the Plan. Two types of mitigation fees were established:

1. **The Development Fee**, which is calculated by multiplying the acreage of the site permanently disturbed by development projects subject to the fee by the fee rate applicable in the zone in which the projects are located; and
2. **The Wetland Mitigation Fee**, which is applicable to the wetland, aquatic, or riparian portions of a development project.

The Conservancy and participating cities each separately adopted the mitigation fees and procedures to implement the HCP/NCCP. This was accomplished in Brentwood through the adoption of Resolution No. 2007-234 in October 2007 and Ordinance No. 850 in November 2007.

The HCP/NCCP includes automatic annual adjustments to the mitigation fees based on economic indices. The HCP/NCCP also requires periodic audits in years 3, 6, 10, 15, 20, and 25 of the Plan’s implementation. The periodic audits are conducted to assess whether changes in HCP/NCCP implementation costs over time require adjustment of the fees. Per HCP/NCCP requirements, the Conservancy hired an outside, independent financial auditor to conduct a fee analysis. The 2022 East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study (“Fee Study”) was prepared to comply with the requirement of a fully-funded mitigation strategy.

Other than the automatic annual adjustments approved for the fees (based on the Consumer Price Index and the Home Price Index), the County and the participating cities most recently updated the HCP/NCCP mitigation fees in the last two years. The



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most recent fee update was based on a 2017 Fee Study that was delayed due to litigation between the Conservancy and a private third party. That litigation was settled in January 2021. In February 2021, the Conservancy adopted the updated fee schedule based on the 2017 Fee Study. This triggered a need for the County and participating cities to take action to adopt the updated fee schedule. On August 3, 2021, the Board of Supervisors adopted Ordinance No. 2021-25, updating the mitigation fee schedule to reflect the 2017 Fee Study. The member cities of the joint powers subsequently undertook their own adoption of fee updates. It is now time for the next periodic audit, which the Conservancy adopted in February of this year, and the other member cities subsequently adopted within the last few months.

2022 MITIGATION FEE AUDIT AND NEXUS STUDY FEE RECOMMENDED ADJUSTMENTS

The 2022 Mitigation Fee Audit and Nexus Study determined there is a need to adjust the Mitigation Fees (Development Fee [and the associated Rural Road Fee, and Temporary Impact Fee] and the Wetland Mitigation Fee [and the associated Temporary Impact Fee]) based on the recent updated data.

Development Fee

Excerpted from the 2022 Mitigation Fee Audit and Nexus Study, Table E.2 provides the recommended adjustments to the Development Fee. The proposed adjustment is a 1.2% increase to the current fee schedule.

Table E.2: Development Fee Comparison

Zone	2022 Fee Schedule	2022 Audit	Change
Zone 1	\$18,938	\$19,170	1.2%
Zone 2	\$37,876	\$38,340	1.2%
Zone 3	\$9,469	\$9,585	1.2%

Sources: Table 6.3.

Wetland Mitigation Fee

Excerpted from the 2022 Mitigation Fee Audit and Nexus Study, Table E.3 provides the recommended adjustments to the Wetland Mitigation Fee. The Wetland Mitigation Fees for all wetland land cover types and streams are proposed to increase between 0.4% and 2.5% compared to the current fee schedule.



Table E.3: Wetland Mitigation Fee Comparison

Land Cover Type	Fee Basis	2022 Fee Schedule	2022 Audit	Change
Riparian	per acre	\$105,516	\$105,891	0.4%
Perennial Wetland	per acre	\$159,912	\$162,953	1.9%
Seasonal Wetland	per acre	\$374,220	\$382,792	2.3%
Alkali Wetland	per acre	\$378,310	\$386,980	2.3%
Pond	per acre	\$205,924	\$211,115	2.5%
Aquatic (open water)	per acre	\$102,962	\$105,558	2.5%
Slough / Channel	per acre	\$147,029	\$149,516	1.7%
Streams (<=25 ft. wide)	per linear foot	\$543	\$553	1.8%
Streams (>25 ft. wide)	per linear foot	\$814	\$829	1.8%

Sources: Table 5.2.

Determining Fee Amounts

The Conservancy, participating cities (Brentwood, Clayton, Oakley, and Pittsburg), and the County (“**Co-Permittees**”) have the responsibility and authority to adjust the fees in effect for their jurisdictions. The role of the Conservancy is to conduct the periodic fee audits, determine fees to be charged to Participating Special Entities, and refer the results of the 2022 Fee Audit and Nexus Study to the Co-Permittees.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE

A 30-day notice of public hearing was published in the Brentwood Press on October 13, 2023. This was followed by a 14-day notice of public hearing that was published in the Brentwood Press on October 27, 2023.

ENVIRONMENTAL DETERMINATION

This action has been found to be exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section



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15378(b)(4), as it relates to the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

ATTACHMENT(S)

1. Previous Actions
2. ECCC HCP-NCCP Mitigation Fee Audit and Nexus Study – February 2023
3. Resolution