

CITY COUNCIL RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD AMENDING BRENTWOOD HABITAT CONSERVATION FEES NECESSARY TO IMPLEMENT THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN AND AMENDING THE 2023/24 COST ALLOCATION PLAN AND SCHEDULE OF CITY FEES

WHEREAS, the City Council has adopted ordinances and resolutions establishing and revising fees required to be paid by sponsors of new development; and

WHEREAS, Government Code Sections 65104, 65909.5, 66014, and 66451.2 allow the City to establish fees to offset the City's administrative costs in processing permits, licenses, subdivision maps, and other entitlements; and

WHEREAS, Brentwood Municipal Code Chapter 16.168 provides for the payment of Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) implementation fees and an administrative fee to review required applications and collect required fees; and

WHEREAS, Goal COS 3 of the Conservation and Open Space Element of the City's General Plan calls for the protection and enhancement of Brentwood's ecosystem and natural habitats; and

WHEREAS, Policy COS 3-1 of the Conservation and Open Space Element of the City's General Plan recognizes that sensitive habitats include creek corridors, wetlands, vernal pools, riparian areas, wildlife and fish migration corridors, native plant nursery sites, waters of the United States, sensitive natural communities, and other habitats designated by state and federal agencies; and

WHEREAS, Policy COS 3-1 of the Conservation and Open Space Element of the City's General Plan looks to preserve and enhance those biological communities that contribute to Brentwood's and the region's biodiversity including, but not limited to, wetlands, riparian areas, aquatic habitat, and agricultural lands; and

WHEREAS, Action COS 3a of the Conservation and Open Space Element of the City's General Plan requires new development, as well as infrastructure projects, long-range planning projects, and other projects, to comply with the requirements of the HCP/NCCP to ensure that potentially significant impacts to special-status species and sensitive resources are adequately addressed; and

WHEREAS, in October 2006, a Final HCP/NCCP and Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) were released. Copies of both documents are on file within the Brentwood Community Development Department at 150 City Park Way in Brentwood, California; and

WHEREAS, the main element of the proposed HCP/NCCP conservation strategy is the creation of a Preserve System that would preserve approximately 23,800 acres of species habitat land with the initial urban development area, or approximately 30,300 acres of species habitat land under the maximum urban development area; and

WHEREAS, the proposed HCP/NCCP conservation measures address the landscape level, community-level (or habitat), and species-level impacts, and include measures to address the following objectives: design of covered activities to avoid or minimize impacts on covered species and covered vegetation communities; preservation of covered vegetation communities; preservation of covered species populations and habitats; restoration of covered species habitat and vegetation communities to compensate for direct and indirect impacts on specific species and vegetation communities; restoration of species habitat to contribute to the recovery of listed covered species and help prevent the listing of non-listed covered species, and management of preserves to maximize the functions of habitats for covered species; and

WHEREAS, by developing a plan that addresses natural resource issues comprehensively and proactively, the City would increase its control over local land use issues and benefit species and project proponents alike; and

WHEREAS, on November 8, 2006, the HCP Executive Governing Committee unanimously approved the final HCP/NCCP and the EIR/EIS as the lead agency and directed the HCPA staff to forward the documents to the plan participants for approval; and

WHEREAS, the City, as one of those plan participants, has acted and is continuing to act in the capacity of a responsible agency in its review of, and reliance upon, said EIR/EIS; and

WHEREAS, the final HCP/NCCP includes a comprehensive analysis of the cost to implement the HCP/NCCP including program administration, land acquisition, habitat restoration/creation, preserve management, and environmental compliance; and

WHEREAS, the City has prepared an analysis of the costs to review applications and collect applicable HCCP/NCCP fees required by Chapter 16.168; and

WHEREAS, the fees established herein are adopted and implemented by the City Council in reliance on the comprehensive studies that have been prepared for the HCP/NCCP and by the City; and

WHEREAS, on January 23, 2007, the City Council approved the HCP/NCCP, the implementing agreement, and a Joint Exercise of Powers Agreement creating a conservancy to form the oversight agency for the Plan; and

WHEREAS, on August 6, 2007, both the U.S Fish and Wildlife Service and

California Department of Fish and Game approved the HCP/NCCP and issued regional permits to the local plan participants; and

WHEREAS, on October 9, 2007, the City Council held a public hearing on the proposed implementing ordinance and the adoption of related fees for the implementation of the HCP/NCCP, and introduced Ordinance No. 850, and adopted Resolution No. 2007-234; and

WHEREAS, on November 13, 2007, the City Council adopted Ordinance No. 850, codified at Brentwood Municipal Code (BMC) Chapter 16.168; and

WHEREAS, BMC § 16.168.070 authorizes the collection of mitigation fees to offset impacts by development that disturbs open space, wetlands and waters, habitat, and sensitive special status species covered by the HCP/NCCP, with the fee amounts established by Resolution No. 2007-234; and

WHEREAS, BMC § 16.168.070 likewise provides for an automatic adjustment of mitigation fees according to market inflation or deflation as provided in the HCP/NCCP. A periodic audit and adjustment of the mitigation fees is required to be done in years three, six, 10, 15, 20, and 25 of Plan implementation to assess whether actual land costs and experience in implementing the HCP/NCCP since adoption of the Plan necessitate an additional adjustment of the mitigation fees; and

WHEREAS, the fee audit for year 15 occurred in 2022 (the 2022 Mitigation Fee Audit and Nexus Study); and

WHEREAS, on February 27, 2023, the HCP Conservancy Governing Board adopted the 2022 East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study; and

WHEREAS, each of the participating agencies in the HCP/NCCP must take action to adopt the 2022 Mitigation Fee Audit and Nexus Study's updated fees, as adjusted to include automatic annual adjustments that occurred in March 2023, to facilitate consistency in implementation of the HCP/NCCP across the participating agencies; and

WHEREAS, a public hearing has been noticed in accordance with state law; and

WHEREAS, on November 14, 2023, the City Council held a public hearing on the proposed adoption of updated fees for the implementation of the HCP/NCCP; and

WHEREAS, the City Council has reviewed and given consideration to all written material and oral testimony presented before and during the hearing.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brentwood does hereby:

Section 1. Findings:

The Council makes each of the following findings:

- A. The foregoing recitals are true and correct and are incorporated herein by reference.
- B. The purpose of the habitat conservation mitigation fees is to help fund the HCP/NCCP conservation strategy, mitigate the impacts of development on covered species, and contribute to the recovery of these species in the plan area.
- C. The habitat conservation mitigation fees help implement Brentwood's General Plan Conservation and Open Space Element, including, specifically, Goal COS 3, in that the fees will be used to help protect and enhance Brentwood's ecosystem and natural habitats; Policies COS 3-1 and COS 3-2 in that the fees will be used to preserve and enhance biological communities that contribute to the biodiversity of Brentwood and the region; and Action COS 3a in that these fees will be required of qualifying new development to ensure that potentially significant impacts to special status species and sensitive resources are adequately addressed.
- D. As reflected in the recitals set forth above, the City has historically followed the procedures set forth in the Mitigation Fee Act (Government Code § 66000, et seq.) in adopting and imposing the fees set forth herein, and the City is electing to continue to follow these procedures in the present Resolution, even though said fees do not meet the definition of development "fees" under Government Code section 66000, subdivision (b) and thus are not otherwise subject to the requirements set forth in many provisions of that Act.
- E. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the use of the updated HCP/NCCP implementation fees authorized by this Ordinance and the type of development projects subject to the fees. The fees updated herein are adopted and implemented by the Council in reliance on the comprehensive studies that have been prepared for the HCP/NCCP and by the City. The updated 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 activities to mitigate for impacts to open space, habitat and covered species caused by affected Development Projects. The updated Wetland mitigation fee will be used to implement the HCP/NCCP by funding the restoration, creation and management Jurisdictional Wetlands and Waters and riparian woodland/scrub and other actions in order to mitigate for impacts to Jurisdictional Wetlands and Waters and riparian areas caused by affected Development Projects. The updated HCP/NCCP implementation fees will not apply to all types of development projects, but only those that impact open space, habitat suitable for one or more covered species, Jurisdictional Wetlands and Waters or riparian areas. In this way, the updated 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.

F. Based on the 2022 Mitigation Fee Audit and Nexus Study and the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the need for the public activities and facilities including land acquisition, management, restoration, and habitat creation and enhancement to be funded by the updated HCP/NCCP implementation fees and the type of development projects on which the updated fees are imposed in that the need for the activities and the facilities arise from the very development projects to which the updated fees will apply, i.e. development projects of all types that disturb open space, habitat, Jurisdictional Wetlands and Waters or riparian areas.

G. Based on the 2022 Mitigation Fee Audit and Nexus Study and the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the amount of the updated HCP/NCCP implementation fees authorized by Chapter 16.168 of the Brentwood Municipal Code and established in this resolution and the cost of the facilities or portion of the facilities attributable to the development projects on which the updated fees will be imposed. As reflected in the findings set forth in this Resolution, the City has reviewed the assumptions in the Nexus Study supporting the original fee and has evaluated the amount of fees collected under the original fee. The costs of the facilities needed to mitigate cumulative impacts from development projects subject to the updated 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 updated 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 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 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, 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, 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, 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 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, such 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.
3. On October 9, 2007, prior to approving the HCP/NCCP implementing ordinance and fees, the City Council adopted Resolution No. 2007-234 making findings pursuant to the California Environmental Quality Act (CEQA) and approving the HCP/NCCP. This update of the adopted schedule of fees is an administrative action that is not considered a "project" pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5), and is thus exempt from CEQA.

H. Future individual affected development projects subject to this resolution will require separate project-specific CEQA review.

I. After considering the 2022 Mitigation Fee Audit and Nexus Study, City staff reports, and the testimony received during the public hearing, the City Council approves and adopts said study, and incorporates such herein.

J. The 2022 Mitigation Fee Audit and Nexus Study, HCP/NCCP, staff reports, and the testimony establish:

1. That there is a reasonable relationship between the updated fee's use and the type of development on which the updated fee is imposed; and
2. That there is a reasonable relationship between the amount of the updated fees and the cost of purchasing habitat to protect species covered under the

HCP/NCCP within the Brentwood Planning Area.

Section 2. Definitions:

For purposes of this Resolution, the terms defined in Chapter 16.168 of the Brentwood Municipal Code are incorporated by reference herein.

Section 3. Fees Imposed:

A. Chapter 16.168 of the Brentwood Municipal Code sets forth the requirements for certain development projects to pay the applicable HCP/NCCP implementation fees. The amounts of which are set forth herein.

B. Development Fee.

1. The Development Fee shall be based on each acre of land permanently disturbed and is set as follows:

<u>Location of Affected Development Project</u>	<u>Development Fee</u>
Development Fee Zone I	\$19,871.91 per acre
Development Fee Zone II	\$39,743.83 per acre
Development Fee Zone III	\$9,935.96 per acre

2. The Development Fee Zones are set forth in Exhibit A.

C. Wetland Mitigation Fee

1. The Wetland Mitigation Fee is set forth in Exhibit B.

D. The Development Fee and Wetland Mitigation Fee shall on March 15 of each year be automatically adjusted as follows:

1. The Development Fee shall be adjusted as provided in Exhibit C and based on the formula in Exhibit D, as explained in Chapter 9.3.1 of the HCP/NCCP. As shown in Exhibit C and Exhibit D, 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 Enterprise Oversight Annual Home Price Index for the Oakland-Fremont-Hayward, 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-San Jose Combined Statistical Area (U.S. Bureau of Labor Statistics) for the 12-month period ending December 31.

2. The Wetland Mitigation Fee shall be adjusted as provided in Exhibit C. As shown

in Exhibit C, 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-San Jose Combined Statistical Area (U.S. Bureau of Labor Statistics) for the 12-month period ending December 31.

Section 4. Effective Date of Fees:

The fee increases provided in this Resolution shall be effective sixty (60) days after the adoption of this Resolution.

Section 5. Severability:

All portions of this Resolution are severable. Should any provision of this Resolution be judged to be invalid and unenforceable, the remaining provisions shall be and continue to be fully effective, and the fees shall be fully effective except as to the portion that has been judged to be invalid.

Section 6. Cost Allocation Plan and Schedule of City Fees Amendment:

The City of Brentwood 2023/24 Cost Allocation Plan and Schedule of City Fees is hereby amended to add the HCP/NCCP implementation fees and administration fees adopted by this resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brentwood at a regular meeting held on the 14th day of November, 2023, by the following vote:

EXHIBIT 'A'

Development Fee Zones

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

Figure 9-1 : Development Fee Zones

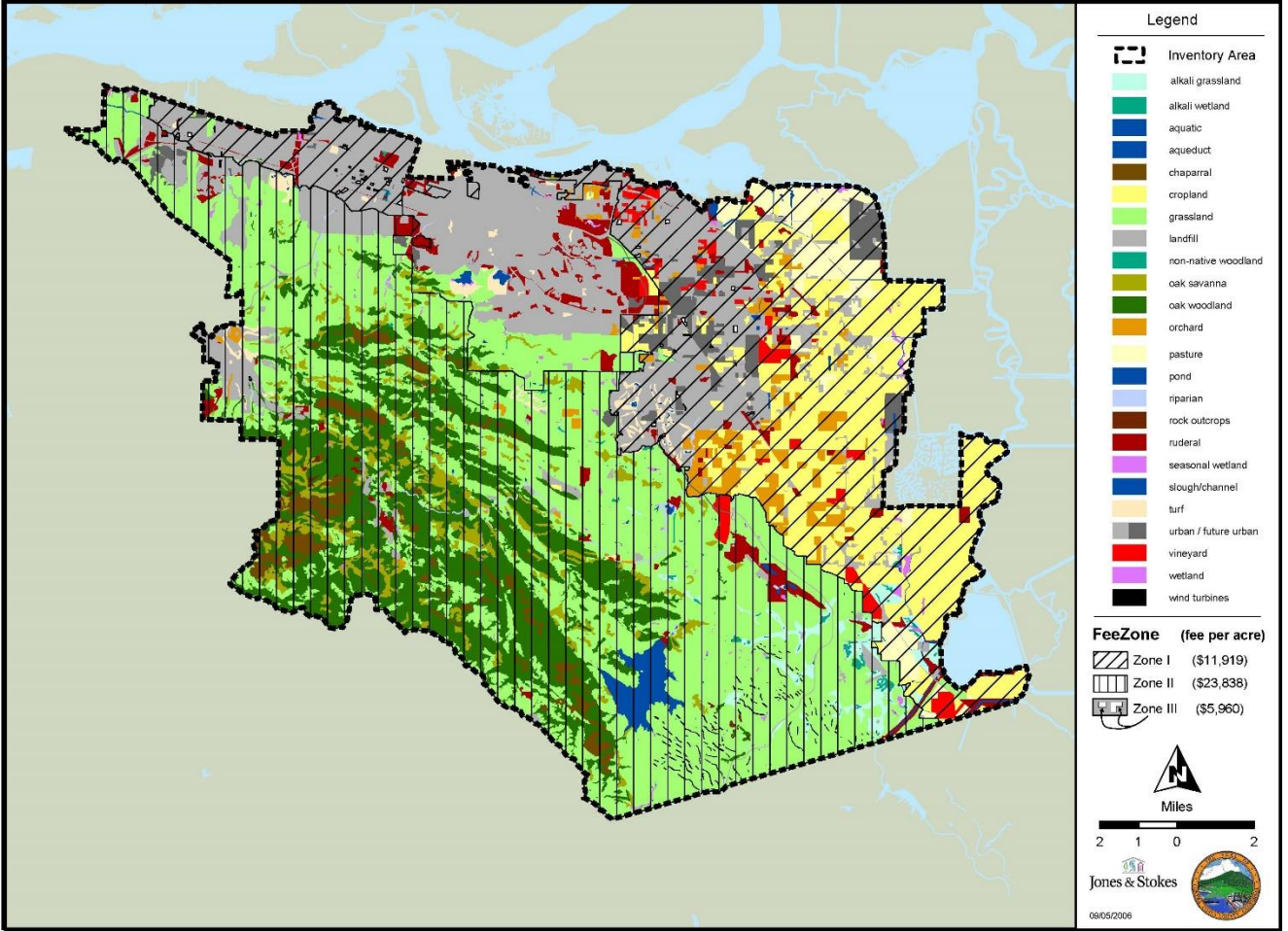


EXHIBIT 'B'

Wetland Mitigation Fee

(Figure 2-3 of the HCP/NCCP)

Figure 2-3 : Initial Urban Development Area

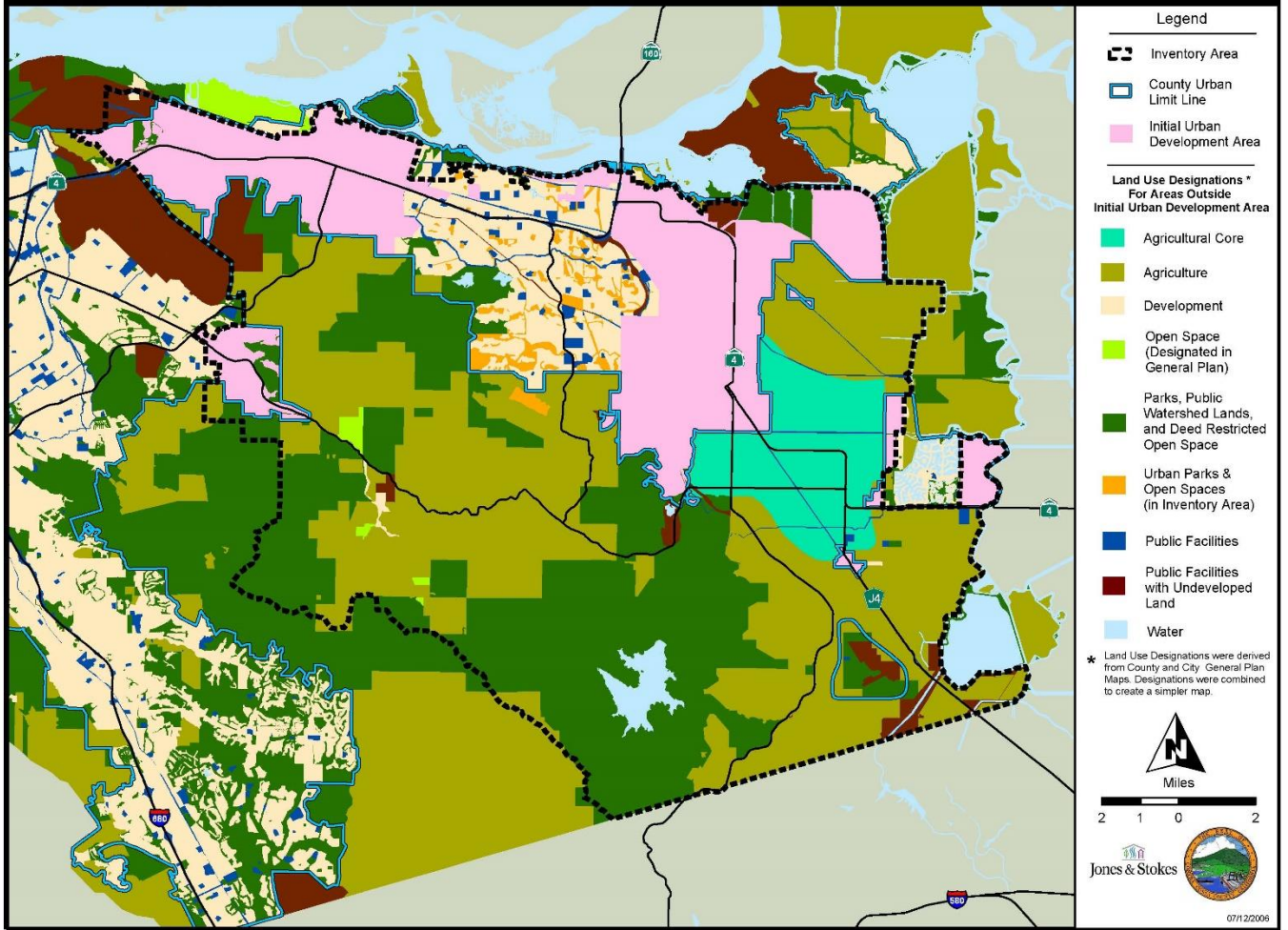


EXHIBIT 'C'

2022 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 Resolution)

Land Cover Type	Fee per unit of Impact	Method for Determining Fee Boundary
Riparian woodland/scrub	\$111,060.40/acre	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$170,908.06/acre	Jurisdictional wetland boundary of state or federal government ¹ , whichever is greater
Seasonal wetland	\$401,479.18/acre	Same as above
Alkali wetland	\$405,871.63/acre	Same as above
Ponds	\$221,421.23/acre	Jurisdictional waters boundary of state or federal government ¹ , whichever is greater
Aquatic (open water)	\$110,711.14/acre	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$156,815.09/acre	Area of impact within banks
Streams		
Streams 25 feet wide or less	\$580.00/linear foot	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide ²	\$869.47/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 Resolution)

Fee	Annual Adjustment Index ¹	Annual Average Rate (2006-2022) 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	3.85%
Portion for Preserve System 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	2.87%
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	2.87%

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 2023-XX)

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

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 17 (n=17) is 2023.]

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)

Fee₁₇ = \$39,743.83 for Zone II; \$19,871.91 for Zone I; and \$9,935.96 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
L₁₇ = 59.53% of \$39,743.83 = \$23,659.15

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

S₁₇ = 40.47% of \$39,743.83 = \$16,084.67

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