

**A MODEL ORDINANCE OF THE  
[CITY COUNCIL OF THE CITY OF \_\_\_\_\_ ]  
[BOARD OF SUPERVISORS OF THE COUNTY OF CONTRA COSTA]  
TO IMPLEMENT THE  
EAST CONTRA CONSTA COUNTY HABITAT CONSERVATION PLAN /  
NATURAL COMMUNITY CONSERVATION PLAN**

The [City Council of the City of \_\_\_\_\_][Board of Supervisors of the County of Contra Costa] does ordain as follows:

**SECTION I  
TITLE**

This Ordinance shall be known as the "East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Policy."

**SECTION II  
FINDINGS AND PURPOSE**

- A. The [City Council (“Council”)][Board of Supervisors (“Board”)] finds that 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 on rare, threatened and endangered species. To that end, a joint powers authority formed to develop the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”), and the [Council][Board] finds that the HCP/NCCP 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, agriculture, 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, the multiple use of protected areas; share the costs and benefits of the HCP/NCCP as widely and equitable as possible; and protect the rights of private property owners. Adoption and implementation of this Ordinance will enable the [City of \_\_\_\_\_ (“City”)][County of Contra Costa (“County”)] to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing Agreement executed by the [City][County] on \_\_\_\_\_, 2005, 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 ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA"), the California Natural Community Conservation Planning Act ("NCCPA"), and other applicable laws.
- B. The purpose and intent of this Ordinance is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to the recovery of endangered species within East Contra Costa County by assembling and managing a Preserve

System to conserve threatened and endangered species and their natural communities, and to sustain strong economic development within the [City][County] by providing a streamlined regulatory permitting process from which development can proceed in an orderly process.

### **SECTION III APPLICATION OF ORDINANCE**

- A. This Ordinance shall apply to all ground-disturbing projects and activities within the [City's][County's] land use jurisdiction that are within the Urban Development Area shown on Figure 2-3 of the HCP/NCCP, attached as **Exhibit A**, or for those rural infrastructure projects and activities that are specifically defined as Covered Activities in the HCP/NCCP[OPTIONAL “, except for any in-fill project with a total footprint of less than one acre or any in-fill project where new development is replacing existing development”]. This Ordinance establishes an application procedure for the proponents of all such projects and activities, through which the applicant may receive authorization for the incidental take of certain Covered Species listed as threatened or endangered under state and federal law and identified in the HCP/NCCP, subject to the applicant's compliance with all terms and conditions required by this HCP/NCCP and this Ordinance.
- B. Upon the [City's][County's] initiation of a project that is subject to CEQA, the [City][County] shall be required to comply with the procedures set forth in this Ordinance.
- C. This Ordinance shall not apply when its application would result in the property owner being deprived of all reasonable economic use of the property in violation of federal or state constitutional prohibitions against the taking of property without just compensation.

### **SECTION IV PROCEDURES**

The [City][County] shall ensure that all ground-disturbing projects and activities to which this Ordinance applies incorporate the requirements of the HCP/NCCP as follows:

- A. Upon receipt of an application for a project or activity that is subject to this Ordinance, or prior to the [City][County]'s initiation of a project, the [City][County] shall determine whether all or a portion of the real property for the project or activity is located within the boundaries of the Urban Development Area, or whether it is a rural infrastructure project or activity specifically defined as a Covered Activity. If either are true, and the project or activity is not a qualified exception (“Qualified Exception”) as defined below in Section IV.D, then the [City][County] shall:
  - 1. Ensure that the applicant has, pursuant to Chapter 6.2.1 of the HCP/NCCP and at the applicant's expense:
    - a. Performed a planning survey and prepared a survey report for wildlife, plants, vegetation communities and landscape features, and

- b. Delineated any jurisdictional waters.
  2. Determine whether the survey report is complete.
  3. Provide a copy of the survey report to the HCP/NCCP Implementing Entity for entry into the HCP/NCCP database.
  4. Determine whether preconstruction surveys and/or construction monitoring are required pursuant to Chapter 6.2.1 of the HCP/NCCP.
  5. Determine which avoidance and minimization and other conservation measures are required, according to Chapters 5.0 and 6.0 of the HCP/NCCP.
  6. Impose as a condition of the [City][County]'s approval of the project or activity all such surveys, monitoring, avoidance, minimization and other conservation measures are necessary to ensure the project complies with the HCP/NCCP.
  7. Impose as a further condition of the [City][County]'s approval of the project or activity the right for the [City][County] to monitor the applicant's compliance with all avoidance and minimization requirements.
  8. Impose as a further condition of the [City][County]'s approval of the project or activity either a fee or a dedication of land in lieu of the fee, as described in Section V below.
- B. The authority of the [City][County] to extend take authorization to a project or activity is dependent upon whether the [City][County] and other participants in the HCP/NCCP are successfully implementing all provisions of the HCP/NCCP. Therefore, for any project or activity that is subject to this Ordinance, the [City][County] shall not approve the project or activity if the Implementing Entity has notified the [City][County] that it is not successfully implementing the HCP/NCCP and needs to temporarily suspend take authorization. In such a case, the project applicant may elect to either delay the project or activity, or independently seek incidental take authorization from the federal and state wildlife agencies.
- C. For any project or activity that, based on the survey report or other available information, the [City][County] concludes is likely to result in harm to a threatened or endangered species that is not covered by the HCP/NCCP, the [City][County] shall not approve the project or activity. In such a case, the project applicant may elect to either delay the project or activity while the Implementing Entity seeks an amendment to the HCP/NCCP to cover that species, or independently seek incidental take authorization from the federal and state wildlife agencies.
- D. A project is a Qualified Exception and does not need to comply with Section IV.A above if it is a project that has already received final approval from the United States Fish and Wildlife Service and/or California Department of Fish and Game for incidental take of all federally and/or state listed species that may be adversely affected by the project, including but not limited to a Section 7 consultation under FESA or a Section 2080.1 authorization under CESA, and it has paid a habitat and open-space fee to the Implementing Entity subject to Section V.F below.

## SECTION V

## **HCP/NCCP IMPLEMENTATION FEE OR DEDICATION OF LAND IN LIEU OF FEE**

To fund the acquisition, management and monitoring of the Preserve System, and all other implementation and administration of the HCP/NCCP, the [City][County] shall condition the approval of any and all projects or activities that this Ordinance applies to subject to the collection of HCP/NCCP implementation fees, and/or, on a case-by-case basis, a dedication of land in lieu of some or all of the fee, as follows:

### **A. Development Fees**

1. The [City][County] shall determine in which of the Three Fee Zones the project or activity is located, pursuant to Chapter 9.3.1.
2. The development fee for each project or activity shall be calculated by multiplying the fee for the applicable Fee Zone by the number of acres permanently removed from an undeveloped or habitat-providing state by the project or activity, pursuant to Chapter 9.3.1.
3. As of the Effective Date, the development fee for each of the Three Fee Zones is as follows: Zone 1 (Eastern Agricultural Zone) is \$11,466 per acre; Zone II (Natural Area Zone) is \$22,932 per acre; and Zone III (Infill) is \$5,733 per acre, as further described in Table 9-4 of the HCP/NCCP, attached as **Exhibit B**, and as those numbers are adjusted pursuant to Section V.D below.
4. Prior to approval of the project or activity, the [City][County] shall either collect the entire development fee or shall execute an agreement with the developer to arrange for up to 33% of the development fee to be paid through ongoing annual assessments in perpetuity on the subject parcels.

### **B. Wetlands Fee**

1. For any project or activity that will fill, dredge, or remove wetlands, streams, ponds, or riparian areas, the applicant shall pay a wetlands fee in addition to the development fee.
2. Wetlands fees vary by wetland type. The [City][County] shall determine which of the wetland types will be affected by the project activity, according to Table 9-5 of the HCP/NCCP, attached as **Exhibit C**.

### **C. Rural Road Fee [For the County ordinance, only]**

1. For all rural road projects or activities that are Covered Activities, the County shall determine the fee according to Table 9-6 of the HCP/NCCP, attached as **Exhibit D**.
2. Pursuant to Chapter 9.3 of the HCP/NCCP, this fee may be discounted by the Implementing Entity on a case-by-case basis if optional avoidance and minimization measures are incorporated into the road design. The [County] shall request the Implementing Entity to determine the applicable discount for any given rural road project or activity.

### **D. Each of these development, wetlands and rural roads fees shall be adjusted both automatically for inflation or deflation, and periodically through outside audits.**

1. The [City][County] shall automatically amend this Ordinance and Exhibits B, C and D within thirty (30) days after the beginning of each fiscal year incorporate the annual recalculation by the Implementing Entity of the development, wetlands

- and rural road fees according to the indices in Table 8-7 of the HCP/NCCP, attached as **Exhibit E**.
2. The Implementing Entity may periodically arrange for an outside audit of the operating costs of the HCP/NCCP to ensure that the fees are keeping pace with costs of implementing the HCP/NCCP. Within thirty (30) days after any formal recommendation of the Implementing Entity, the [City][County] shall amend this Ordinance and Exhibits B, C and D to conform the development, wetlands and rural road fees according to that recommendation.
- E. On a case-by-case basis, and upon a voluntary offer by the applicant, a dedication of land may be accepted in lieu of some or all of the development fees. Upon any such offer, the [City][County] shall coordinate with the Implementing Entity, which has the authority to consider such offers, including the amount of the development fee that any such dedication would substitute. Dedication of land in lieu of fees will not be accepted for lands that do not contribute to the biological goals and objectives of the HCP/NCCP, and that are not in areas designated as high or moderate priorities for acquisition, pursuant to Chapter 8.6.7 of the HCP/NCCP. The [City][County] shall not approve a project or activity for which a dedication of land in lieu of fees has been offered unless and until the Implementing Entity determines that the applicant has satisfied all fee requirements under the HCP/NCCP.
  - F. On a case-by-case basis, an 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 project may apply to the Implementing Entity to pay a fee, the amount to be negotiated by the applicant with the Implementing Entity, to support the conservation of habitat and open space under the HCP/NCCP instead of the standard development, wetlands or rural road fees. If the mitigation and conservation requirements under the separate approval exceed what would be required under this ordinance, than the Implementing Entity may waive any requirement for further fees. The [City][County] shall not approve a project or activity that is a Qualified Exception unless and until the Implementing Entity determines that the applicant has satisfied all fee requirements under the HCP/NCCP.

## **SECTION VI DEFINITIONS**

For purposes of this Ordinance, the following terms shall have the meaning set forth herein:

- A. "HCP/NCCP" means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, plus the accompanying Implementing Agreement signed by the [City][County], plus the Federal and State Permits issued under FESA and the NCCPA, as those documents may be amended from time to time.
- B. "Implementing Entity" means a joint powers authority, composed of elected officials from the Cities participating in the HCP/NCCP and the County, that will oversee the implementation of the HCP/NCCP.

- C. "Project or activity" means any action or activity that is subject to the [City][County]'s ministerial or discretionary approval, or any action or activity undertaken directly by the [City][County], for the purpose of developing or improving real property, including, but not limited to, the following: the sale, purchase, or lease of [City][County]-owned property; the approval of a tentative subdivision map; the issuance of a license, permit, certificate, variance, or other entitlement for the development or improvement of real property, including the clearing or grading of real property (except for weed or fire hazard abatement); and the construction or improvement of streets, water, sewer, or other public facilities or public works.
- D. "Urban Development Area" means the areas designated for urban development that are either a) within the unincorporated areas of the County and within the Urban Limit Line ("ULL") as it may be amended during the term of the HCP/NCCP, or b) within the jurisdictional limits of the City as they may be amended during the term of the HCP/NCCP, provided those boundary amendments are consistent with the assumptions supporting the changes to the Urban Development Area provided in Chapter 2.3.1 of the HCP/NCCP.

**SECTION VII  
EFFECTIVE DATE**

The [Mayor][Chair] shall sign this Ordinance and the [City][County] Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Contra Costa Times, a newspaper published and circulated in the [City of \_\_\_\_\_][County of Contra Costa], and thereupon and thereafter this Ordinance shall take effect and be in force according to law.

PASSED, APPROVED, AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote:

\_\_\_\_\_  
[Mayor][Chair]

ATTEST:

\_\_\_\_\_  
City Clerk