

Appendix F

Template of Implementing Ordinance

**A MODEL ORDINANCE OF THE
[CITY OF _____]
[COUNTY OF CONTRA COSTA]
TO IMPLEMENT THE
EAST CONTRA COSTA 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**

[Note: the following findings exemplify the appropriate substance of the findings that the County and each city may make in support of this Ordinance, but the County and each city may adapt the findings as necessary to reflect its independent review of the facts.]

The [Council][Board] finds as follows:

- 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 of future development on rare, threatened and endangered species.
- B. To meet the need identified in Section II-A, the [City of _____ (“City”)][County of Contra Costa (“County”)] participated as a member of the East Contra Costa County Habitat Conservation Planning Agency, a joint exercise of powers agency, to develop the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”) and the Implementing Agreement for the HCP/NCCP. The [Council][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. The [Council][Board] finds that adoption and implementation of this Ordinance will enable the [City][County] to promote the health, safety and welfare of all of its citizens by helping to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing Agreement executed by the [City][County] on _____, 2006, 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.
 - D. The [Council][Board] finds that there is a reasonable relationship between the use of the HCP/NCCP implementation fee imposed by this Ordinance and the type of development project on which the fee is imposed. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to Chapter 9.3.1, and data and analyses referenced therein, the HCP/NCCP implementation fee will be used to implement the HCP/NCCP by funding actions to preserve, enhance, restore, create and manage habitat in order to mitigate for impacts to open space and covered species. The HCP/NCCP implementation fee will apply only to development projects that impact open space or habitat suitable for one or more covered species. The HCP/NCCP implementation fee will therefore be used for purposes reasonably related to the development projects that will be subject to the fee.
 - E. The [Council][Board] further finds that there is a reasonable relationship between the need for the public facilities to be funded by the HCP/NCCP implementation fee imposed by this Ordinance and the type of development project on which the fee is imposed. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to Chapter 9.3.1, and data referenced therein, the fee will be used to fund actions to preserve, enhance, restore, create and manage open space and habitat in order to mitigate for impacts to open space and covered species. The need for such mitigation actions arises from the development projects to which the fee will apply, i.e., development projects that disturb open space and habitat. The HCP/NCCP implementation fee will therefore be used to establish and manage mitigation areas that are reasonably related to the mitigation needs of the development projects that will be subject to the fee.
 - F. The [Council][Board] finds that there is a reasonable relationship between the amount of the HCP/NCCP implementation fee imposed by this Ordinance and the cost of the public facilities or portion of the public facilities attributable to the development projects on which the fee will be imposed. As set forth in the Implementing Agreement and the HCP/NCCP, including but not limited to Chapters 2, 5, 9 and Appendix G of the HCP/NCCP, the costs for mitigation of cumulative impacts from development projects subject to the fee were estimated by projecting the extent of future development impacts, calculating the acres of mitigation required, and estimating the overall costs of mitigation. The method for

calculating the fee amount for individual development projects reflects the mitigation cost attributable to individual development projects based on:

- a. area, as the cost of acquiring sufficient open space or habitat land to mitigate for the impacts of development is directly proportional to the acreage of the development; and
 - b. location, as the mitigation needed varies in proportion to the intrinsic habitat or open space value of the land impacted. Thus fees are tiered so that the highest fee amounts are imposed in areas (zones) deemed to have the highest intrinsic value per acre, a fee equal to 50% of the highest fee amount is imposed in areas deemed to have substantial but lower intrinsic value per acre, and a fee equal to 25% of that amount is required in areas deemed to have the lowest intrinsic value per acre.
- G. The findings set forth herein are based on the Implementing Agreement, the HCP/NCCP, and studies and data referenced therein, including data indicating the estimated cost to provide the facilities and services for which the HCP/NCCP implementation fees herein are levied, and the anticipated revenue sources, which have been available for public inspection and review in the office of the [City][County] Clerk for more than ten (10) days prior to the date of this public hearing.
- H. At least fourteen (14) days prior to the public hearing at which this ordinance was adopted, [City][County] mailed notice of the time and place of the hearing and of the availability of data indicating the estimated cost required to provide the services and amenities for which the fees established herein are levied, and the anticipated revenue sources therefore, to all interested parties who filed written requests with the [Council][Board] for mailed notice of meetings on new or increased fees. Notice of this hearing was also given by publication in accordance with section 6062(a) of the California Government Code.

SECTION III APPLICATION OF ORDINANCE

- A. This Ordinance shall apply to all development projects, i.e., 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, as further described in Chapter 2.3.1 of the HCP/NCCP, 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**, as it may be amended, and to 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 development projects, 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 the HCP/NCCP, the Implementing Agreement, and this Ordinance.

- B. This Ordinance shall not apply if the [City][County] determines 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 taking of property without just compensation.

SECTION IV PROCEDURES

[Note: the Ordinance must contain application procedures substantially similar to those outlined in the Implementing Agreement and further described in Chapter 6.2 of the HCP/NCCP, but such procedures may be adapted for purposes of administrative efficiency based on each city's and the County's policies and procedures.]

SECTION V HCP/NCCP IMPLEMENTATION FEE OR DEDICATION OF LAND IN LIEU OF FEE

To help 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 development projects that this Ordinance applies to upon the collection of the 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 of the HCP/NCCP.
 2. The development fee for each development project 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 development project, pursuant to Chapter 9.3.1, as verified by [City or County official otherwise responsible for such calculations, e.g., for purposes of environmental review].
 3. As of the Effective Date, the development fee for each of the three Fee Zones is as follows: Zone I (Eastern Agricultural Zone) is \$11,919 per acre; Zone II (Natural Area Zone) is \$23,838 per acre; and Zone III (Infill) is \$5,960 per acre, as further described in Table 9-4 of the HCP/NCCP, attached as **Exhibit B**, and as those amounts are adjusted pursuant to Section V.D below. **[Note: the County and each city may also elect to set the amount of the fees by resolution and/or may incorporate the text of Exhibit B within the ordinance itself.]**
 4. At the time the grading permit or first construction permit is issued, whichever comes first, the applicant shall pay the entire development fee or, with the approval of the [County][City], may pay at least 67% of the fee and execute

an agreement with the [County][City] to arrange for up to 33% of the development fee to be paid through fees or assessments imposed by the applicant on the subject parcels through deed restrictions or similar means, pursuant to Chapter 9.3.1.

B. Wetlands Fee

1. For any development project that will fill, dredge, or remove wetlands, streams, ponds, or riparian areas, the applicant shall concurrently 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**, as verified by [City or County official otherwise responsible for such calculations, e.g., for purposes of environmental review].

C. The development and wetlands fees shall each be adjusted automatically for inflation or deflation and also be adjusted periodically through outside audits.

1. The development fees established by this Ordinance shall automatically be increased or decreased effective March 15 of each year as provided in Table 9-7 of the HCP/NCCP, attached as **Exhibit D**, and based on the formula in **Exhibit E**, which are further explained in Chapter 9.3.1 of the HCP/NCCP. As shown in **Exhibit D** and **Exhibit E**, one portion of the fee amount 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 twelve-month period ending with the September index of the immediately preceding calendar year, and another portion of the fee 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 twelve-month period ending with the September index of the immediately preceding calendar year.
2. The wetlands fees established by this Ordinance shall on March 15 of each year be automatically increased or decreased from the amount then applicable 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 twelve-month period ending with the September index of the immediately preceding calendar year.
3. As provided in the Implementing Agreement and the HCP/NCCP, the HCP/NCCP 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 sixty (60) days after any formal recommendation of the Implementing Entity, the [City][County] shall consider amending this Ordinance and Exhibits B and C to conform the development and wetlands fees according to that recommendation.
4. Any amendment of this Ordinance to increase the HCP/NCCP implementation fees pursuant to Section V.D.3 shall be made only upon the same notice and

hearing, and only upon the [Council][Board] reaching the same findings, with respect to the fee increase, as the [Council][Board] made herein at Section II, with respect to the fees imposed by this Ordinance. Any such amendment to increase the HCP/NCCP implementation fees pursuant to Section V.D.3 shall not be adopted as an urgency measure.

- D. All fees collected hereunder shall be transmitted to the [City][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.
- 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 approve such offers for purposes of compliance with the HCP/NCCP, including the amount of the development fee for which 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 or 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 development project 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 after taking into consideration the dedication in lieu of fees.
- 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 are equivalent to or exceed what would be required under this ordinance, then the Implementing Entity may determine that no further fees are required for purposes of complying with the HCP/NCCP, in which case the HCP/NCCP implementation fee described herein shall not be required.

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 and the Federal and State Permits issued under FESA and the NCCPA, as those documents may be amended from time to time.

- B. "Implementing Agreement" means the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan by and between East Contra Costa County Habitat Conservation Plan Implementing Entity, Contra Costa County, 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.
- C. "Implementing Entity" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency whose members are the cities participating in the HCP/NCCP and the County, or its successor, which is responsible for overseeing the implementation of the HCP/NCCP.
- 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**

This Ordinance becomes effective sixty (60) days after passage, and within fifteen (15) days after passage shall be published once with the names of the supervisors voting for and against it in the [newspaper], a newspaper.

PASSED AND ADOPTED on _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: [City][County] Clerk

By: _____

Exhibit A

**Figure 2-3
Urban Development Area**

Exhibit B

**Table 9-4
HCP/NCCP Development Fee**

Table 9-4. HCP/NCCP Development Fee

	Fee Zone ¹			Total
	Zone I: Cultivated and Disturbed Lands	Zone II: Natural Areas	Zone III: Small Vacant Lots	
Development Fee per Acre at Start of Permit Term ²	\$11,919	\$23,838	\$5,960	
Estimated Cost per Housing Unit ³	\$2,980	\$5,960	\$1,490	
Estimated Areas of Impact in Fee Zones (Excludes Rural Road Activities)⁵				
Initial Urban Dev. Area	6,212	2,306	166 ⁴	8,685
Max. Urban Dev. Area	7,533	4,180	166 ⁴	11,879
Estimated Revenue (2005 Dollars)⁵				
Initial Urban Dev. Area	\$67,310,127	\$49,973,327	\$899,347	\$118,182,800
Max. Urban Dev. Area	\$80,027,657	\$88,813,383	\$881,760	\$169,722,800

Notes:

- ¹ As defined in Figure 9-1. Fee amounts are defined solely by a project's position in Figure 9-1. Zone names are provided only as a general guide to dominant land cover.
- ² See text and Appendix H for calculation methods. Development fees will be adjusted for inflation or deflation according to Table 9-7 and the terms of the HCP/NCCP; consult planning staff with your participating jurisdiction for the latest HCP/NCCP development fee.
- ³ Assumes average housing density of 4.0 units per acre. This is an estimate only; fees will be charged on a per acre basis, not on a per unit basis.
- ⁴ Projects less than 1 acre may be exempt depending on the jurisdiction.
- ⁵ Estimated acres of impact in Fee Zones and revenue projections assume a 10% contingency (i.e., that up to 10% of the impact acres will not pay a fee due to development not occurring during the permit term). The initial fee will be set to reflect the cost and revenue projections associated with the initial urban development area as described in Appendix H. The cost and revenue projections associated with the maximum urban development area are reflected in the revenue projections for that development scenario.

Exhibit C

Table 9-5 Wetland Fee and Acreage Determination Methods

Table 9-5. Wetland Fee and Acreage Determination Methods

Land Cover Type	Fee per unit of Impact ¹	Required Compensation Ratio for Restoration/Creation ¹	Method for Determining Fee Boundary
Riparian woodland/scrub	\$58,140/acre	1:1	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$79,560/acre	1:1	Jurisdictional wetland boundary of state or federal government ² , whichever is greater
Seasonal wetland	\$172,380/acre	2:1	Same as above
Alkali wetland	\$163,200/acre	2:1	Same as above
Ponds	\$86,700/acre	1:1	Jurisdictional waters boundary of state or federal government ² , whichever is greater
Aquatic (open water)	\$86,700/acre	1:1	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$98,940/acre	1:1	Area of impact within banks
Streams			
Streams 25 feet wide or less	\$474/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide ³	\$714/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.

¹ See Appendix G for calculation of fee by wetland type. Wetland fee takes required compensation ratio into account. Fees from Draft HCP/NCCP (in 2004 dollars) were updated for the Final HCP/NCCP using a 2005 CPI of 2.0% per Table 9-7.

² Using methods for determining state and federal jurisdictional waters and wetlands at the time of HCP/NCCP approval.

³ Impact fee for wider streams is 1.5 times the base stream fee to account for higher construction costs on wider streams.

Exhibit D**Table 9-7
Fee Adjustment Indices****Table 9-7.** Fee Adjustment Indices

Fee	Annual Adjustment Index ¹	Average Annual Rate (1991–2001) Example
Development Fee, Rural Road Fee, and Temporary Impact Fee		
Portion for Land Acquisition ² (60 % initially ³)	Change in the annual Home Price Index (HPI) for the Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD) for the prior calendar year (Office of Federal Housing Enterprise Oversight) ⁴	5.19%
Portion for Preserve System Operation, Restoration, and Maintenance (40% initially ³)	Change in the Consumer Price Index for the San Francisco-Oakland-San Jose Combined Statistical Area for all urban consumers for the prior calendar year (U.S. Bureau of Labor Statistics) ⁵	3.25%
Wetland Fee	Same as above	3.25%

Notes:

- 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 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 fees, rural road fees, and temporary impact fees that will be adjusted according to the HPI and CPI will vary over time. For the first annual automatic adjustment, 60% of the initial fees will be adjusted according to the HPI and 40% will be adjusted according to the CPI. The apportionment in subsequent years will depend on the relative values of the indices.
- ⁴ See <http://www.ofheo.gov/HPI.asp>. Data for the prior calendar year are published in March. For the first annual automatic adjustment, the change in the HPI from the end of the third quarter of 2005 through the end of fourth quarter of 2006 will be used. In all subsequent automatic adjustments, the change in the HPI for the prior calendar year will be used. The exception for the first automatic annual adjustment is needed because estimated land acquisitions costs from the Draft HCP/NCCP were adjusted for the Final HCP/NCCP by the change in the HPI during the first three quarters of 2005 because data for the fourth quarter of 2005 were not available in time.
- 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 Fee Increase Formula

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

Where:

n= year of HCP/NCCP Implementation [year 1 (n=1) is 2006, the first calendar year in which HCP/NCCP Implementation occurs; year 2 (n = 2) is 2007; etc. Year 0 (n=0) is 2005.]

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)

Fee₁ = \$23,838 for Zone II, \$11,919 for Zone I, and \$5,960 for Zone III

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

L₁ = 60% of \$23,838 = \$14,303

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

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

S₁ = 40% of \$23,838 = \$9,535

CPI_{n-1} = Consumer Price Index for the San Francisco-Oakland-San Jose 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

The above formula applies for every fee adjustment except for the first fee adjustment to calculate the fees for Year 2. Because the Year 1 fees were calculated without access to Home Price Index data for the fourth quarter of 2005, the fee adjustment for Year 2 will rely on a different formula. The following formula will be used to calculate the fee adjustment for year 2 and will be used to calculate the fees that apply from March 15, 2007 through March 14, 2008:

$$Fee_{2007} = [[$14,303 * (HPI_{2006}/HPI_x)] + [($9,535 * (CPI_{2006}/CPI_{2005}))] * Z$$

Where:

HPI_x = Home Price Index (HPI) for the Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD) through the third quarter of 2005 as published by the Office of Federal Housing Enterprise Oversight