

## RESOLUTION NO. 2007-234

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD ADOPTING BRENTWOOD HABITAT CONSERVATION FEES NECESSARY TO IMPLEMENT THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN AND AMENDING THE 2007/2008 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 7 of the Conservation/Open Space Element of the City's General Plan calls for the protection of natural resources within the City's Planning Area; and

**WHEREAS**, Policy 7.2 of the Conservation/Open Space Element of the City's General Plan calls for the preservation of vegetation and associated wildlife habitat in the City's Planning Area; and

**WHEREAS**, in October 2006, a Final East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) and Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was released and copies of which are on file within the Brentwood Community Development Department at 104 Oak Street; 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.

**WHEREAS**, the proposed HCP/NCCP conservation measures address the landscape-level, community-level (or habitat), and species-level impacts, and includes 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 final HCP/NCCP included 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 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**, a public hearing has been noticed in accordance with State Law; 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

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

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRENTWOOD DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1. Findings:**

The Council makes each of the following findings:

- A. The purpose of the habitat conservation mitigation fees to help fund the HCP/NCCP conservation strategy, mitigate the impacts development on covered species and contribute to the recovery of these species in the plan area.
- B. The habitat conservation mitigation fees help implement Goal 7 and Policy 7.2 of the Conservation/Open Space Element of the General Plan.
- C. 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 authorized by this Ordinance and the type of development projects subject to the fees. The fees established 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 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 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 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 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.

- D. Based on 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 HCP/NCCP implementation fees and the type of development projects on which the fees are imposed in that the need for the activities and the facilities arise from the very 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.
- E. 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 authorized by Chapter 16.168 of the Brentwood Municipal Code and established in this resolution 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, 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 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, 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.
- F. The Final Environmental Impact Report (EIR) for the HCP/NCCP project was prepared in compliance with Public Resources Code Section 21000 et seq., and the State California Environmental Quality Act (CEQA) Guidelines Section 15000 et seq. All impacts associated with this project have been analyzed in the EIR prepared for this project, and the Council has independently reviewed and considered the information contained therein, and adopted findings as a responsible agency related to the EIR for the HCP/NCCP prior to making its decision on this resolution. No substantial changes have occurred to the circumstances under which that EIR was certified and no new information, which was not known and could not have been known at the time that the EIR was certified as complete, has become available relating to the environmental effects of this project. Therefore, the Program EIR for the HCP/NCCP is adequate for the approval relating to this resolution.
- G. Future individual affected development projects subject to this resolution will require separate project-specific CEQA review.
- H. After considering the final HCP/NCCP, City staff reports and the testimony received during a public hearing, the Council approves and adopts said report, and incorporates such herein.

- I. The HCP/NCCP, staff reports and the testimony establish:
  1. That there is a reasonable relationship between the fee's use and the type of development on which the fee is imposed; and
  2. That there is a reasonable relationship between the amount of the fees and the cost of purchasing habitat to protect species covered under the HCP/NCCP within the Brentwood Planning Area; and

**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	\$12,457 per acre
Development Fee Zone II	\$24,914 per acre
Development Fee Zone III	\$6,229 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.

#### E. Administration Fee

1. As of the Effective Date of this Resolution, the Administration Fee for HCP/NCCP incidental take authorization applications is \$1,168 as described in Exhibit E.
2. On July 1 of each year, the Administration Fee shall be automatically adjusted by an amount equal to the percentage of increase or decrease in the Consumer Price Index for this region, as last computed before the July 1 date.
3. The Administration Fee may also be adjusted if the City updates or modifies the Cost Allocation Plan and conducts a public hearing to implement a new or revised fee or fees based upon such update or modification.
4. The Administration Fee shall be determined on the basis of the fee schedule in effect at the time the application is submitted to the City for review. The fee shall be payable in full at the time the application is submitted.
5. The adoption of this Resolution does not affect the ability of the City to request an agreement between the project applicant and the City to pay extraordinary processing costs and establish deposit accounts.
6. The Community Development Director shall require establishment of deposit account rather than payment of the flat fee described in Exhibit E for review of complex HCP/NCCP incidental take authorization applications involving the payment of wetland mitigation fees, dedication of land in lieu of some or all the Development Fee, and project sites of 10 acres or more in size . The initial deposit amount shall be \$3,000.

#### **Section 4. Effective Date of Fee:**

The fee provided in this Resolution shall be effective on January 15, 2008 or at least sixty (60) days after the adoption of this Resolution whichever is later. The effective date of this Resolution shall be concurrent with the effective date of the HCP/NCCP Implementing Ordinance.

#### **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 Amendment:**

The City of Brentwood 2007/2008 Cost Allocation Plan and Schedule of Fee 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 9th day of October 2007 by the following vote:

**AYES:** Becnel, Brockman, Richey, Stonebarger  
**NOES:** None  
**ABSENT:** Taylor  
**ABSTAIN:** None



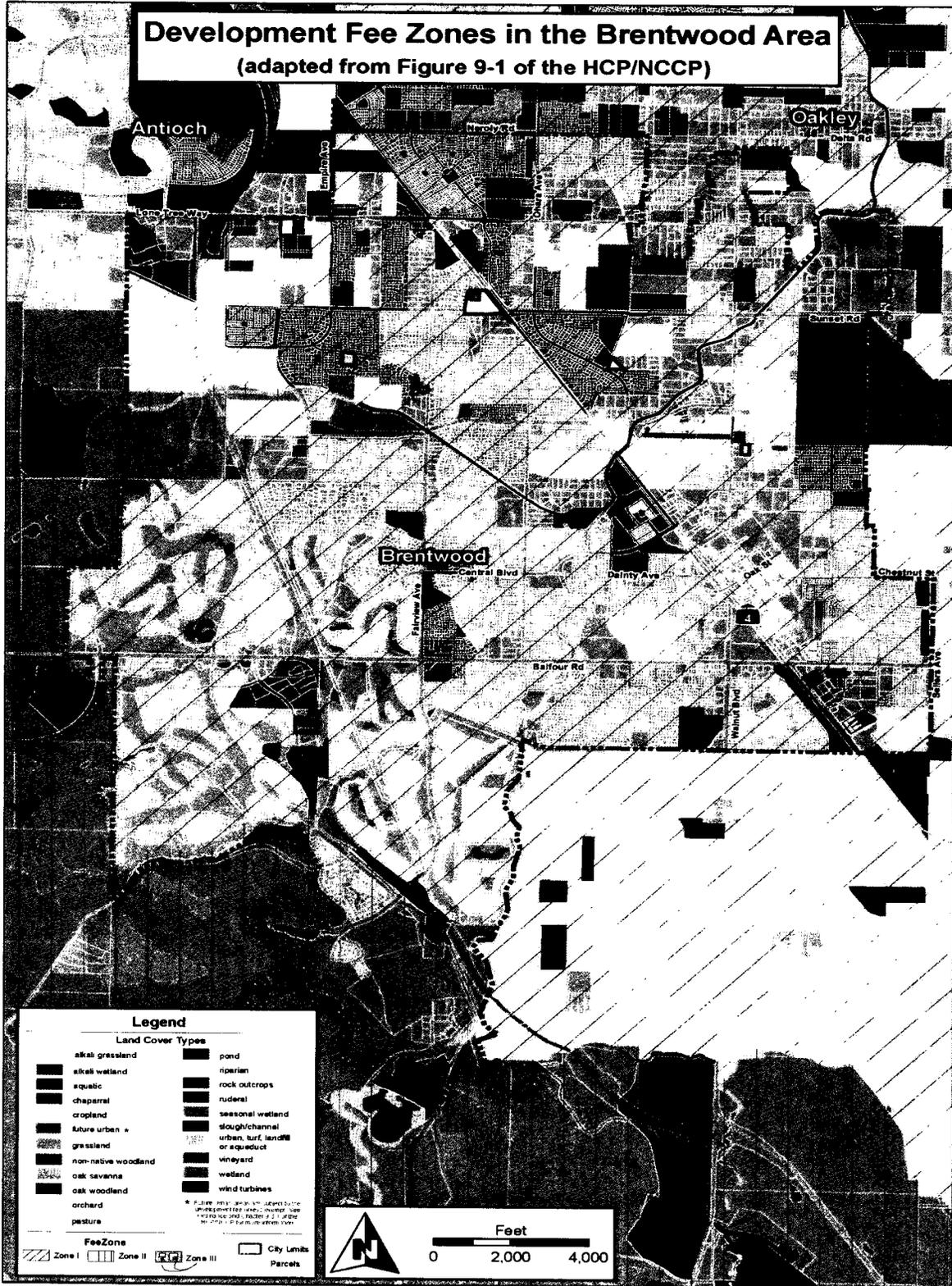
Robert Brockman  
Vice Mayor

ATTEST:



Margaret Wimberly, CMC  
City Clerk

### EXHIBIT A TO CITY COUNCIL RESOLUTION Development Fee Zones in the Brentwood Area



**EXHIBIT B****Wetland Mitigation Fee and Acreage Determination Methods**

(Adapted from Table 9-5 of the HCP/NCCP to reflect the fee amounts applicable after March 2007)

Land Cover Type	Fee per unit of Impact <sup>1</sup>	Required Compensation Ratio for Restoration/Creation <sup>1</sup>	Method for Determining Fee Boundary
Riparian woodland/scrub	\$60,004/acre	1:1	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$82,111/acre	1:1	Jurisdictional wetland boundary of state or federal government <sup>2</sup> , whichever is greater
Seasonal wetland	\$177,908/acre	2:1	Same as above
Alkali wetland	\$168,433/acre	2:1	Same as above
Ponds	\$89,480/acre	1:1	Jurisdictional waters boundary of state or federal government <sup>2</sup> , whichever is greater
Aquatic (open water)	\$45,266/acre	1:1	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$102,113/acre	1:1	Area of impact within banks
Streams			
Streams 25 feet wide or less	\$489/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide <sup>3</sup>	\$737/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.

<sup>1</sup> See Appendix G for calculation of fee by wetland type. Wetland fee takes required compensation ratio into account.

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

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

**EXHIBIT C****Fee Adjustment Indices**

(Adapted from Table 9-7 of the HCP/NCCP to reflect the fee adjustment procedures applicable after March 2007)

Fee	Annual Adjustment Index <sup>1</sup>	Average Annual Rate (1991–2001) <b>Example</b>
<b>Development Fee</b>		
Portion for Land Acquisition <sup>2</sup> (60.5 % initially <sup>3</sup> )	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) <sup>4</sup>	5.19%
Portion for Preserve System Operation, Restoration, and Maintenance (39.5% initially <sup>3</sup> )	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) <sup>5</sup>	3.25%
Wetland Mitigation Fee	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) <sup>5</sup>	3.25%

**Notes:**

- <sup>1</sup> 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.
- <sup>2</sup> Direct land acquisition costs only. Excludes costs associated with land transaction, site improvements, and due diligence (e.g., pre-acquisition surveys).
- <sup>3</sup> 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, 60.5% of the initial fees will be adjusted according to the HPI and 39.5% 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.
- <sup>4</sup> See <http://www.ofheo.gov/HPI.asp>. 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.
- <sup>5</sup> 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](http://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm)

**EXHIBIT D****Automatic Development Fee Increase Formula**

$$\text{Fee}_n = [ [L_{n-1} * (\text{HPI}_{n-1}/\text{HPI}_{n-2})] + [S_{n-1} * (\text{CPI}_{n-1}/\text{CPI}_{n-2})] ] * Z$$

Where:

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

Fee<sub>n</sub> = 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)

Fee<sub>1</sub> = \$24,914 for Zone II, \$12,457 for Zone I, and \$6,229 for Zone III

L<sub>n-1</sub> = Land acquisition portion of development fee for the year prior to year n

L<sub>1</sub> = 60.5% of \$24,914 = \$15,073

HPI<sub>n-1</sub> = 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<sub>n-1</sub> = Non-land acquisition portion of development fee for the year prior to year n

S<sub>1</sub> = 39.5% of \$24,914 = \$9,841

CPI<sub>n-1</sub> = 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

**EXHIBIT E****HCP/NCCP Implementation Administrative Costs**

<b>Task</b>	<b>Staff Position Assigned to Perform Task</b>	<b>Hourly Billing Rate</b>	<b>Hours Required To Perform Task</b>	<b>Administrative Cost</b>
1. Initial completeness review of project take authorization application information	Associate Planner	\$129.77	0.5	\$64.89
2. Review of biological survey information	Associate Planner	\$129.77	2.0	\$259.54
3. Evaluation of site conditions and preparation of applicable avoidance or impact minimization measures and HCP/NCCP-related conditions of project approval.	Associate Planner	\$129.77	3.0	\$389.31
4. Determination of applicable fee and/or land dedication requirements.	Associate Planner	\$129.77	0.5	\$64.89
	Principal Planner	\$160.53	0.5	\$80.27
5. Verification that avoidance and minimization measures have been followed and monitor HCP/NCCP-related conditions of project approval.	Associate Planner	\$129.77	1.0	\$129.77
6. Fee collection and/or verification of land dedication prior to grading permit or before site disturbing activities.	Public Works Technical Assistant II	\$118.13	0.5	\$59.07
7. Record receipt of funds, account monitoring, and process disbursements of funds to East Contra Costa County Conservancy	Accountant II	\$105.73	0.5	\$52.87
	Accounting Manager	\$135.32	0.5	\$67.66
<b>TOTAL</b>				<b>\$1,168*</b>

\*Note: The administrative fee total has been rounded to the nearest dollar.