

**RESOLUTION NO. 48-2007**

**A RESOLUTION ADOPTING IMPLEMENTATION FEES FOR THE  
EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN /  
NATURAL COMMUNITY CONSERVATION PLAN  
(CDD 10-05)**

**THE CITY COUNCIL  
City of Clayton, California**

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

**WHEREAS**, *Clayton Municipal Code* Chapter 16.55, adopted on November 6, 2007 provides for the payment of Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) implementation fees; and

**WHEREAS**, Clayton General Plan Goal 3 of the Land Use Element calls for preservation of the natural features, ecology, and scenic vistas of the Clayton 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, copies of which are on file within the Clayton Community Development Department; 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 (or habitat)-level, 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 Association 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 fees submitted herein for adoption and implementation by the City Council are in reliance on the comprehensive studies that have been prepared for the adopted HCP/NCCP; and

**WHEREAS**, on December 19, 2006, the City Council approved the HCP/NCCP; and

**WHEREAS**, on February 20, 2007, the City Council approved an Implementing Agreement for the HCP/NCCP and a Joint Exercise of Powers Agreement creating a conservancy to form the oversight agency for the HCP/NCCP; 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 16, 2007, the City Council held a public hearing on the proposed implementing ordinance and the authorization and establishment 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, and at the November 6, 2007 City Council meeting.

**NOW, THEREFORE, THE CITY COUNCIL OF CLAYTON, CALIFORNIA DOES HEREBY FIND AND RESOLVE AS FOLLOWS:**

#### **SECTION 1. Affirmations**

The City Council does hereby find and affirm the above noted Recitals are true and correct facts and information relative to the proceedings at hand.

## SECTION 2. Findings

The City Council makes each of the following findings:

- A. The purpose of the habitat conservation mitigation fees is 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 General Plan Goal 3 of the Land Use Element of the Clayton 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 Resolution and the type of development projects subject to the fees. 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. 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 16.55 of the Clayton 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 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 City 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. The HCP/NCCP, staff reports and the testimony establish:

1. That there is a reasonable relationship between the fees' use and the type of development on which the fees are 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 Clayton area; and

### **SECTION 3. Definitions**

For purposes of this Resolution, the terms defined in Chapter 16.55 of the Clayton Municipal Code are incorporated by reference herein.

### **SECTION 4. Implementation Fees Imposed**

A. Chapter 16.55 of the Clayton 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, or portion thereof, 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.

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's 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's 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's 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 5. Effective Date of Fee**

The fees provided in this Resolution shall be effective on January 15, 2008 or 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 6. 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.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Clayton, California at a regular public meeting thereof held on November 6, 2007, by the following vote:

AYES: Mayor Walcutt, Vice Mayor Manning, Councilmembers Pierce, Shuey and Stratford.

NOES: None.

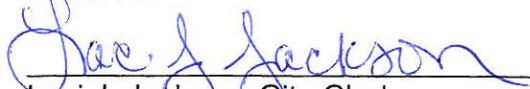
ABSENT: None.

ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA

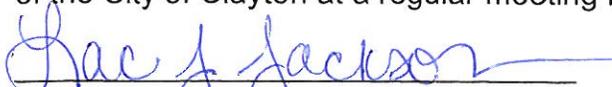
  
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William R. Walcutt, Mayor

ATTEST:

  
\_\_\_\_\_  
Laci J. Jackson, City Clerk

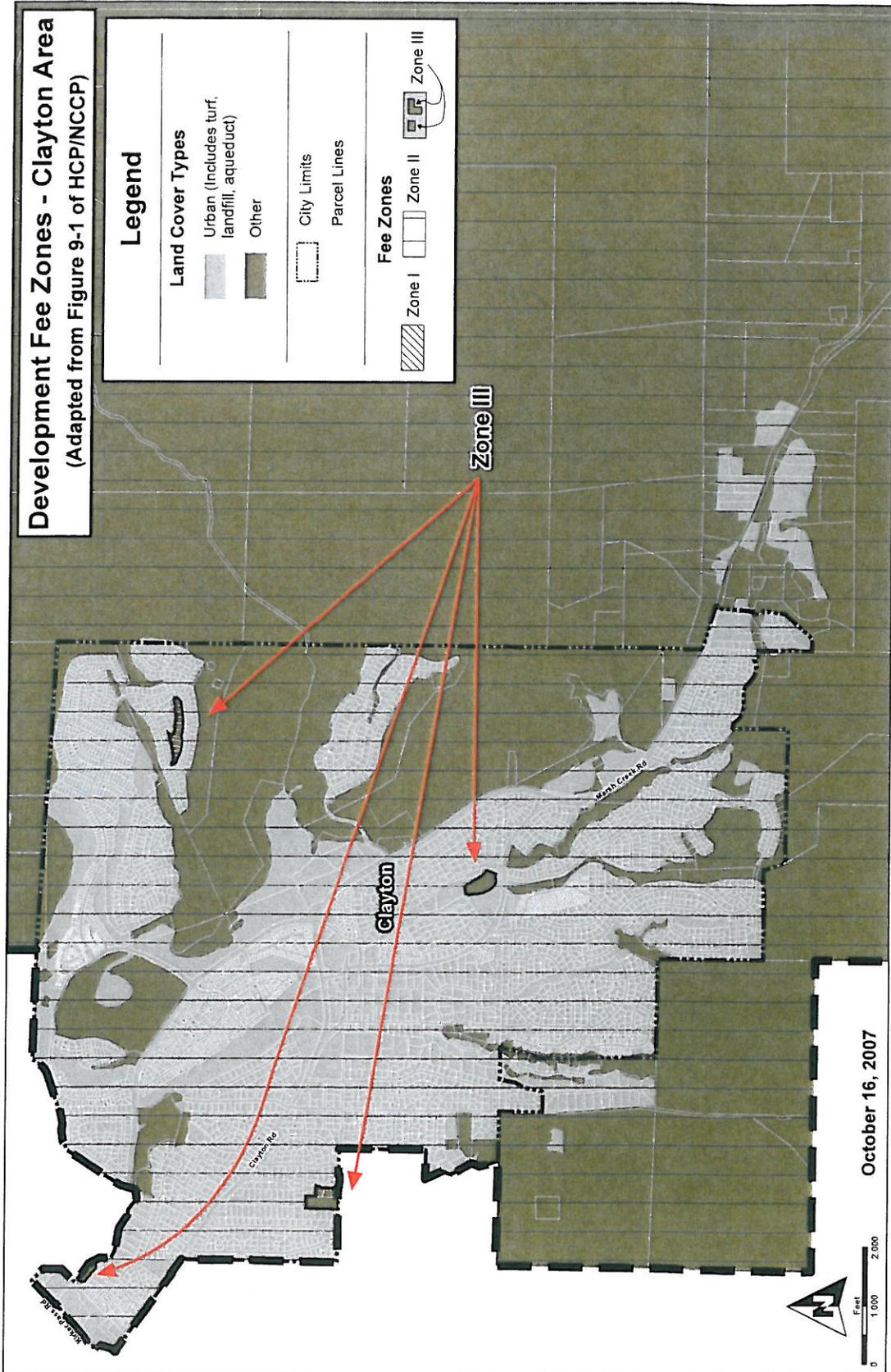
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I certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular meeting held on November 6, 2007.

  
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Laci J. Jackson, City Clerk

CDD\2005\10-05.Resolution-Approved

**EXHIBIT A**  
**Development Fee Zones --- Clayton 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%
<b>Wetland Mitigation Fee</b>	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 D.
- <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