

ORDINANCE NO. 412

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON TO IMPLEMENT THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN BY ADDING CHAPTER 16.55 TO THE CLAYTON MUNICIPAL CODE (CDD 10-05)

THE CITY COUNCIL OF CLAYTON, CALIFORNIA FINDS AS FOLLOWS:

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, on April 18, 2000 the City Council approved Resolution No. 17-2000 and agreed to participate in the preparation of an East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP); and

WHEREAS, in June 2000, the East Contra Costa County Habitat Conservation Plan Association (HCPA) was formed to provide regional conservation and development guidelines to protect natural resources while improving and streamlining the permit process for endangered species and wetland regulations; and

WHEREAS, the HCPA includes the cities of Brentwood, Clayton, Oakley, and Pittsburg; Contra Costa Water District, East Bay Regional Park District, and Contra Costa County; and

WHEREAS, in October 2001, the HCPA began preparing a HCP/NCCP for East Contra Costa County; and

WHEREAS, in June 2005, a Draft HCP/NCCP was released for public review and comment; and,

WHEREAS, in October 2006, a Final HCP/NCCP and Final Environmental Impact Report / Environmental Impact Statement (EIR/EIS) was released, a copy of which is 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 Final HCP/NCCP conservation measures address the landscape-level, community (or habitat)-level, 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, in addition to its primary role of protecting species and their habitats, the Preserve System would also support activities such as recreation, livestock grazing and, to a lesser degree, cultivated agriculture; and

WHEREAS, by developing and implementing 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 HCPA 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, on December 19, 2006, the City Council adopted findings as a responsible agency related to the EIR for the HCP/NCCP and approved the East Contra Costa County 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, 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 on July 25, 2007 and August 6, 2007, respectively; and

WHEREAS, a public hearing to consider this ordinance was noticed in accordance with State Law; and

WHEREAS, on October 16, 2007, the City Council held a public hearing on this proposed implementing ordinance for the HCP/NCCP; and

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

NOW, THEREFORE, THE CITY COUNCIL OF CLAYTON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds as follows:

- A. 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 1.A above, the City of Clayton ("City") participated as a member of the East Contra Costa County Habitat Conservation Plan Association, 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.
- C. 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.
- D. Adoption and implementation of this Ordinance will enable the City to promote the health, safety and welfare of all of its residents by helping to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing Agreement, 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, the California Environmental Quality Act, the Federal Endangered Species Act, the California Endangered Species Act, the California Natural Community Conservation Planning Act, and other applicable laws.
- E. 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 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.

- F. 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.

- G. 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 this Ordinance 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.

H. 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 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 implementing ordinance. 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 Ordinance.

I. Future individual development projects subject to this Ordinance will require separate project-specific CEQA review.

SECTION 2. Title 16 of the Clayton Municipal Code is hereby amended to add a new Chapter 16.55 to read as follows:

“Chapter 16.55
HABITAT CONSERVATION PLAN IMPLEMENTATION”

Sections:

- 16.55.010 Purpose
- 16.55.020 Definitions
- 16.55.030 Applicability
- 16.55.040 Administration and Application Procedures
- 16.55.050 Requirements for Affected Development Projects
- 16.55.060 HCP / NCCP Implementation and Administration Fees
- 16.55.070 Land and Other Options In Lieu of Fee
- 16.55.080 Enforcement

16.55.010 Purpose.

The purpose of this chapter is to help 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; to establish procedures to implement the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; and to authorize fees to be used for the conservation of habitat for covered species in mitigation of the impacts of development within the City.

16.55.020 Definitions.

The following terms shall have the meaning set forth herein:

“Affected development project” means all development projects within the City’s land use jurisdiction except for the development projects listed in Section 16.55.030 below.

“Covered species” means those species of plants and animals whose conservation and management are provided for by the HCP/NCCP for which limited take is authorized pursuant to the state and federal permits.

“Development fee” means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section 16.55.060 of this chapter.

“Development fee zones” means the three areas depicted as Zones I, II and III on the map attached hereto as Exhibit A and in the detailed map data gathered as part of the HCP/NCCP used to create Exhibit A, both of which are incorporated herein by reference and are on file with the Community Development Department.

“Development project” means 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.

“Director” means the Community Development Director of the City, including his or her designated representatives.

“HCP/NCCP” means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, approved by the City Council on December 19, 2006, as may be revised from time to time and on file with the Community Development Department.

“HCP/NCCP implementation fees” means the Development Fee and the Wetland Mitigation Fee.

“Implementing agreement” means the February 20, 2007 Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan by and between East Contra Costa County Habitat Conservancy, County of Contra Costa, 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.

“Implementing entity” means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by Contra Costa County and the cities of Brentwood, Clayton, Oakley and Pittsburg to oversee the implementation of the HCP/NCCP.

“Jurisdictional wetlands and waters” means state-and federally-regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. § 1251 et seq.), from the State Water Resources Control Board under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act (California Water Code, § 13000 et seq.), or from the California Department of Fish and Game under section 1602 of the California Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.

“Project applicant” means a property owner, or duly-designated agent of the property owner, who has submitted to the City a request for approval of a development project on a property subject to the land use jurisdiction of the City.

“Public facilities” includes public improvements, public services and community amenities.

“State and federal permits” means the permit issued by the California Department of Fish and Game to the County and other local agencies on August 6, 2007 authorizing take of covered species pursuant to the HCP/NCCP and the Natural Community

Conservation Planning Act (permit number 2835-2007-01-03) and the permit issued by the United States Fish and Wildlife Service to the County and other local agencies on July 25, 2007 authorizing incidental take of covered species pursuant to the HCP/NCCP and the federal Endangered Species Act (permit number TE160958-0), as those documents may be amended from time to time.

“Take” includes the definitions provided by the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.) (“FESA”) and its implementing regulations with regard to activities subject to that Act, the California Fish and Game Code with regard to activities subject to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.). Specifically, take is defined in FESA to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. § 1532(18)) and in the California Fish and Game Code section 86 as “to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.”

“Urban development area” means the areas designated for urban development that are either (1) within the area designated as the “Initial Urban Development Area” as generally depicted on Figure 2.3 of the HCP/NCCP, incorporated herein by reference, or (2) areas added to or removed from the Initial Urban Development Area according to the procedures set forth in Section 3.50 of the Implementing Agreement.

“Wetland mitigation fee” means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section 16.55.060 B of this chapter.

16.55.030 Applicability.

This chapter shall apply to all development projects, within the City’s land use jurisdiction and within the Urban Development Area as the boundaries of these areas may change pursuant to the law or this chapter, except for the following:

- A. Any development project that will permanently disturb less than one acre. The “acreage of land permanently disturbed” by a project, as that term is defined in Chapter 9.3.1 of the HCP/NCCP, shall be determined by the Director.
- B. Any development project that the Director determines is contained entirely within an area mapped as urban, turf, landfill and/or aqueduct land cover types in the HCP/NCCP, as generally depicted on Exhibit A and in the map data used to create Exhibit A.
- C. Any development project of a type not covered by the HCP/NCCP within the Urban Development Area, as set forth in Chapter 2.3.1 of the HCP/NCCP.
- D. Any development project with vested rights pursuant to an agreement by and between the project applicant and the City existing as of the effective date of this chapter.

- E. Any development project exempt under any provision of law.
- F. Any development project where the City determines based on written evidence submitted by the project applicant that application of this chapter would deprive the project applicant of all reasonable economic use of the property in violation of federal or state constitutional prohibitions against the taking of property without just compensation.

16.55.040 Administration and Application Procedures.

- A. The Director shall administer and apply the provisions of this chapter for the City. Such actions shall include, but not be limited to review of HCP/NCCP take authorization applications for completeness and verification that the appropriate HCP/NCCP implementation fee amount, where applicable, has been collected prior to site disturbance or the issuance of the first construction permit.
- B. Project applicants for any and all Affected Development Projects shall submit an application for take authorization to the Director for review simultaneously with the submittal of a request for approval of a development project. The Director may require that the application be submitted using an application form prepared by the Community Development Department. The application for take authorization must include the following information to be determined complete:
 - 1. Description of the Affected Development Project, including maps, detailed information on the project footprint, extent of construction and extent of any ongoing maintenance activities subject to the HCP/NCCP.
 - 2. One or more reports documenting the methods and results of planning surveys and the methods of applicable pre-construction surveys and construction monitoring, in accordance with Chapter 6 of the HCP/NCCP. The Director may allow specific components of the required surveys, including some or all of the results of planning surveys and the methods of applicable pre-construction surveys and construction monitoring, to be provided subsequent to the submittal of the initial application and prior to approval of the development project; however, the application for take authorization is not complete until all items listed in this paragraph have been submitted.
 - 3. Evidence of compliance or planned compliance with avoidance and minimization, and conservation measures, in accordance with Chapter 6 of the HCP/NCCP.
 - 4. Quantification of the anticipated acreage of land permanently disturbed, consistent with Chapters 6.2 and 9.3.1 of the HCP/NCCP.

5. Estimate of HCP/NCCP implementation fees due and/or documentation of proposed land dedication and/or proposed habitat restoration or creation, consistent with Section 16.55.060 of this chapter.
 6. Other information as determined by the Director in accordance with the HCP/NCCP.
 7. Payment of the HCP/NCCP administration fee, in accordance with Section 16.55.060 of this chapter.
- C. The City may grant take authorization to a project applicant only upon satisfaction of all of the following:
1. The application for take authorization is deemed complete.
 2. The conditions of approval for the project require compliance with all terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits that apply to the project. Such terms and conditions include but are not limited to the following:
 - a. Payment of the required HCP/NCCP implementation fees and/or approval by the City of an offer of land dedication and/or habitat restoration or creation, pursuant to the requirements of Sections 16.55.060 and 16.55.070, respectively, of this chapter.
 - b. Compliance with all relevant surveys, monitoring, avoidance, minimization, and conservation measures determined by the Director to apply to the project, pursuant to Chapter 6 of the HCP/NCCP.
 3. The City makes a determination that extension of take authorization is consistent with the HCP/NCCP, the Implementing Agreement, the state and federal permits, all applicable federal, state and local laws and regulations, and the constitutions of the United States and the State of California.

16.55.050 Requirements for Affected Development Projects.

To help fund the acquisition, management and monitoring of lands for the benefit of covered species, natural communities, biological diversity, ecosystem function, and all other implementation and administration requirements of the HCP/NCCP by the Implementing Entity, the City shall condition the approval of any and all Affected Development Projects upon the collection of the applicable Development Fee and, if applicable, Wetland Mitigation Fee, unless an alternative described in Section 16.55.070 is approved or required.

16.55.060 HCP / NCCP Implementation and Administration Fees.

A. Development Fee.

1. The Development Fee shall be imposed upon and collected for each acre of land, or portion thereof, permanently disturbed.
2. The Director shall determine in which of the three Development Fee Zones the Affected Development Project is located, pursuant to Exhibit A and the map data used to create Exhibit A.
3. The Development Fee for each Affected Development Project shall be calculated by multiplying the fee for the applicable Development Fee Zone by the acreage of land permanently disturbed by the project, as determined by the Director pursuant to Chapter 9.3.1 of the HCP/NCCP. The Development Fee amount shall be based on the fee established by the City Council fee resolution in effect at the time of actual payment of the Development Fee to the City.
4. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of the first construction permit, the project applicant shall either (1) pay the entire Development Fee or, (2) with the prior written approval of the City, pay at least sixty-seven (67) percent of the Development Fee and execute an agreement with the City, in a form approved by the City Attorney, to provide additional funding payments through assessments on the subject parcel(s) or other mechanisms, provided that assessments or other funding mechanisms are legally authorized for this purpose, pursuant to the requirements of Chapter 9.3.1 of the HCP/NCCP.
5. The Development Fee amount applicable to an Affected Development Project shall be the Development Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first construction permit is issued for the project. Notwithstanding the foregoing, a project applicant may request to pay the Development Fee in a calendar year prior to the calendar year in which the grading permit or first construction permit is issued. Such request may be granted by the Director only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If such request is granted, the applicable Development Fee shall be the Development Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to this chapter.

B. Wetland Mitigation Fee.

1. In addition to a Development Fee, a Wetland Mitigation Fee shall be imposed upon and collected from any and all Affected Development Projects that will fill, dredge, or remove Jurisdictional Wetlands and Waters or riparian woodland/scrub, and from any and all Affected Development Projects that have been granted an exception to the stream setback established pursuant to Conservation Measure 1.7 of the HCP/NCCP.

2. The Director shall determine which of the land cover types will be impacted by an Affected Development Project and the corresponding fee amounts in accordance with Chapter 9.3.1 of the HCP/NCCP and the Wetland Mitigation Fee amount established by the City Council fee resolution. The Wetland Mitigation Fee applicable to an Affected Development Project that has been granted an exception to the stream setback shall be determined by the Director, based on the acreage of setback encroachment, in accordance with Chapter 9.3.1 of the HCP/NCCP and the Wetland Mitigation Fee amount established by City Council fee resolution.
 3. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of the first construction permit, the project applicant shall pay the Wetland Mitigation Fee determined for the Affected Development Project. The Wetland Mitigation Fee amount applicable to an Affected Development Project shall be the Wetland Mitigation Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first construction permit issued for the project. Notwithstanding the foregoing, a project applicant may request to pay the Wetland Mitigation Fee in a calendar year prior to the calendar year in which the grading permit or first construction permit is issued. Such request may be granted by the Director only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If such request is granted, the applicable Wetland Mitigation Fee shall be the Wetland Mitigation Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to this chapter.
- C. The Development Fee and Wetland Mitigation Fee shall each be adjusted automatically for inflation or deflation in accordance with the requirements of the HCP/NCCP and the City Council fee resolution. All Development Fees and Wetland Mitigation Fees collected hereunder shall be transmitted to the County Auditor-Controller or a successor accounting entity established by the Governing Board of the East Contra Costa County Habitat Conservancy at least 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 the Mitigation Fee Act.
- D. Administration Fee.

Each HCP/NCCP application shall be charged an HCP/NCCP administration fee to review each application request and collect and process the applicable Development Fee and Wetland Mitigation Fee. The amount of the HCP/NCCP administration Fee shall be established by resolution of the City Council and may be amended from time to time.

16.55.070 Land and Other Options In Lieu of Fee.

A. Dedications.

1. On a case-by-case basis, and upon a voluntary offer by the project applicant, the City may accept a dedication of land in lieu of some or all of the Development Fee that would otherwise be imposed upon a development project. Any offer of dedication may be considered for acceptance only if the land dedication is considered by the Director to be consistent with the HCP/NCCP and Implementing Agreement. The Director shall determine the amount of the Development Fee for which such dedication would substitute in accordance with Section 13.2.2.2 of the Implementing Agreement and Chapters 8.6.7 and 9.3.1 of the HCP/NCCP.
2. If required to comply with the "Stay Ahead" provision set forth in Chapter 8.6.1 of the HCP/NCCP and Section 9.2 of the Implementation Agreement, the City may require that some or all Affected Development Projects offer a dedication of land in lieu of some or all of the Development Fee that would otherwise be imposed.

B. Creation /Restoration of Habitat.

On a case-by-case basis, and upon a voluntary offer by the project applicant, the City may accept the restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some or all of the Wetland Mitigation Fee that would otherwise be imposed on an Affected Development Project. The offer of restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some or all of a portion of the Wetland Mitigation Fee may be considered for acceptance only if such restoration or creation is determined by the Director to be consistent with the HCP/NCCP and Implementing Agreement. The Director shall determine the amount of Wetland Mitigation Fee for which such restoration or creation would substitute in accordance with Conservation Measures 2.1 and 2.2 and Chapter 9.3.1 of the HCP/NCCP.

C. Separate Take Authorization.

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 development project may apply to the City to pay a fee, the amount to be negotiated by the project applicant with the City, to support the conservation of habitat and open space under the HCP/NCCP instead of the HCP/NCCP implementation fees. If the Director determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this chapter, then the City may determine that no further fees are required for purposes of complying with the HCP/NCCP, in which case the HCP/NCCP implementation fees described herein shall not be required of the project.

16.55.080 Enforcement.

- A. The City is authorized to enforce the provisions of this chapter by civil, criminal, and/or administrative action and/or any other proceeding or method permitted by law, including all enforcement provisions of this Code.
- B. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant from the requirements of this chapter.”

SECTION 3. Action to Challenge. Any action or proceeding to attack, review, set aside, void or annul this ordinance must be commenced and the service made on the City no later than ninety (90) days after its effective date.

SECTION 4. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this ordinance are hereby repealed. The provisions of this ordinance shall control with regard to any provisions of the *Municipal Code* that may be inconsistent with the provisions of this ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council has declared that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase thereof be declared unconstitutional, invalid or ineffective.

SECTION 6. Effective Date and Publication. This ordinance shall become effective on January 15, 2008 or sixty (60) days from and after its passage, whichever is later. Within fifteen (15) days after the passage of the ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of Clayton, California held on the 16th day of October 2007.

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

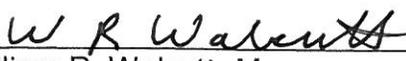
AYES: Mayor Walcutt, Vice Mayor Manning, Councilmembers Pierce, Shuey and Stratford.

NOES: None.

ABSENT: None.

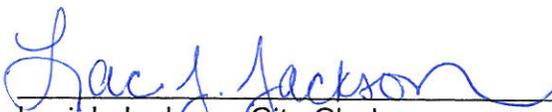
ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA



William R. Walcutt, Mayor

ATTEST:



Laci J. Jackson, City Clerk

APPROVED AS TO FORM:



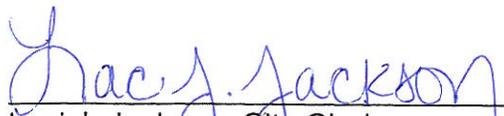
J. Daniel Adams, City Attorney

APPROVED BY ADMINISTRATION:



Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of Clayton, California held on October 16, 2007 and was duly adopted, passed and ordered posted at a regular public meeting of the City Council held on November 6, 2007.



Laci J. Jackson, City Clerk

CDD\2005\10-05.Ordinance-Final

