

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the matter of:

Resolution Establishing HCP/NCCP)
Development Fee, Wetland Fee,)
Administration Fee and Fee)
Calculation Methodology)

RESOLUTION NO. 07-10898

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, General Plan Policy 9-P-3, related to biological resources and habitat, calls for the City to participate in the development of a regional Habitat Conservation Plan (HCP) and consider its adoption for preservation of native species throughout eastern Contra Costa County.

WHEREAS, On April 16, 2007, the City Council adopted Resolution No. 07-10745 approving the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), and authorized the City Manager to execute the HCP/NCCP Implementing Agreement and Joint Exercise of Powers Agreement Creating the East Contra Costa County Habitat Conservancy.

WHEREAS, On May 1, 2007, the City Manager executed the HCP/NCCP Implementing Agreement and on April 19th, 2007, the City Manager executed the HCP/NCCP Joint Exercise of Powers Agreement.

WHEREAS, The Implementing Agreement is an agreement among the participating cities, the County, the Flood Control District, East Bay Regional Park District (EBRPD), the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) that assigns roles and responsibilities to these parties in the implementation of the HCP/NCCP. The Implementing Agreement requires CDFG and USFWS to provide regional endangered species permits to the participating cities, the County, the Flood Control District and EBRPD, which are collectively responsible for implementing the terms of the permits. The East Contra Costa County Habitat Conservancy (the "Conservancy") has the primary responsibility of expending fees and other funds and for ensuring that the land acquisition, restoration, enhancement, management and monitoring requirements of the HCP/NCCP are implemented. The Conservancy has primary authority and responsibility for implementing the HCP/NCCP and is charged with carrying out all the duties assigned to the Implementing Entity in the HCP/NCCP and the Implementing Agreement.

WHEREAS, Under the HCP/NCCP Implementing Agreement, the cities, County, Flood Control District and EBRPD will issue endangered species permits to themselves and ensure compliance with the HCP/NCCP for projects they conduct. The cities and the County can also issue endangered species permits to developers of projects approved by the cities or the County and ensure that such projects also comply with the HCP/NCCP.

WHEREAS, August 6, 2007 is the effective date of the Implementing Agreement which follows the issuance of endangered species permits by USFWS and CDFG.

WHEREAS, On November 5, 2007 the City Council approved the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) Implementation Ordinance. This ordinance applies to all Development Projects, within the City's land use jurisdiction that are within the Urban Development Area shown on Figure 2-3 of the HCP/NCCP, 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 City.
- b. Any development project that the City 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, both of which are incorporated here by reference.
- 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. Development projects with vested rights pursuant to an agreement by and between the project applicant and the City or Redevelopment Agency of the City of Pittsburg prior to the adoption of this ordinance.
- e. Development projects exempt under any provision of law.
- f. Development projects where the City determines based on evidence submitted by the project applicant that application of the ordinance 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.

B. The development projects to which this ordinance applies, as set forth above, may hereafter be referred to as the "Affected Development Projects."

WHEREAS, The HCP/NCCP Implementation Ordinance establishes an application procedure through which an 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 the Ordinance.

WHEREAS, Section 15.108.070(E) of the HCP/NCCP Implementation Ordinance establishes that HCP/NCCP related mitigation fees (Development Fees, Wetland Fees, Administration Fees and methodology for fee calculation) will be set forth by City Council fee resolution.

WHEREAS, As the Lead Agency for the HCP/NCCP under CEQA, the East Contra Costa County Habitat Conservation Plan Association (HCPA) prepared and certified an environmental impact report (EIR) for the project on November 8, 2006. As a responsible agency under the California Environmental Quality Act (CEQA), prior to approving the HCP/NCCP project, the City Council made findings for each significant impact identified in the EIR, that the project has been changed or mitigated to reduce the impacts to a less than significant level (Public Resources Code §15091). As indicated in the findings (City Council Resolution No. 07-10745) and in the EIR, significant impacts identified for the HCP/NCCP can be mitigated to a less than significant level.

WHEREAS, On September 18, 2007, a "Notice of Public Hearing" for the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Development Fee, Wetland Fee, Administration fee and fee calculation methodology was posted at City Hall and the Pittsburg Library, and published in the local newspaper September 21, 2007 and mailed out to individuals and organizations that requested such notice, in accordance with PMC Section 18.14.010 and Government Code Section 65090. Notice was also mailed to local development companies requesting notification of City fees and fee increases.

WHEREAS, On October 1, 2007, the City Council held a public hearing on the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Ordinance and Resolution Establishing HCP/NCCP Development Fee, Wetland Fee, Administration Fee and Fee Calculation Methodology, at which time action on this resolution was continued to the October 15, 2007 City Council Meeting.

WHEREAS, On October 15, 2007, the City Council held a public hearing on the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Ordinance and Resolution Establishing HCP/NCCP Development Fee, Wetland Fee, Administration Fee and Fee Calculation Methodology, at which time oral and/or written testimony was considered and action on this resolution was continued to the November 5, 2007 City Council Meeting.

WHEREAS, On November 5, 2007, the City Council held a public hearing on the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Ordinance and Resolution Establishing HCP/NCCP Development Fee, Wetland Fee, Administration Fee and Fee Calculation Methodology, at which time oral and/or written testimony was considered.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

- A. Based on the City Council Staff Reports entitled, "Introduction of a HCP Implementing Ordinance and Adoption of a Resolution Establishing HCP/NCCP Development Fee, Wetland Fee, Administration Fee and Fee Calculation Methodology" dated October 15, 2007 and "Adoption of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Ordinance and Fee Resolution," dated November 5, 2007, and based on all the information contained in the Planning Department files on the project, incorporated here by reference and available for review

in the Planning Department located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the City Council finds that:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. 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.
3. To meet this identified need, the City of Pittsburg ("City") 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.
4. The purpose of the Development Fee is to mitigate for impacts to open space, habitat and species covered by the HCP/NCCP. The Development Fee revenues will be used to fund the acquisition of land that does or could provide habitat for covered species, the management and enhancement such land and habitat and the administrative actions necessary to accomplish these tasks, as more particularly set forth in the HCP/NCCP, incorporated herein by reference.
5. The purpose of the Wetland Mitigation Fee is to mitigate for impacts to Jurisdictional Wetlands and Waters, riparian woodland/scrub or stream buffers. The Wetland Mitigation Fee revenues will be used to fund the restoration, creation and management of Jurisdictional Wetlands and Waters and riparian woodland/scrub and the administrative actions necessary to perform these tasks, as more particularly set forth in the HCP/NCCP.
6. 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.
7. Adoption and implementation of this Resolution 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.

8. 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 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 public facilities identified in Section VI.A in order 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 of Jurisdictional Wetlands and Waters and riparian woodland/scrub and the other public facilities identified in Section VI.B 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.
9. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the need for the public facilities to be funded by the HCP/NCCP implementation fees and the type of development projects on which the fees are imposed because the need for these facilities, which include the acquisition of land and the management, enhancement, restoration and creation of habitat, arises 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.
10. 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 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 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:
 - i. 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 development project; and

- ii. Location of the Affected Development Project, as the mitigation needed 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.

The method of calculating the Wetland Mitigation Fee amount for individual Affected Development Projects reflects the cost of the public facilities attributable to individual Affected Development Projects based on:

- i. 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 and 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 the particular feature and (2) the different mitigation ratios required to mitigate impacts to 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 must be restored or created in larger amounts to offset the anticipated failure of a portion of the acreage restored or created; and
- ii. 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, and which in turn is directly proportional to the acreage being impacted by the project.

11. 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 Clerk for more than ten (10) days prior to the date of this public hearing.

12. There is a reasonable relationship between the use of the HCP/NCCP Administration fees imposed by this Resolution and the HCP Implementing Ordinance and the number of staff hours estimated to administer the processing of HCP/NCCP applications. The Administration fees reflect the relationship

between the weighted hourly cost of staff time and the estimated time that will be required of staff in order to administer the HCP Implementing Ordinance.

13. At least fourteen (14) days prior to the public hearing at which this Resolution and the HCP Implementing ordinance was considered for adoption, City 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 for mailed notice of meetings on new or increased fees or service charges. Notice of this hearing was also given by publication in accordance with section 6062(a) of the California Government Code.

14. 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 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, prior to making its decision on the implementing ordinance and fee resolution.

Section 2. Decision

- A. The applicability and application procedure for the payment of the HCP/NCCP Development Fee and Wetland Mitigation Fee and procedure for payment of such fees shall be as specified by Chapter 15.108 of Pittsburg Municipal Code.
- B. As of the Effective Date, the Development Fee for each of the three Fee Zones is as follows: Zone I (Eastern Agricultural Zone) is \$12,457 per acre; Zone II (Natural Area Zone) is \$24,914 per acre; and Zone III (Infill) is \$6,229 per acre, as further described in Table 9-4 of the HCP/NCCP and updated by Exhibit C. These fee amounts establish the base Development Fee which is subject to an automatic annual adjustment as further described herein.
- C. 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 City Planning Director or her designee pursuant to Chapter 9.3.1 of the HCP/NCCP.
- D. As of the Effective date, the Wetland Fee for each wetland land cover type shall be as described by Table 9-5 of the HCP/NCCP and updated by Exhibit C. These fee amounts establish the base Wetland Fee which is subject to an automatic annual adjustment as further described herein.
- E. The Development Fee and Wetland Mitigation Fees shall each be adjusted automatically for inflation or deflation.

- 1. The Development Fee established by this Resolution 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 B, and based on the formula in Exhibit C, which are further explained in Chapter 9.3.1 of the HCP/NCCP. As shown in Exhibit B and Exhibit C, 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 12-month period ending December 31. The remaining 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 12-month period ending December 31.

2. The Wetland Mitigation Fees established by this Resolution shall on March 15 of each year be automatically adjusted as provided in Table 9-7 of the HCP/NCCP, attached as Exhibit B. As shown in Exhibit B, 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 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.

F. As of the Effective Date, the Administration Fee for HCP/NCCP Applications for each of the three Fee Zones is as follows:

1. Zone I (Eastern Agricultural Zone) - \$1,000
2. Zone II (Natural Area Zone) - \$2,000
3. Zone III (Infill) - \$1,000

This resolution and above fees shall become effective on January 15, 2008, sixty (60) days after the date of adoption of this resolution, or upon the effective date of the HCP/NCCP Ordinance (Ordinance No. 07-1293), whichever is latest.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November, 2007, by the following vote:

AYES: Members Casey, Kee, Parent and Mayor Johnson
NOES: None
ABSTAINED: None
ABSENT: Member Evola [recused]



Ben Johnson, Mayor

ATTEST:



Alice E. Evenson, City Clerk

Exhibit A

Adapted from HCP/NCCP Figure 9-1 Development Fee Zones

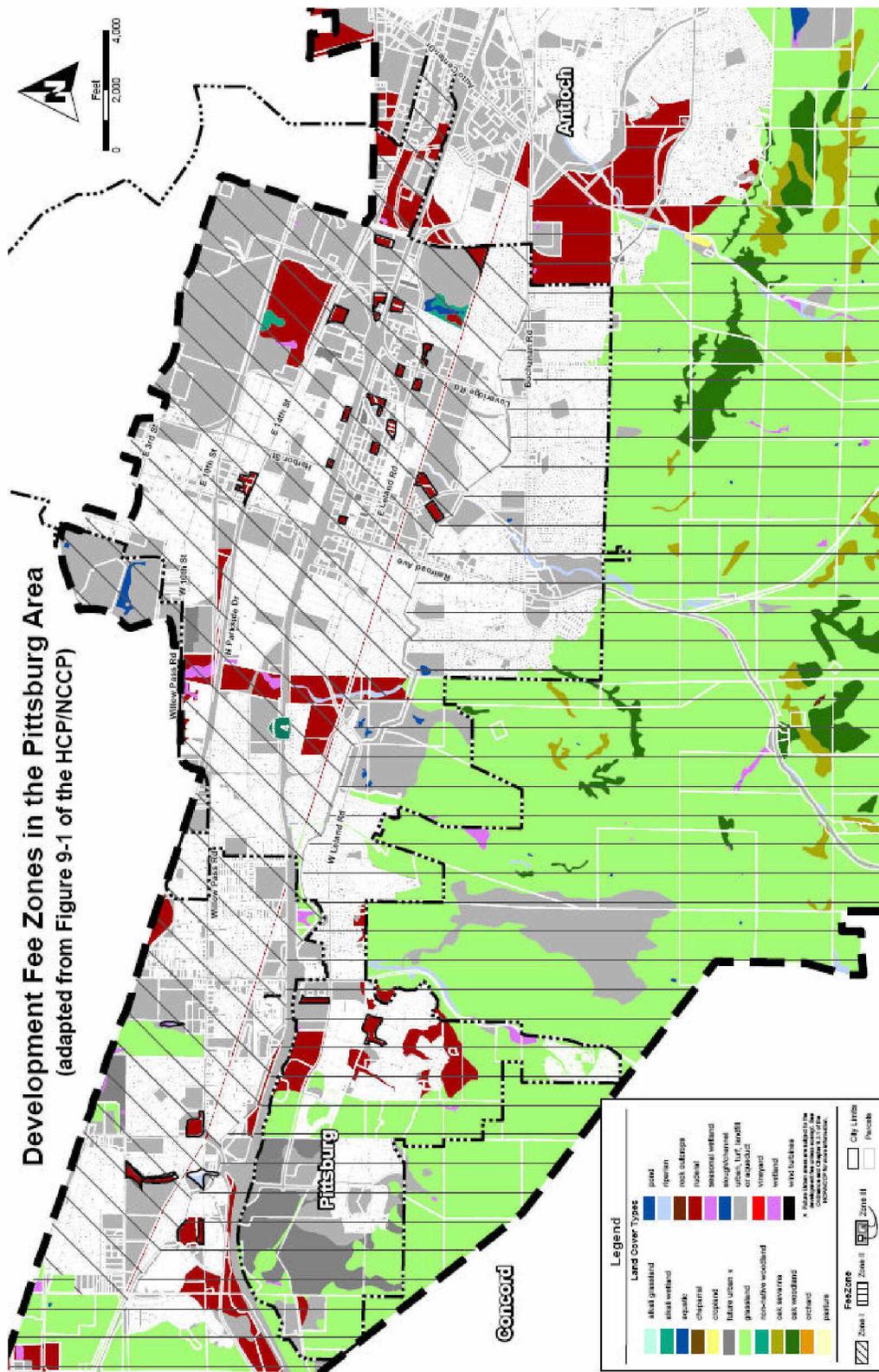


Exhibit B

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		
Portion for Land Acquisition ² (60.5 % 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 (39.5% 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 Mitigation 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 of the HCP/NCCP 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 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 49.5% 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 C.
- ⁴ 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.
- 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 C

Automatic Development 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 2007, the calendar year in which the HCP/NCCP implementation ordinance was adopted; year 2 (n = 2) is 2008; etc. Year 0 (n=0) is 2006.]

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 = \$24,914 for Zone II, \$12,457 for Zone I, and \$6,229 for Zone III

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

L₁ = 60.5% of \$24,914 = \$15,073

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 = 39.5% of \$24,914 = \$9,841

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

Exhibit D

Table 9-5 Wetland Mitigation Fee and Acreage Determination Methods

Table 9-5. Wetland Mitigation 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	\$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 ² , 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 ² , 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 ³	\$737/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 wetlands and waters 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.