

Chapter 15.108

HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN IMPLEMENTATION ORDINANCE

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15.108.010 Purpose.

- A. The purpose of the Habitat Conservation Plan/Natural Community Conservation Plan Implementation Ordinance is to establish the procedures to implement the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- B. 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 of 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.
- C. 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.

15.108.020 Definitions.

The following terms shall have the meaning set forth herein:

- A. "Affected Development Projects" means the development projects to which this ordinance applies, as set forth in Section 15.108.030 of this ordinance.
- B. "Covered Species" means those species of plants and animals addressed in the HCP/NCCP for which limited take is authorized pursuant to the state and federal permits.

- C. "Development Fee" means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section 15.108.070 of this ordinance.
- D. "Development Fee Zones" means the three areas depicted as Zones I, II and III on the map attached hereto as Exhibit A and the detailed map data used to create Exhibit B. The Development Fee imposed on a development project is determined based on the Development Fee Zone in which the project is located.
- E. "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.
- F. "HCP/NCCP" means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan approved by the City Council on April 16, 2007, and as may be revised from time to time.
- G. "HCP/NCCP implementation fees" means the Development Fee and the Wetland Mitigation Fee.
- H. "Implementing Agreement" means the January 22, 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.
- I. "Implementing Entity" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the County and the cities of Brentwood, Clayton, Oakley and Pittsburg to oversee the implementation of the HCP/NCCP.
- J. "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.
- K. "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 the property.
- L. "Public facilities" includes public improvements, public services and community amenities.
- M. "State and federal permits" means the permit issued by the California Department of Fish and Game to the City of Pittsburg 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 City of Pittsburg 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.

- N. "Take" has the same meaning 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, and also has the same meaning provided in 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 California Fish and Game Code Section 86 as to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.
- O. "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 the map attached hereto as Exhibit B, 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.
- P. "Wetland Mitigation Fee" means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section VIII.B of this ordinance.

15.108.030 Applicability.

- A. This ordinance shall apply to all development projects in the City that are within the Urban Development Area except for the following:
 - 1. 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 Planner.
 - 2. Any development project that the City Planner 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.
 - 3. 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.
 - 4. Development projects with vested rights as established by California law including Government Code sections 65864 to 65869 (development agreements) and sections 66498.1 to 66498.9 (vesting tentative maps) where such rights vested prior to adoption of this ordinance.
 - 5. Development projects exempt under any provision of law.
 - 6. Development projects where the City Council determines based on written 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.

7. Any development project with all City entitlements approved prior to the adoption of this ordinance

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

15.108.040 Responsibility for Administration.

The City Planner or his/her designee shall administer this chapter for the City and shall determine the applicability of this Ordinance.

15.108.050 Contents of HCP/NCCP Application Submittal.

A. The City Planner shall establish criteria for HCP/NCCP application submittal requirements. At a minimum, the HCP/NCCP application submittal shall include the following:

1. Completed standard application form for coverage under the HCP/NCCP.
2. A written description of the project, a grading plan, and a site plan, which together provide detailed information on the geographic extent of the project, the extent of construction, and the extent of on-going maintenance activities to be performed on the site.
3. Results of planning surveys, in accordance with Chapter 6 of the HCP/NCCP. Results shall be summarized in a survey report that documents the methods and results of required planning surveys, the methods of applicable preconstruction surveys, and the methods of applicable construction monitoring.
4. Evidence of compliance with avoidance and minimization measures, in accordance with Chapter 6 of the HCP/NCCP.
5. Quantification of anticipated acreage of land permanently disturbed, consistent with Chapters 6.2 and 9.3.1 of the HCP/NCCP.
6. Estimated HCP/NCCP implementation fees due and/or documentation of proposed land dedication and/or proposed habitat restoration or creation, consistent with Section 15.108.080 of this ordinance.
7. HCP/NCCP application administration fee.

15.108.060 Application.

A. Every application for a private development project and other project subject to land use authority of the City, for which this Ordinance applies, shall be accompanied by a completed HCP/NCCP application that complies with Section 15.108.050 and shall include

any additional contents and requirements set forth by the City Planner for implementation of this ordinance.

- B. A completed HCP/NCCP application that meets the requirements set forth in section 15.108.050 shall be prepared for projects undertaken by the City for which this Ordinance applies.
- C. The City Planner or his/her designee shall review HCP/NCCP applications for completeness and verify that the appropriate HCP/NCCP administration fee has been collected.

15.108.070 HCP/NCCP Fee.

HCP/NCCP implementation fees are hereby adopted to fund the public facilities identified in the HCP/NCCP.

A. Development Fee.

1. The City Planner, or his/her designee, 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.
2. The Development Fee for each 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 Planner, pursuant to Chapter 9.3.1 of the HCP/NCCP. The Development Fee amount shall be based on the fee in place at the time of actual payment of HCP/NCCP Development Fee to the City. This fee amount shall be based on the Development Fee amount to be established by the City Council by adoption of a fee resolution.
3. Except as otherwise provided in Section 15.108.080.A and 15.108.080.C, upon or before the issuance of a grading permit or, if no grading permit is issued, then upon or before issuance of the first building permit for the project, the project applicant shall either (1) pay the entire Development Fee or, (2) with the prior written approval of the City Council, pay at least 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 parcels 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.
4. The Development Fee amount applicable to the 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 building permit is issued for the project. Notwithstanding the foregoing, a project applicant may submit a written request to pay the Development Fee prior to the issuance of a grading permit or first building permit. Such request shall be forwarded by the City Planner to the Implementing Entity in order that the Implementing Entity can make a determination pursuant to Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of

the HCP/NCCP. If such request is granted by the Implementing Entity, the applicable Development Fee shall be the Development Fee in effect at the time the payment is thereafter made.

B. Wetland Mitigation Fee.

1. Except as otherwise provided in Sections 15.108.080.B and 15.108.080.C, for any Development Project that will fill, dredge, or remove jurisdictional wetlands and waters, riparian woodland or scrub, or stream buffers, the applicant shall pay a Wetland Mitigation Fee in addition to the Development Fee.
2. Wetland Mitigation Fees varies by wetland type. The City Planner shall determine on the basis of the verified wetlands delineation report completed pursuant the Chapter 6.2.1 of the HCP/NCCP which of the wetland types will be affected by the Development Project and shall determine the area affected by the Development Project and the total amount of the Wetland Mitigation Fee required for the Development Project according to Chapter 9.3.1 of the HCP/NCCP. 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 City Planner, or his/her designee, based on the acreage of setback encroachment, in accordance with Chapter 9.3.1 of the HCP/NCCP. This fee amount shall be based on the Wetland Mitigation fee amount to be established by City Council by adoption of a 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 building permit for the project, the project applicant shall pay the Wetland Mitigation Fee determined for the Affected Development Project. The Wetland Mitigation Fee amount shall be based on the fee in place at the time of actual payment of HCP/NCCP Wetland Mitigation Fee to the City.
4. 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 building permit is issued for the project. Notwithstanding the foregoing, a project applicant may submit a written request to pay the Wetland Mitigation Fee prior to issuance of a grading or first building permit. Such request shall be forwarded by the City Planner to the Implementing Entity in order that the Implementing Entity can make a determination pursuant to 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 at the time the payment is thereafter made.

C. Administration Fee.

Each HCP/NCCP applicant shall be charged a one-time fee for each respective HCP/NCCP application request to cover costs associated with the review of each application. Payment of this fee shall be required at the time of HCP/NCCP application submittal

1. All fees collected hereunder, except for the Administration Fee, shall be transmitted to the City Finance Department and deposited into a non-interest bearing pass-through account and dispersed to the HCP/NCCP Conservancy at the end of each month and in accordance with the provisions of this Ordinance and the Mitigation Fee Act.
2. Timing of mitigation fee payment not otherwise specified by this Ordinance shall be governed by the HCP/NCCP. Pages 9-31 and 9-32 of the HCP/NCCP provide additional guidance on timing of mitigation fee payments and are incorporated herein by reference.

D. Determination of Fee. The Development Fee, Wetland Fee, HCP/NCCP Administration fee amount, and method for calculation shall be adopted by City Council fee resolution. The fee calculation methodology established by resolution may be used to automatically update fees as required by the HCP/NCCP.

15.108.080 HCP/NCCP Land and Other Options In Lieu of Fee.

A. Dedications.

1. Upon receiving a voluntary offer to dedicate land in-lieu of some or all of the Development Fee that would otherwise be imposed upon a development project, the City Planner will forward such offer to the Implementing Entity, in order that the Implementing Entity can make a determination whether to accept such offer 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 the Implementing Entity concludes that land in-lieu of mitigation fees is required to comply with the Stay Ahead provision set forth at Chapter 8.6.1 of the HCP/NCCP and Section 9.2 of the Implementing Agreement and recommends that the City require land in-lieu of mitigation fees, the City Council may require that some or all Affected Development Projects offer a dedication of qualifying land in lieu of some or all of the Development Fee that would otherwise be imposed.

B. Creation/Restoration of Habitat. Upon receiving a voluntary offer to perform wetland mitigation in lieu of paying some or all of the the Wetland Mitigation Fee, the City Planner will forward such offer to the Implementing Entity in order that the Implementing Entity can make a determination whether to accept such offer 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, a project 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 Manager, to support the conservation of habitat and open space under the HCP/NCCP in lieu of the HCP/NCCP implementation fees. If the City Planner determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, the City Planner 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.

15.108.090 Take Authorization Application Review Procedures.

A. Project applicants for any and all Affected Development Projects shall submit an application for take authorization to the City Planner at the same time as the request for approval of the project is submitted to the City. The City Planner may require that the application be submitted on one or more standard application forms. At a minimum, the application for take authorization must include the following information:

1. Completed application and submittal requirements provided for in Section 15.108.050.
2. One or more reports documenting the methods and results of planning surveys and the methods of applicable preconstruction surveys and construction monitoring, in accordance with Chapter 6 of the HCP/NCCP. The City Planner or his/her designee may allow specific components of the required surveys, including some or all of the results of planning surveys and the methods of applicable preconstruction 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 required in Section 15.108.050 are submitted.
3. Evidence of compliance or planned compliance with applicable avoidance and minimization measures, in accordance with Chapter 6 of the HCP/NCCP.
4. Quantification of 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 15.108.070 of this ordinance.

B. Upon satisfaction of the following conditions, the City Planner or his/her designee will extend take authorization consistent with Chapter 6.2.3 of the HCP/NCCP:

1. The application for take authorization is deemed complete.
2. The project applicant has been required to comply 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:
 - i. Payment of the required HCP/NCCP implementation fees and/or approval of an offer of land dedication and/or habitat restoration or creation by the City, pursuant to the requirements of Sections 15.108.070 and 15.108.080 of this ordinance.
 - ii. Compliance with all relevant surveys, monitoring, avoidance, minimization, and

conservation measures determined by the City Planner or his/her designee to apply to this project, pursuant to Chapter 6 of the HCP/NCCP.

3. The extension of take authorization is consistent with the HCP/NCCP, Implementing Agreement, the state and federal permits and all applicable federal, state and local laws and regulations.

15.108.100 Enforcement.

- A. The City Attorney shall be authorized to enforce the provisions of this Chapter by civil action and any other proceeding or method permitted by law.
- B. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer from the requirements of this Chapter.

15.108.110 Severability.

If any individual component of the HCP/NCCP implementation fees or any provision of this ordinance is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not affect the validity or enforceability of the remaining fee components and/or ordinance provisions, and that City Council declares that it would have adopted each part of this ordinance irrespective of the validity of any other part.

Exhibit A

Figure 2-3 Initial Urban Development Area

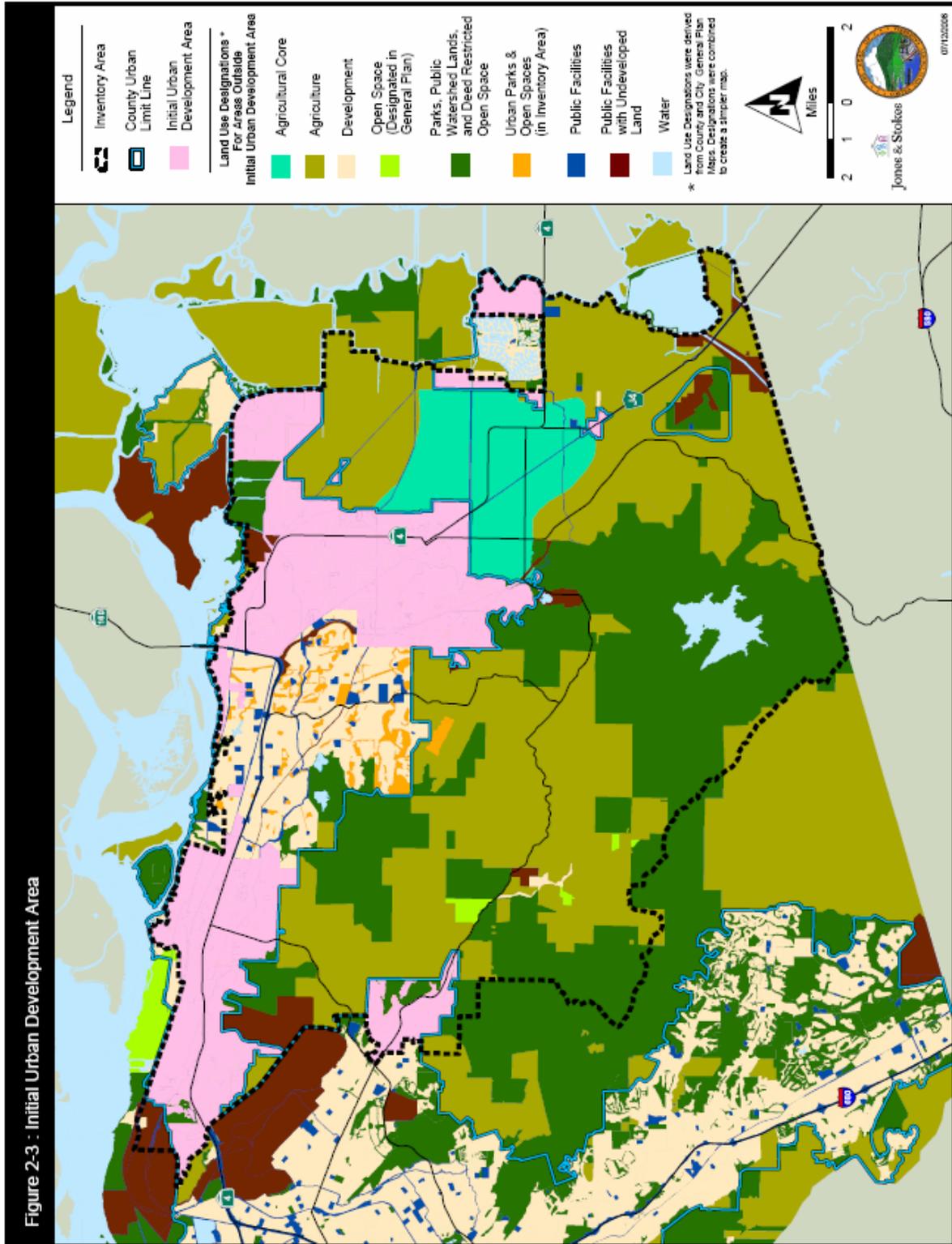


Figure 2-3 : Initial Urban Development Area

