

## **RESOLUTION NO. 2007-092**

Adopted by the Sacramento City Council

February 13, 2007

### **ADJUSTING THE AMOUNT OF THE HABITAT CONSERVATION FEE ESTABLISHED PURSUANT TO CHAPTER 18.40 OF TITLE 18 OF THE CITY CODE**

#### **BACKGROUND:**

- A. On August 7, 1997, the City Council of the City of Sacramento adopted Ordinance No. 97-046, which added Chapter 84.10 to Title 84 (now Title 18, Chapter 18.40) of the City Code, which created and established the authority for the Habitat Conservation Fee, which is used to fund the costs of implementation of the Natomas Basin Habitat Conservation Plan (HCP). Chapter 18.40 of Title 18 directs the City Council, by resolution, to set the specific amounts of the fee and the manner in which the fee is to be paid.
- B. On September 2, 1997, the City Council adopted Resolution No. 97-508, pursuant to which it established the specific amounts of the Habitat Conservation Fee and the manner in which the fee is to be paid.
- C. Section 18.40.080 of Title 18 of the City Code contemplates periodic revision of the Habitat Conservation Fee by resolution of the City Council.
- D. The Natomas Basin Conservancy (TNBC), a non-profit public benefit corporation, is the entity responsible for administration of the Natomas Basin HCP, which is funded by the Habitat Conservation Fee.
- E. On December 6, 2006, the Board of Directors of TNBC recommended that the City of Sacramento adjust the Natomas Basin HCP from the current rate of Forty-one Thousand One Hundred Eighty-two Dollars (\$41,182.00) per gross acre to Thirty-Eight Thousand Four Hundred Forty-Five Dollars (\$38,445.00) per gross acre). The request is based upon a HCP Finance Model dated December 6, 2006, which established the need for an adjustment in the Habitat Conservation Fee to fund actual costs of administering the HCP.
- F. A public hearing on adoption of this Resolution to adjust the Habitat Conservation Fee and require land dedication in lieu of payment of a portion of the Habitat Conservation Fee was heretofore noticed and set as part of a regularly scheduled hearing for February 13, 2007, at 2 PM in the City Council Chamber located at City Hall, 915 I Street, Sacramento, California, 95814.
- G. Pursuant to Government Code Section 66017, development fee adjustments become effective sixty (60) days following their adoption.
- H. On April 5, 2005, by Resolution 2005-223, the City Council approved a land dedication requirement. On May 4, 2006, by Resolution 2006-301, the City Council

extended this requirement through May 1, 2007. The Resolution identifies that this provision will expire unless extended by the City Council.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**SECTION 1. Findings**

The City Council hereby finds as follows:

- (a) All provisions set forth above are true and correct and are hereby incorporated herein by reference as findings for purposes of this resolution. In addition, those findings and other provisions specified in the Ordinance (Ordinance No. 97-046) are incorporated herein by reference as findings for purposes of this resolution.
- (b) Participating in the HCP is one of several alternatives available for obtaining incidental take protection which a landowner may select to satisfy obligations imposed by the federal and state Endangered Species Acts, the Mitigation Monitoring Plans, and the SAFCA Permit. The Plan itself is designed to serve a number of purposes, including but not limited to the satisfaction of the Mitigation Monitoring Plan requirements specified in the North Natomas Community Plan and requirements of the SAFCA Permit, relating to direct, indirect, and cumulative biological impacts associated with Urban Development in the Permit Area.
- (c) Because payment of the Habitat Conservation Fee pursuant to the HCP is only one of the available options for a landowner seeking to satisfy its obligations relating to direct, indirect, and cumulative biological impacts of urban development in the Natomas area, the fee is voluntary in nature and is not a mandatory imposition. It is therefore not legally required to demonstrate the satisfaction of the various nexus tests set forth in Government Code Sections 66000 et. seq. Nevertheless, the Council finds as to the adjusted Habitat Conservation Fee: (i) the amount of fee has been set based upon the HCP Finance Model, dated December 6, 2006, which has been reviewed and considered by the Board of Directors of TNBC, and which has been reviewed and considered by the Council; (ii) the HCP Finance Model represents a rational, fair and equitable method of allocating the costs of implementation of the HCP, and allocates the burden among development projects in a manner which is approximately proportionate to the impacts which may be reasonably anticipated from such development activity; and (iii) the relationship between the Habitat Conservation Fee and the adverse environmental impacts it is designed to mitigate are clearly established in numerous environmental impact reports, including but not limited to those relating to the North Natomas Community Plan and the Comprehensive Drainage Plan for North Natomas, all of which are incorporated by reference as part of the findings supporting this resolution.
- (d) The amount of the Habitat Conservation Fee, as adjusted by this resolution, is consistent with the City's General Plan, the North Natomas and South Natomas

Community Plans, the North Natomas Financing Plan 2005 Update, the Mitigation Monitoring Plans and the SAFCA Permit.

## **SECTION 2. Amount of Fee**

The amount of the Fee, which a landowner may voluntarily select as the landowner's preferred alternative for satisfaction of its legal obligations to mitigate for the adverse impacts of Urban Development on biological resources, for property located within the Permit Area is hereby set at the rate of Thirty-Eight Thousand Four Hundred Forty-Five Dollars (\$38,445.00) per gross acre of development.

## **SECTION 3. Land Dedication Requirement**

Developers seeking an Urban Development Permit from the City shall pay all components of the Habitat Conservation Fee (\$38,445.00 per gross acre) except in the specific circumstances stated below. When the specific circumstances apply, the developer is required to dedicate land in lieu of payment of the Land Acquisition Fund of the Habitat Conservation Fee. When the developer is required to dedicate land (or exercises his/her option to dedicate land), the Habitat Conservation Fee is \$18,445 per gross acre plus the required mitigation land dedicated to TNBC in compliance with the land acquisition criteria pursuant to the 2003 Natomas Basin HCP. Mitigation land is determined to be required at a ratio of one half acre of mitigation land for every acre of developed land.

The specific circumstances when mitigation land is required in lieu of payment of the Land Acquisition portion of the Habitat Conservation Fee are:

- 1) land developments of less than 50 acres may exercise the option of full payment of the Natomas Basin HCP fee or land dedication in lieu of the Land Acquisition portion of the HCP fee; and
- 2) developments of 50 acres or greater would be required to dedicate land in lieu of the land cost portion of the Land Acquisition Fund, although affected developers may obtain a waiver from TNBC if it can be shown that the Land Acquisition Fund portion of the Natomas Basin HCP fee to be paid could adequately cover the cost to TNBC for land acquisition.

In recognition of the fact that it is difficult to acquire land at exactly a specified number of acres, projects 50 acres or greater must acquire mitigation land but are eligible to pay Land Acquisition fees for any portion of their land 50 acres or less.

The requirement to dedicate land in lieu of paying fees shall continue for the life of the Habitat Conservation Plan, unless rescinded by the City by resolution, and provided the Conservancy (TNBC) has acquired adequate land that enables mitigation of the development.

## **SECTION 4. Construction of Resolution**

The provisions of the resolution are subject and subordinate to the provisions of Chapter 18.40 of Title 18 of the City Code, as enacted by Ordinance No. 97-046, and shall at all times be construed and applied consistent therewith as the same presently exist or may from time to time be amended.

**SECTION 5. Judicial Action to Challenge this Resolution**

Any judicial action or proceeding to attack, review, set aside or annul this resolution shall be brought within 120 days of its adoption.

**SECTION 6. Effective Date**

This resolution shall take effect 60 days following adoption of this resolution.

**SECTION 7. Severability**

If any section, phrase, sentence or other portion of this resolution for any reason is held or found to be invalid, void, unenforceable or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this resolution.

**Table of Contents:**

Exhibit A: TNBC Board Resolutions

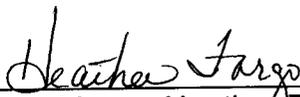
Adopted by the City of Sacramento City Council on February 13, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

  
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Mayor, Heather Fargo

Attest:  
  
\_\_\_\_\_  
Shirley Concolino, City Clerk

**ADOPTED BY THE BOARD OF DIRECTORS OF  
THE NATOMAS BASIN CONSERVANCY,  
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION,  
ON DECEMBER 6, 2006**

**A RESOLUTION AUTHORIZING ELECTION OF LAND DEDICATION IN LIEU OF  
PAYING THE LAND ACQUISITION FUND PORTION OF THE HCP FEE**

**WHEREAS**, The Natomas Basin Conservancy (“Conservancy”) accepts fees pursuant to the HCP and specifically, pursuant to Section 4 of the Implementation Agreement, and Section VI of the Natomas Basin Habitat Conservation Plan (NBHCP), and

**WHEREAS**, the HCP fee includes an Land Acquisition Fund portion, which is used to acquire mitigation land necessary to implement the HCP, and

**WHEREAS**, Section VI-B.1 of the NBHCP provides that a fee payer may dedicate land in lieu of paying the Land Acquisition Fund portion of the fee, provided certain other conditions and requirements are met, and

**WHEREAS**, the Conservancy recognizes the ability built into the HCP which allows for the Land Use Agencies (e.g., City of Sacramento, County of Sutter) to allow the acceptance of land dedication in lieu of payment of the Acquisition Fund portion of the HCP fee, and

**WHEREAS**, the Conservancy believes the real estate market is sufficiently dynamic at this time that more HCP implementation certainty comes with election of the option to require land dedication in lieu of payment of the Acquisition Fund portion of the HCP fee.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF  
THE NATOMAS BASIN CONSERVANCY AS FOLLOWS:**

1. The Board of Directors of The Natomas Basin Conservancy requests that all parties (the “Land Use Agencies”) that are parties to the 2003 NBHCP require the land dedication option in lieu of payment of the Land Acquisition Fund portion of the HCP fee.
2. The action electing this option remain in effect until land prices stabilize and become more predictable, at which time the Conservancy will provide notice.
3. Mitigation for parcels under 50 acres will normally be exempted from this election and be allowed to pay the full HCP fund fees. Such exemption shall be subject to the Conservancy’s Executive Director’s determination that such exemption will not compromise the Conservancy’s ability to meet its obligations under the NBHCP; and shall further be subject to the Conservancy’s maintaining a surplus of mitigation land of 200 acres, or more, as of May 1 of the year in which the exemption is requested.

4. The Conservancy reserves the right to grant exceptions to this election based upon negotiations with a fee payer and the consent of the relevant Land Use Agency and Wildlife Agencies.

**PASSED AND ADOPTED** as of the 6th day of December, 2006, by unanimous vote.

ATTEST:

  
Secretary

**RESOLUTION NO. 06.12.04**

**ADOPTED BY THE BOARD OF DIRECTORS OF  
THE NATOMAS BASIN CONSERVANCY  
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION,  
ON DECEMBER 6, 2006**

**A RESOLUTION RECOMMENDING A DECREASE IN THE NATOMAS BASIN  
HABITAT CONSERVATION PLAN FEE TO THE CITY OF SACRAMENTO**

**WHEREAS**, the Conservancy is charged with implementing the Natomas Basin Habitat Conservancy Plan (NBHCP), and

**WHEREAS**, in order to accomplish its mission the Conservancy receives fees paid to it which are collected by the City of Sacramento, and these fees are in turn conveyed to the Conservancy, and

**WHEREAS**, as required by the 2003 NBHCP, each year the Conservancy evaluates the costs associated with its implementation of the NBHCP and determines if the fees are adequate, and

**WHEREAS**, the Conservancy has re-run the NBHCP Finance Model that has been used to evaluate the adequacy of funds necessary to implement the NBHCP, and

**WHEREAS**, when the fee is deemed in need of adjustment to permit continued implementation of the NBHCP, the Conservancy has requested that the City of Sacramento approve a fee level that is adequate, and

**WHEREAS**, in order to adequately finance the NBHCP's implementation given current levels of income and expense, the Conservancy believes that a fee of \$38,445.00 per developed acre ("base fee") is necessary and \$18,445.00 ("Land Dedication Option" fee) per developed acre if such an option is granted.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE NATOMAS BASIN CONSERVANCY THAT,**

1. The Conservancy believes an NBHCP fee of \$38,445.00 per developed acre ("base fee") is necessary and requests its approval by the City of Sacramento.
2. The Conservancy believes a fee of \$18,445.00 is necessary with satisfactory land dedication in lieu of paying the Land Acquisition Fund portion of the NBHCP fee and is necessary if such a Land Dedication Option is granted by the City of Sacramento.
3. The Conservancy requests that the City of Sacramento institute this new level of fees at its earliest convenience.

**PASSED AND ADOPTED** as of this 6th day of December 2006.

Signed: 