



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

PUBLIC HEARING
February 13, 2007

Honorable Mayor and
Members of the City Council

Subject: Natomas Basin Habitat Conservation Fee Adjustment

Location/Council District: North and South Natomas, Council District 1

Recommendation: Adopt a **Resolution** adjusting the amount of the Natomas Basin Habitat Conservation Plan (HCP) fee, to be effective in 60 days, and reauthorizing the land dedication requirement.

Contact: Scot Mende, New Growth Manager, 808-4756; and Carol Shearly, Director of Planning, 808-5393

Presenter: Scot Mende, 808-4756

Department: Planning

Division: New Growth

Organization No: 4913

Description/Analysis

Issue: The annual re-evaluation of the Natomas Basin Habitat Conservation Plan (HBHCP) has resulted in a fee adjustment. A fee decrease, from \$41,182 to \$38,445 per gross acre of development, is proposed. The fee reduction reflects lower land prices in the Natomas Basin. City Council approval is required before the fee adjustment will take effect. The fee change is proposed to take effect within 60 days. On December 6, 2006, the Natomas Basin Conservancy (TNBC) Board of Directors recommended the fee adjustment and requested that the City reauthorize the land dedication requirement.

Policy Considerations: The 2003 Natomas Basin HCP was approved by Council on May 13, 2003; the federal Incidental Take Permit (ITP) was issued by U.S. Fish and Wildlife Service on June 27, 2003, and the amended state ITP was issued by California Department of Fish and Game on July 10, 2003. A fee adjustment is necessary to ensure accuracy of the funding to implement the 2003 HCP and comply with the ITP and the related Implementation Agreement.

Adoption of the fee adjustment is consistent with the City's Strategic Plan Three-Year Goal to "Achieve sustainability and livability." The fee increase also helps achieve the City's Smart Growth Principle #6 - Preserve open space, farmland, natural beauty, and critical environmental areas.

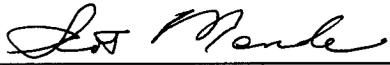
Committee/Commission Action: No action was taken by the Planning Commission on this item.

Environmental Considerations: The City Council's action in approving this resolution is solely for the purpose of establishing an adequate HCP fee to be used to implement the HCP, and is therefore not a project for the purpose of the California Environmental Quality Act. Previous environmental review has been conducted related to the North Natomas Community Plan, the 2003 Natomas Basin HCP, and the Comprehensive Drainage Plan, among others.

Rationale for Recommendation: The HCP fees are adjusted annually, prior to the commencement of the grading season (May 1st). The Natomas Basin Conservancy recommends reducing the fee to reflect lower current prices for acquiring habitat mitigation lands.

Financial Considerations: Developers of land in North and South Natomas currently pay a HCP fee of \$41,182 per gross acre. The Natomas Basin Conservancy's economic consultant - Economic & Planning Systems - completed an update of the HCP Finance Model based on estimated costs (including land acquisition) that indicates an ability to decrease fees in order to successfully implement the HCP. The HCP Fee revenue pays for the land acquisition, restoration and enhancement, administration and operations and maintenance, O+M endowment, and supplemental endowment funds associated with implementing the HCP and mitigating impacts of urban development on the species covered under the NBHCP. The Council is being requested to approve a decrease in the fee to \$38,445 per gross acre based on the Finance Model update. There is no obligation of the General Fund associated with this fee.

Emerging Small Business Development (ESBD): Not applicable to this report.

Respectfully submitted by: 
Scot Mende, New Growth Manager

Approved by: 
Carol Shearly
Director of Planning

Recommendation Approved:


RAY KERRIDGE
City Manager

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ATTACHMENT 1

BACKGROUND – HABITAT CONSERVATION PLAN FEE:

History of the HCP Fee

On August 7, 1997, the City Council added Chapter 84.10 to Title 84 (currently Chapter 18.40 of Title 18) of the City Code which created and established the authority for the Habitat Conservation Fee, which is used to fund the costs of implementing the Natomas Basin HCP (Ord. No. 97-046). Chapter 18.40 directs the City Council, by resolution, to set the amount of the fee. Also, the chapter contemplates the periodic revision of the fee by resolution of the Council. On September 2, 1997, the City Council established the specific amount of the HCP Fee as \$2,656 per gross acre (Reso. No. 97-508). The history of the HCP fee is shown in the table below:

**TABLE 1
History of HCP Fees**

Date	HCP Fee / Gross Acre	Resolution No.
October 31, 1995	\$2,240 [Interim Fee]	95-060
September 2, 1997	\$2,656	97-508
August 17, 1999	\$3,292	99-473
September 12, 2000	\$3,942	2000-538
June 12, 2001	\$10,021* (incl. \$4,028 premium)	2001-391
May 21, 2002	\$11,962* (incl. \$4,028 premium)	2002-300
June 24, 2003	\$12,270	2003-460
April 20, 2004	\$16,124 (\$8,624 w/ land dedication)	2004-285
April 5, 2005	\$24,897 (\$12,397 w/ land dedication)	2005-223
May 4, 2006	\$41,182 (\$18,682 w/ land dedication)	2006-301
February 13, 2007	\$38,445 (\$18,445 w/ land dedication)	proposed

* - In 2001, the Council increased the fee to \$10,021 per gross acre to implement the 1997 HCP and the Settlement Agreement. The fee included a base fee of \$5,993 per gross acre and a premium fee of \$4,028 per gross acre to acquire reserve lands in prioritized areas of the Basin in order to comply with the agreement. In 2002, the Council increased the fee to \$11,962 per gross acre – a base fee of \$7,934 and a premium fee of \$4,028 for the agreement.

The Natomas Basin Conservancy (TNBC) is the plan operator of the Natomas Basin HCP. TNBC acquires mitigation land and implements management and enhancement measures necessary to meet the mitigation requirements of the HCP. With best available information regarding current and projected costs associated with implementation of the 2003 Natomas Basin HCP, TNBC staff worked with its economic consultant - Economic and Planning Systems (EPS) - to update the HCP Finance Model. The proposed fee decrease is based on lower overall costs, but largely due to the softening in land prices projected in 2007.

Justification for the HCP Fee Adjustment

In order to implement the HCP, TNBC is requesting Council to approve a fee adjustment. The current fee is \$41,182 per gross acre of development (\$18,682 per acre with land dedication); the proposed fee would be \$38,445 (\$18,445 w/ land dedication).

The HCP Fee is made up of five major parts: 1) Land Acquisition, 2) Restoration and Enhancement, 3) Administration and Operation and Maintenance (O+M), 4) O+M Endowment, and 5) Supplemental Endowment. The fifth component was added in June 2001 to provide assurances that the last acre of required mitigation land will be purchased after all the fee revenue has been collected. Unlike the Supplemental Endowment part of the fee, the O+M Endowment Fund is used to maintain the preserve lands in perpetuity after build-out of the plan area and all development fee revenue has been collected. A small sixth fund is allocated to the City for fee collection (2% of the fee).

The primary reason for the proposed fee adjustment is the lower land values caused by the softening market.

A copy of the full fee study is available for review at the City Planning Office, New City Hall, 915 I Street, 3rd Floor, Sacramento, CA 95814.

Land Dedication Requirement

In the past couple of years, all large mitigation efforts have been accomplished through land dedication by the developers to TNBC, as opposed to payment of the Land Acquisition portion of the HCP fee. In April 2005, the City Council voted to require developers of 50-100+ acres to dedicate land in lieu of fee payment; on May 4, 2006 the City Council extended this provision to May 1, 2007.

The Conservancy Board requests that the City Council require land dedication in lieu of paying the Land Acquisition Fund portion of the NBHCP fee. This option is permitted in the NBHCP by agreement between the City and Wildlife Agencies. The request includes a small developer exemption, whereby the developer of less than 50 acres could pay the full NBHCP fee and not be required to dedicate land in lieu of Land Acquisition Fund fee payment, provided that adequate surplus land is available to accommodate these mitigation needs.

ATTACHMENT 2

RESOLUTION NO.

Adopted by the Sacramento City Council

**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.

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Exhibit A: TNBC Board Resolutions

Exhibit A
RESOLUTION NO. 06.12.05

**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.

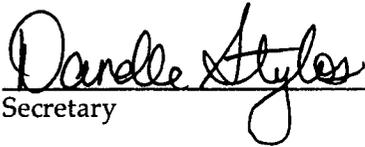
**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF
THE NATOMAS BASIN CONSERVANCY AS FOLLOWS:**

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: 

