

## RESOLUTION NO. 2011-157

Adopted by the Sacramento City Council

March 22, 2011

### 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 1, 2010, the Board of Directors of TNBC requested that the City of Sacramento adjust the Natomas Basin HCP from the current rate of Forty-Four Thousand Fifty Dollars (\$44,050.00) per gross acre) to Thirty-Seven Thousand Five Hundred Forty Seven Dollars (\$37,547.00) per gross acre. If the land dedication option is utilized, the fee would be adjusted from the current Twenty-Six Thousand Five Hundred Fifty Dollars (\$26,550) per gross acre to Twenty-Two Thousand Five Hundred Forty Seven Dollars (\$22,547) per gross acre. The request is based upon a HCP Finance Model dated November 19, 2010 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 22, 2011, at 6 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 February 13, 2007, by Resolution 2007-092, the City Council permanently established the land dedication requirement.

**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 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 HCP 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 November 12, 2010, 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 is 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, 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-Seven Thousand Five Hundred Forty Seven Dollars (\$37,547.00) per gross acre, and if the land dedication option is utilized, the fee would be set at the rate of Twenty-Two Thousand Five Hundred Forty Seven Dollars (\$22,547) per gross acre.

## Section 3. **Construction of Resolution**

The provisions of this 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. The definitions set forth in section 18.40.020 of Chapter 18.40 of Title 18 of the City Code shall apply to the terms used in this resolution.

## Section 4. **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 5. **Effective Date**

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

## Section 6. **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.

Adopted by the City of Sacramento City Council on March 22, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.

  
Bonnie Pannell, Vice-Mayor

Attest:

  
Dawn Bullwinkel, Assistant City Clerk