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JUN 24 2003

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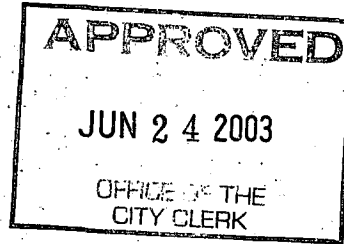
PLANNING AND BUILDING  
DEPARTMENT

CITY OF SACRAMENTO  
CALIFORNIA

NATOMAS UNIT  
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SACRAMENTO, CA 95834

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NATOMAS MANAGER

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City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT: NATOMAS BASIN HABITAT CONSERVATION FEE INCREASE**

**LOCATION AND COUNCIL DISTRICT:** North and South Natomas, Council District 1

**RECOMMENDATION:** Staff recommends the City Council authorize increasing the amount of the Natomas Basin Habitat Conservation Plan (HCP) fee by adopting the attached resolution as an urgency measure.

**CONTACT PERSON:** Carol Shearly, Natomas Manager, 808-5893

**FOR COUNCIL MEETING OF:** June 24, 2003

**SUMMARY:** A fee increase, from \$11,962 to \$12,270 per gross acre of development, is proposed to cover the increase in costs associated with successfully implementing the Revised Natomas Basin HCP, which was recently adopted by the City Council on May 13, 2003. City Council approval is required before the fee increase will take effect. The fee increase is proposed to take effect immediately. On June 4, 2003, the recommended fee increase was approved by The Natomas Basin Conservancy Board of Directors.

**COMMITTEE/COMMISSION ACTION:** No action was taken by the Planning Commission on this item.

**BACKGROUND INFORMATION:**

**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 (HCP Fee), which is used to fund the costs of implementing the Natomas Basin Habitat Conservation Plan (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), on August 17, 1999, the Council increased the fee to \$3,292 per gross acre (Reso. No. 99-473), on September 12, 2000, the Council increased the fee to \$3,941 per gross acre (Reso. No. 2000-538), and on June 12, 2001, the Council increased the fee to \$10,021 per gross acre to implement the HCP and the HCP Settlement Agreement (Reso. No. 2001-391). 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 Settlement Agreement. Last year, on May 21, 2002, the Council increased the HCP fee from \$10,021 to \$11,962 per gross acre (Reso. No. 2001-300).

The Natomas Basin Conservancy (The Conservancy) is the plan operator of the Natomas Basin Habitat Conservation Plan (HCP). The Conservancy 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 revised NBHCP, The Conservancy staff worked with Economic and Planning Systems (EPS) to update the HCP finance model. Based on this analysis, a determination was made that a fee increase was necessary to successfully implement the Revised HCP, adopted by City Council on May 13, 2003.

### **Fee Increase**

In order to implement the Revised HCP, The Conservancy Board is requesting Council to approve a fee increase. The current fee is \$11,962 per gross acre of development. The proposed fee would be \$12,270 per gross acre of development.

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 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 smaller sixth fund is allocated to the City for fee collection (2% of the fee).

The primary reasons for the increase in the fee are: 1) to reflect the continuing increase in land acquisition costs, 2) to augment the administration/ operations and maintenance (O&M) and O&M endowment funds related to long-term funding, 3) to increase the supplemental endowment fund to ensure the ability to purchase the "last acre" of required mitigation land once development revenues have been collected, and 4) to collect fee revenue adequate to comply with new requirements of the Revised HCP related to

monitoring, adaptive management, and other HCP provisions.

### **Rationale for Making Fee Increase Effective Immediately**

Pursuant to Government Code Section 60017(b), development fee increases become effective 60 days following their adoption, unless the resolution includes findings that immediate effectiveness is necessary to serve the public health, safety, or welfare. The incidental take permit decisions by US Fish and Wildlife Service and California Department of Fish and Game are anticipated on or about June 25, 2003. To collect fees at the current rate is projected to be insufficient to enable the City to implement the Revised Natomas Basin HCP. Therefore, the fee increase should be made effective immediately. A four-fifths majority vote is required to adopt an urgency resolution.

Also, the Government Code provides that where the fee increase is made effective immediately by resolution, the resolution can remain in effect for a maximum of 30 days unless extended again for a maximum period of additional 30 days. Staff intends to undertake that procedure so that the increased fee will be applicable during the entire 60 day period following adoption of the resolution. An extension of the fee increase, if approved, will be scheduled for the appropriate Council meeting, tentatively scheduled for July 22, 2002.

**FINANCIAL CONSIDERATIONS:** Developers of land in North and South Natomas currently pay a Habitat Conservation Plan fee of \$11,962 per gross acre. EPS completed an update of the HCP Finance Model based on estimated land acquisition costs that indicates a need to increase fees to successfully implement the Revised 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 endangered species in the Natomas Basin. The Council is being requested to increase the fee to \$12,270 per gross acre based on the finance model update. There is no obligation of the General Fund associated with this fee.

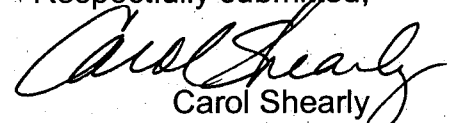
**ENVIRONMENTAL CONSIDERATIONS:** The City Council's action in approving this resolution is solely for the purpose of establishing an adequate HCP fee to be used to implement the Revised HCP, and is therefore not a project for the purpose of the California Environmental Quality Act. Previous environmental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

**POLICY CONSIDERATIONS:** The 1994 North Natomas Community Plan required approval of a Habitat Conservation Plan and the Corps 404 permit for the Sacramento Local Area Project had a condition that required the adoption of an HCP prior to completion of the flood protection improvements. The Natomas Basin HCP was adopted in August 1997 and the Incidental Take Permits (ITPs) granted on December 31, 1997, to comply with these two requirements. On August 15, 2000, the Judge's Order invalidated

the ITP upon which development in South and North Natomas relied. On May 15, 2001, the Judge approved a Modified Order reinstating the ITP for the limited development allowed by the Settlement Agreement hammered out by all parties to the litigation. It is anticipated that the Revised NBHCP will be approved by the USFWS and CDFG and decisions related to the incidental take permits for the Revised HCP will be made on or about June 25, 2003. A fee increase to provide adequate funding to implement the Revised HCP is necessary to allow development to proceed. Adoption of the revised fee is consistent with the intention of the 1994 Financing Plan. It is also consistent with the City's Strategic Plan in preserving and enhancing the City's quality of life. Also, adoption of an adequate fee is imperative to fully implementing the Revised HCP and complying with the incidental take permit, once issued.

**ESBD CONSIDERATIONS:** Not applicable to this report.

Respectfully submitted,

  
Carol Shearly  
Natomas Manager

RECOMMENDATION APPROVED:

  
ROBERT P. THOMAS  
City Manager

Attachments –Resolution Establishing as an Urgency Measure the Revised HCP Fee

4.4  
2003-460

# RESOLUTION NO. 2003-460

APPROVED  
JUL 9 2003  
OFFICE OF THE  
CITY CLERK

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**A RESOLUTION INCREASING THE AMOUNT OF THE HABITAT CONSERVATION FEE ESTABLISHED PURSUANT TO CHAPTER 18.40 OF TITLE 18 OF THE CITY CODE, TO TAKE EFFECT IMMEDIATELY**

**WHEREAS:**

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. 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, a non-profit public benefit corporation, is the entity responsible for administration of the Natomas Basin Habitat Conservation Plan, which is funded by the Habitat Conservation Fee.

E. On June 4, 2003, the Board of Directors of The Natomas Basin Conservancy adopted Resolution No. 03.06.03, pursuant to which it recommended that the City of Sacramento increase the Natomas Basin Habitat Conservation Fee from the current rate of a total fee of Eleven Thousand, Nine Hundred, and Sixty-Two Dollars (\$11,962.00) per gross acre of development to a total fee of Twelve Thousand, Two Hundred and Seventy Dollars (\$12,270.00) per gross acre. The resolution indicates that the request is based upon a Habitat Conservation Plan Finance Model dated June 2003, which established the need for an increase in the Habitat Conservation Fee to fund actual costs of administering the Habitat Conservation Plan.

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DATE ADOPTED: \_\_\_\_\_

F. A public hearing on adoption of this Resolution to increase the Habitat Conservation Fee was heretofore noticed and set as part of a regularly scheduled hearing for June 24, 2003, at 2 PM in the City Council Chamber located at City Hall, 730 I Street, Sacramento, California, 95814.

G. Pursuant to Government Code Section 66017, development fee increases become effective sixty (60) days following their adoption, unless the resolution includes findings that immediate effectiveness is necessary to preserve the public health, safety, or welfare. In this case it is necessary that the fees become immediately effective rather than waiting for the sixty (60) day period to expire, because the current fee is not adequate to implement the HCP and the anticipated incidental take permits, the increase is needed now because grading permits will be issued and fees collected once the incidental take permits are issued, which is expected to occur on or about June 25, 2003, and without the increase the HCP cannot be implemented, specifically necessary mitigation lands cannot be acquired, and the necessary public infrastructure, including flood protection, storm drainage, circulation, and provision of community services, that relies on the HCP, vital to public health, safety, and welfare, cannot be built.

H. Government Code Section 66017 also provides that where the fee increase is made immediately effective by resolution, that resolution can remain in effect for only thirty (30) days unless extended again for a maximum period of an additional thirty (30) day period. Staff intends to undertake that procedure, so that the increased fee will be applicable during the entire sixty (60) day period following adoption of this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO 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 Habitat Conservation Plan (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,

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DATE ADOPTED: \_\_\_\_\_

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 increased Habitat Conservation Fee: (i) the amount of increased fee has been set based upon the HCP Finance Model, dated June 2003, which has been reviewed and considered by the Board of Directors of The Natomas Basin Conservancy, 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 Habitat Conservation Plan, 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 increased 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 increased by this resolution, is consistent with the City's General Plan, the North Natomas and South Natomas Community Plans, the North Natomas Financing Plan 2002 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 Twelve Thousand, Two Hundred and Seventy Dollars (\$12,270.00) per gross acre of development.

## **SECTION 3. 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 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 immediately upon its adoption, pursuant to Government Code Section 66017. The current and immediate threat to the public health, safety and welfare

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necessitating the immediate effectiveness of this resolution is as follows: without collection of an adequate fee and implementation of the Habitat Conservation Plan, necessary public infrastructure, including flood protection, storm drainage, emergency evacuation, circulation access, and provision of community services, that relies on the HCP for mitigation and is vital to public health, safety, and welfare, cannot be built. The incidental take permit is anticipated to be issued on or about June 25, 2003. Developers obtaining grading permits after the incidental take permit is obtained must pay an adequate fee to implement the HCP.

Staff is directed to return to the City Council prior to thirty (30) days following adoption of this resolution with all necessary staff reports, resolutions or other documents required in order to ensure the immediate effectiveness of this resolution during the sixty (60) day period 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.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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DATE ADOPTED: \_\_\_\_\_