



# REPORT TO COUNCIL

## City of Sacramento

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

Consent  
**June 10, 2008**

**Honorable Mayor and  
Members of the City Council**

**Title: Interim Ordinance Relating to Assumption of Flood Risk in Natomas Area,  
to be Adopted as an Urgency Measure [6 Votes Required]**

**Location/Council District:** Natomas Basin/Council District 1

**Recommendation:** Adopt the interim ordinance as an urgency measure, to take effect immediately upon adoption.

**Contact:** David L. Brent, Engineering Manager, 808-1420; Bill Busath, Supervising Engineer, 808-1434

**Presenters:** Not Applicable

**Department:** Utilities

**Division:** Engineering Services

**Organization No:** 3331

### **Description/Analysis**

**Issue:** City Code Section 15.108.040 provides that no building permit shall be issued for any new construction or substantial improvements located in areas of the one hundred year floodplain zones designated on the City flood insurance rate maps ("FIRMS"), unless the permittees execute an agreement with the City that provides notification that the new construction or substantial improvements may be subject to flood-related property damage and requires such persons to expressly assume the risk of such damage. This requirement presently does not apply to the Natomas area, because the Natomas area presently is not designated on the City FIRMS as one of the one hundred year floodplain zones to which City Code Section 15.108.040 applies.

However, the City has been notified by the Federal Emergency Management Agency ("FEMA") that in June 2008, FEMA will issue written notification to the City that the Natomas area will be re-designated as Zone AE on the revised City FIRMS effective in December 2008. Upon the December 2008 effective date, City Code Section 15.108.040 will apply to the issuance of building permits for new construction or substantial improvements in the Natomas area.

The purpose of this ordinance is to require that an agreement as described in City Code Section 15.108.040 be executed prior to the issuance of a building permit for any new construction or substantial improvements located in the Natomas area from

the effective date of this ordinance until the revised City FIRMS become effective. This ordinance is declared to be an urgency measure, to become effective immediately upon its adoption by the City Council pursuant to Sacramento City Charter section 32(g)(2).

**Policy Considerations:** This action is consistent with the City Council focus areas of Public Safety, Economic Development and Sustainability and Livability.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This recommendation concerns general policy and procedure making and does not constitute a “project” under the California Environmental Quality Act (CEQA), pursuant to Section 15378(b)(1) of the CEQA Guidelines.

**Sustainability Considerations:** Not applicable


**Other:** Not applicable


**Commission/Committee Action:** This interim ordinance bypassed the Law and Legislation Committee based on the City Manager’s determination that it is of an urgent nature, pursuant to Chapter 13, section B(1)(b) of the Council Rules of Procedure.

**Rationale for Recommendation:** The City has deemed it appropriate to allow the permitting of development until the finalization of the FIRMS designating the Natomas area as an AE Flood Zone in December of 2008. Once these FIRMS become effective, the existing City Code will require developers to agree to assume the risk of flood-related property damage, waive any claims for such damage premised on the City’s issuance of building permits, and agree to defend and indemnify the City against any claims for such damage. This interim ordinance will require developers to sign such agreement during the interim period prior to the revised FIRMS taking effect. In order to limit the liability of the City, it is important that this ordinance become effective as soon as possible; therefore, it is declared an urgency measure.

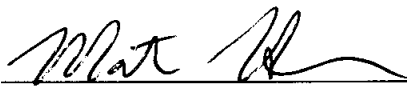
**Financial Considerations:** No additional City funding is required.

**Emerging Small Business Development (ESBD):** No goods or services are requested for this service.

Respectfully Submitted by:   
David L. Brent  
Engineering Manager

Approved by:   
Gary A. Reents  
Director of Utilities

Recommendation Approved:

  
Ray Kerridge  
City Manager

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## Attachment 1

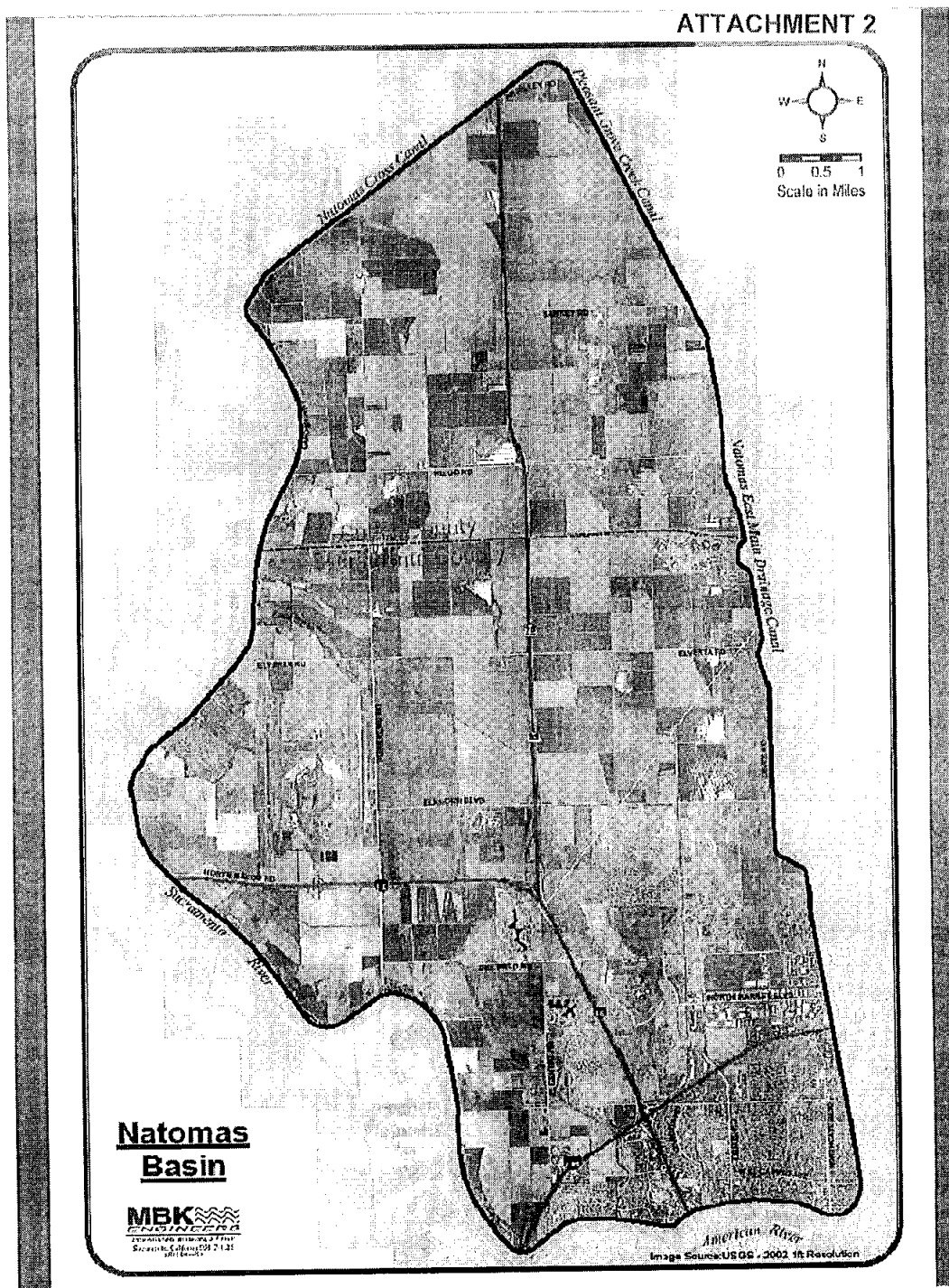
### Background

In 1998 the US Army Corps of Engineers (Corps) certified the levees surrounding the Natomas area as protecting the Natomas area from flooding from a one hundred year event. The levees protecting the Natomas area include (see map at Attachment 2) the Sacramento River East Levee from the American River confluence north to the Natomas Cross Canal, the Natomas Cross Canal South Levee from the Sacramento River to the Pleasant Grove Creek Canal, the Pleasant Grove Creek Canal Levee from the Natomas Cross Canal to the East Main Drain, the East Main Drain west levee from the Pleasant Grove Creek to the American River, and the American River North Levee from the East Main Drain to the Sacramento River confluence. This action led to the removal of the Natomas area from the 100 year flood plain and allowed development to proceed without the regulatory requirements of developing in a floodplain or the requirement for flood insurance on structures in the floodplain.

In 2006, based on the Sacramento Area Flood Control Agency's (SAFCA) investigation of the integrity of the Natomas levees, the Corps withdrew its certification of the Natomas levees. As a result, the Federal Emergency Management Agency (FEMA) began the process of remapping the Natomas area into the AE flood zone, which requires the lowest floor of any structure constructed to be at or above the one hundred year flood elevation, and requires all structures with a federally guaranteed mortgage to have flood insurance. In addition, City Code Section 15.108.04 requires that those constructing structures in any "A" flood zone in the City be required to sign the City's Agreement verifying that they are notified of and assume the risk for flood-related property damage.

City Code Section 15.108.04 will not apply to the Natomas area until the FIRMs designating it as an AE flood zone become effective in December 2008. This interim ordinance will require all those constructing structures in the Natomas area to sign an Agreement as specified in City Code Section 15.108.04, during the interim period before the FIRMs designating the Natomas area as an AE Zone become effective.

**Attachment 2**



**ATTACHMENT 3**

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**AN INTERIM ORDINANCE RELATING TO ASSUMPTION OF THE RISK OF FLOOD-RELATED PROPERTY DAMAGE FOR NEW CONSTRUCTION OR SUBSTANTIAL IMPROVEMENTS IN THE NATOMAS AREA, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

SECTION 1.

The City Council of the City of Sacramento finds and declares as follows:

- A. City Code Section 15.108.040 provides that no building permit shall be issued for any new construction or substantial improvements located in areas of the one hundred year floodplain designated on the City flood insurance rate maps ("FIRMS") as Zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, or AR/AH, unless the owners of the new construction or the persons contracting for the substantial improvements execute an agreement with the City that provides notification that the new construction or substantial improvements may be subject to flood-related property damage and requires such persons to expressly assume the risk of such damage.
- B. City Code Section 15.108.040 presently does not apply to the Natomas area, because the Natomas area presently is not designated on the City FIRMS as one of the one hundred year floodplain zones to which City Code Section 15.108.040 applies.
- C. However, the City has been notified by the Federal Emergency Management Agency ("FEMA") that in June 2008, FEMA will issue written notification to the City that the Natomas area will be redesignated as Zone AE on the revised City FIRMS effective in December 2008. Upon the December 2008 effective date, City Code Section 15.108.040 will apply to the issuance of building permits for new construction or substantial improvements in the Natomas area.
- D. The purpose of this ordinance is to require that an agreement as described in City Code Section 15.108.040 be executed prior to the issuance of a building permit for any new construction or substantial improvements located in the Natomas area from the effective date of this ordinance until the revised City FIRMS become effective.

SECTION 2.

- A. As of the effective date of this ordinance, no building permit shall be issued for any new construction or substantial improvements located in the Natomas area, unless the owners of the new construction or substantial improvements execute an agreement with the City, in a form acceptable to the City Attorney, whereby such person(s):
1. Are notified of and expressly assume the risk that the new construction or substantial improvements may be subject to flood-related property damage;
  2. Unconditionally waive any claim of liability on the part of the City, or its officers, agents or employees for any flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements;
  3. Expressly agree, in connection with the transfer of an ownership interest in the new construction or substantial improvements, to notify the transferee of the flood danger and obtain on behalf of the City the transferee's waiver of any claim for flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements; and
  4. Agree to defend and indemnify the City and its officers, employees and agents against all claims for any flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements, provided:
    - a. The indemnifiers shall be released from this indemnification pledge if, at such time as the City seeks to enforce this pledge, the indemnifiers demonstrate that they have fully complied with the provisions of the agreement requiring that they give notice of the flood danger to third parties obtaining an interest in the new construction or substantial improvements.
- B. As used herein, the "Natomas area" means the area within the Sacramento City limits bounded on the south by the north levee of the American River, on the west by the east levee of the Sacramento River, on the north by the south levee of the Natomas Cross Canal and on the east by the west levee of Steelhead Creek (Natomas East Main Drainage Canal).
- C. As used herein, "substantial improvements" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:
1. Before the improvement or repair is started; or
  2. If the structure has been damaged, and is being restored, before the damage occurred.

For the purpose of this definition "substantial improvements" are considered to

occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the national register of historic places or a state inventory of historic places.

### SECTION 3

This ordinance is enacted as an interim ordinance, and shall automatically expire and cease to be effective on the date that the revised City FIRMS for the Natomas area become effective.

### SECTION 4.

This ordinance is declared to be an emergency measure, to become effective immediately upon its adoption by the City Council pursuant to Sacramento City Charter section 32(g)(2). The facts constituting the emergency are as follows:

FEMA has indicated that it will issue written notification to the City in June 2008, that the Natomas area will be redesignated from Zone X to Zone AE on the revised City FIRMS scheduled to become effective in December 2008. Redesignation of the Natomas area from Zone X to Zone AE indicates that the Natomas area faces greater flood risk than is indicated on the current City FIRMS, and applies the more restrictive Zone AE building restrictions to the Natomas area. Once the Zone AE designation becomes effective, in addition to the building restrictions specified for Zone AE, City Code Section 15.108.040 will prohibit the issuance of building permits for any new construction or substantial improvements in the Natomas area, unless the owners of the new construction or the persons contracting for the substantial improvements execute an agreement with the City that provides notification that the new construction or substantial improvements may be subject to flood-related property damage and requires such persons to expressly assume the risk of such damage.

It is important to also require that such agreements be executed for building permits issued during the interim period before the revised City FIRMS become effective: (1) to ensure that property owners obtaining building permits during the interim period are made aware of the risk of flood-related property damage in the Natomas area reflected in FEMA's intention to redesignate the Natomas area from Zone X to Zone AE; and, (2) to protect the City and City residents from claims arising from flood-related damage to the construction or improvements for which such building permits are issued, by requiring the property owners to assume the risk of flood-related property damage, waive any claims for such damage premised on the City's issuance of the permits, and agree to defend and indemnify the City against any claims for such damage. In order to require that such agreements be executed for building permits issued during this interim period, as specified in this ordinance, it is necessary for this ordinance to take effect immediately.