

**ORDINANCE NO. 95-060**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF OCT 3 1 1995

**AN ORDINANCE ADOPTED AS AN URGENCY MEASURE  
ADDING CHAPTER 84.04 TO THE SACRAMENTO CITY  
CODE RELATING TO THE MITIGATION OF  
DEVELOPMENT IMPACTS ON NORTH NATOMAS PLANT  
AND ANIMAL SPECIES AND HABITAT**

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

**SECTION 1. Purpose and intent of ordinance.**

This Ordinance adds Chapter 84.04 to the City Code pursuant to the general powers reserved to the City of Sacramento under its City Charter for the purpose of establishing and imposing a fee relating to the mitigation of the loss of plant and animal species and their habitat in connection with development of land within the North Natomas Finance Plan Area. It is anticipated that a multi-species habitat conservation plan will be approved and adopted by state and federal agencies and the City which will provide a method by which landowners may satisfy local, state and federal mandated mitigation requirements in order to develop their properties. This Ordinance establishes and imposes, as an interim measure, a fee which landowners may elect to pay in order to continue with development activity in North Natomas prior to the adoption of such habitat conservation plan. Upon adoption of such plan and establishment of a fee implementing the same, the interim fee established hereby will be repealed and replaced by such implementing fee.

**SECTION 2. Definitions.**

Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this Ordinance:

**Development** means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements. **Development Project** means any project undertaken for the purpose of development, exclusive of projects undertaken by or for public agencies, including, without limitation, schools and parks. The terms,

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"Development" and "Development Project," shall, where the context requires, carry the meaning as set forth in an adopted Habitat Conservation Plan.

**Habitat Conservation Plan** means the plan, which must be adopted and implemented by the City Council, pursuant to which (1) measures are taken to implement the provisions of the federal and state Endangered Species Acts, (2) incidental take permits under said Acts may be issued relating to the North Natomas Finance Plan Area, and (3) the requirements of the City's Mitigation Monitoring Programs may be satisfied.

**Habitat Conservation Fee** means such fee as may be specified for participation in an adopted Habitat Conservation Plan where such participation is required or elected, the amount of which may change from time to time.

**Interim Fee** means that fee imposed by the City which allows for continued Development activity prior to the adoption of a Habitat Conservation Plan, the payment of which is required prior to the adoption of such plan and the amount of which may change from time to time.

**Mitigation Monitoring Programs** means those mitigation measures concerning the potential loss of various plant and animal species and their habitat, and other impacts as set forth in the Mitigation Monitoring Program for the North Natomas Community Plan Update contained in the 1994 North Natomas Community Plan Supplemental Environmental Impact Report, adopted on May 3, 1994, including specifically that part of the Program relating to Biological Resources, and all other species and habitat mitigation requirements and programs adopted by the City applicable to the North Natomas Community Plan or the property being developed, as such programs exist as of the date of the enactment of this Ordinance, or as may thereafter be amended or supplemented from time to time.

**North Natomas Community Plan** means the community plan adopted by the City Council, by resolution number 94-259, dated May 3, 1994, as such plan exists as of the date of the enactment of this Ordinance, or as may thereafter be amended or supplemented from time to time. Said plan describes a new urban form for North Natomas featuring a high quality, liveable community with a vital town center surrounded by fourteen neighborhoods each with an elementary school as its focal point. The community will have a well-integrated mixture of land uses interdependently linked by street, transit and pedestrian and bicycle connections.

**North Natomas Financing Plan** means the financing plan adopted by the City Council by resolution 94-495, dated August 9, 1994, as such plan exists as of the date of the enactment of this Ordinance, or as may thereafter be amended or supplemented from time to time.

**North Natomas Finance Plan Area** carries with it the same definition set forth in the North Natomas Financing Plan, as such area may exist from time to time.

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**SECTION 3. Findings.**

The City Council finds and declares as follows:

1. Landowners may not proceed with development in the North Natomas Finance Plan Area without implementing appropriate mitigation measures concerning the potential loss of various plant and animal species and of their habitat, and other impacts, as set forth in the Mitigation Monitoring Programs. As one available option to satisfy the requirements of the Mitigation Monitoring Programs, landowners seeking to develop their property may participate in a multi-species Habitat Conservation Plan, if the same is adopted, through the payment of a Habitat Conservation Fee.
2. Landowners whose land is potentially within the area to be covered by the Habitat Conservation Plan, when such plan is approved, also may not proceed with Development in the North Natomas Finance Plan Area without first obtaining applicable take permits under Section 10(a) of the federal Endangered Species Act, 16 U.S.C. Section 1539(1)(B), and Section 2081 of the California Fish and Game Code, or, in lieu thereof, by selecting one of the following three options: (i) Obtain a waiver or statement of inapplicability of the foregoing permit requirements from the United States Department of the Interior, Fish and Wildlife Service, and the California Department of Fish and Game; (ii) dedicate habitat land satisfactory to United States Department of the Interior, Fish and Wildlife Service, and the California Department of Fish and Game in full or partial satisfaction of a Habitat Conservation Fee; or (iii) participate in a Habitat Conservation Plan, if the same is adopted, applicable to the North Natomas Finance Plan Area, through the payment of a Habitat Conservation Fee.
3. It is the intent of this Ordinance to establish an Interim Fee which landowners may pay in order to continue with Development activity prior to the adoption of a Habitat Conservation Plan. It is the intent of this Ordinance to authorize the City to require payment of an Interim Fee in situations in which a Habitat Conservation Plan is not adopted prior to the time the payment of the Interim Fee is due.
4. The City Council, by resolution, may set the amount of the Interim Fee, establish the manner in which payment of the Interim Fee shall be made to the City, provide for appropriate refunds of the Interim Fee actually paid, and require payment of additional amounts in the event the actual Habitat Conservation Fee required by an adopted Habitat Conservation Plan is greater than the Interim Fee. The payment of the Interim Fee may be made under protest without prejudice to any assertion made by landowners that they are not required to obtain incidental take permits from state and federal agencies, or that the provisions of the Mitigation Monitoring Programs are not applicable to their property and proposed Development.

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5. Upon adoption, if any, of a Habitat Conservation Plan, the Interim Fee will be replaced with the Habitat Conservation Fee pursuant to future action of the City Council.
6. Based upon the following, together with the above findings, a current and immediate threat to the public health, welfare and safety is addressed by declaring the provisions of this Ordinance effective immediately upon its enactment and to declare any resolution implementing this Ordinance effective immediately upon its adoption:
  - (a) It is necessary for and in the interests of the public peace, health, safety and welfare that this Ordinance be effective immediately upon its adoption in order to provide appropriate measures mitigating the impacts caused by Development presently proposed in the North Natomas Finance Plan Area, and to be proposed in the near future, as well as to achieve a degree of certainty to allow for the orderly development in the North Natomas Finance Plan Area. Such certainty should also allow for greater efficiency on the part of City staff processing and evaluating development applications for the North Natomas area, thereby making best use of the limited resources of the City government in addressing the needs of that particular area.
  - (b) Past, existing, and anticipated building permit applications, tract map activity, inquiries by developers and development in the North Natomas Finance Plan Area indicate an immediate demand for certainty with respect to the mitigation of the impacts on plant and animal species and their habitat caused by Development in the area. The activities and inquiries of members of the public holding interests in the North Natomas area or investigating opportunities in said area demonstrates an additional and immediate need for certainty in the amount and implementation of the mitigation measures which will affect the Development in North Natomas.
  - (c) In the event this Ordinance and any resolution implementing the same are not effective immediately upon adoption, landowners desiring to develop their property and the City must enter into agreements addressing, if applicable, the requirements of the Mitigation Monitoring Programs and federal and state laws and regulations relating to the preservation of plant and animal species and their habitat. Such agreements would be inefficient to administer, cause complications with lenders and title companies, and raise enforcement and other problems detrimental to the public interest and the conduct of City business.

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**SECTION 4. Adoption of code provisions.**

Chapter 84.04, as set forth in the attached Exhibit "A" and incorporated herein by this reference, is approved and adopted, and shall be added to the Sacramento City Code.

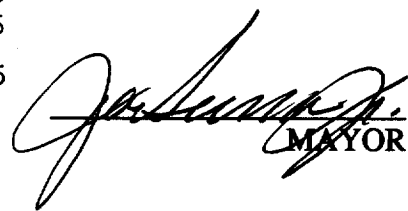
**SECTION 5. Severability.**

- a. If any section, phrase, sentence, or other portion of this Ordinance 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 Ordinance.
- b. If any fee established by this Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees established by this Ordinance.
- c. If any fee established by this Ordinance is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction based upon an insufficient nexus to a specific mitigation measure, public facility, improvement or property for which the revenue generated from such fee may be expended pursuant to this Ordinance, said fee as it relates to such specific mitigation measure, public facility, improvement or property shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other mitigation measures, public facilities, improvements or property.

**SECTION 6. Effective date.**

This Ordinance and any adopted resolution implementing the provisions of this Ordinance are all declared to be urgency measures. This Ordinance shall take effect immediately upon enactment hereof and any such resolution shall take effect immediately upon adoption thereof.

DATE PASSED FOR PUBLICATION: October 17, 1995  
 DATE ENACTED: October 31, 1995  
 DATE EFFECTIVE: ~~October~~ 31, 1995



MAYOR

ATTEST:



CITY CLERK

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**CHAPTER 84.04. HABITAT CONSERVATION FEE**

**Section 84.04.400 Purposes**

This Chapter 84.04 is enacted pursuant to the general powers reserved to the City of Sacramento under its City Charter for the purpose of establishing and imposing a fee relating to the mitigation of the loss of plant and animal species and their habitat in connection with development of land within the North Natomas Finance Plan Area. It is anticipated that a multi-species habitat conservation plan will be approved and adopted by state and federal agencies and the City which will provide a method by which landowners may satisfy local, state and federal mandated mitigation requirements in order to develop their properties. This Chapter establishes and imposes, as an interim measure, a fee which landowners may elect to pay in order to continue with development activity in North Natomas prior to the adoption of such habitat conservation plan. Upon adoption of such plan and establishment of a fee implementing the same, the interim fee established hereby will be repealed and replaced by such implementing fee.

**Section 84.04.401 Additional definitions**

In addition to the definitions set forth in Section 84.01.100, unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions set forth in this Section shall govern construction of the words and phrases used in this Chapter 84.04:

**Development** means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements. **Development Project** means any project undertaken for the purpose of development, exclusive of projects undertaken by or for public agencies, including, without limitation, schools and parks. The terms, "Development" and "Development Project," shall, where the context requires, carry the meaning as set forth in an adopted Habitat Conservation Plan.

**Habitat Conservation Plan** means the plan, which must be adopted and implemented by the City Council, pursuant to which (1) measures are taken to implement the provisions of the federal and state Endangered Species Acts, (2) incidental take permits under said Acts may be issued relating to the North Natomas Finance Plan Area, and (3) the requirements of the City's Mitigation Monitoring Programs may be satisfied.

**Habitat Conservation Fee** means such fee as may be specified for participation in an adopted Habitat Conservation Plan where such participation is required or elected, the amount of which may change from time to time.

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**EXHIBIT A**

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**Interim Fee** means that fee imposed by the City which allows for continued Development activity prior to the adoption of a Habitat Conservation Plan, the payment of which is required pursuant to this Chapter and the amount of which may change from time to time.

**Mitigation Monitoring Programs** means those mitigation measures concerning the potential loss of various plant and animal species and their habitat, and other impacts as set forth in the Mitigation Monitoring Program for the North Natomas Community Plan Update contained in the 1994 North Natomas Community Plan Supplemental Environmental Impact Report, adopted on May 3, 1994, including specifically that part of the Program relating to Biological Resources, and all other species and habitat mitigation requirements and programs adopted by the City applicable to the North Natomas Community Plan or the property being developed, as such programs exist as of the date of the enactment of this Chapter, or as may thereafter be amended or supplemented from time to time.

**Section 84.04.402 Establishment of Interim Fee**

- a. An Interim Fee is established and imposed pursuant to the provisions of this Chapter to provide landowners desiring to develop their property with a method by which to satisfy requirements of the Mitigation Monitoring Programs and state and federal laws and regulations concerning the taking of plant and animal species and their habitat.
- b. The City Council, by resolution, shall establish the specific initial and subsequent amounts of the Interim Fee. In addition, the City Council, by resolution, may adopt additional provisions, procedures and policies to implement the fees established by this Chapter. The amount of the fees and such policies, guidelines, and procedures shall be consistent with the requirements of a Habitat Conservation Plan which the City Council may then reasonably anticipate to be adopted.

**Section 84.04.403 In lieu fee**

The Interim Fee is a fee which a landowner may elect to pay in lieu of satisfying the requirements of federal and state Endangered Species Acts and of the Mitigation Monitoring Programs. Landowners seeking to develop property within the North Natomas Finance Plan Area may elect not to pay the fee and to address said requirements by other means pursuant to applicable law.

**Section 84.04.404 Imposition of fee**

- a. The Interim Fee shall be imposed upon the owners of real property located within the North Natomas Finance Plan Area based upon the following types of Development:
  - (1) For residential property, the construction on the property of a new building or structure containing one or more Dwelling Units, or other activity resulting in the disturbance of land.

- (2) For nonresidential property, the construction on the property of a new building or structure, or other activity resulting in the disturbance of land..
- b. Except as may be expressly provided in this Chapter, including, without limitation, those provisions for a deferral in the payment of fees, no permits or extension of permits for the activities described in subsections (a)(1) and (a)(2) of this Section shall be granted unless and until the Interim Fee has been paid to the City in accordance with the provisions of this Chapter.
- c. Notwithstanding anything to the contrary set forth in subsection (a) of this Section or in any other provision in this Chapter, the Interim Fee shall apply to any Development Project (1) which has heretofore received a tentative map approval or other approval, whether discretionary or nondiscretionary, from the City where the approval of the same has been conditioned upon payment of the fees established as a result of the implementation of the North Natomas Financing Plan, or (2) which is subject to a development agreement between the landowner and City which requires the payment of fees established as a result of the implementation of the North Natomas Financing Plan.

**Section 84.04.405 Time and manner of payment**

- a. In the event a landowner elects to pay the Interim Fee pursuant to Section 84.04.403, said payment shall be made at the time of the earliest issuance of a grading, building or other development permit for the subject Development Project, which permits activity constituting the disturbance of land.
- b. The City Council, by resolution, may establish policies, guidelines and procedures regarding the manner in which the payment of the Interim Fee must be paid.
- c. With respect to Development Projects completed or commenced as of the effective date of this Chapter, the Director may enter into agreements with landowners regarding the amount, time, and manner of payment of fees payable with respect to such Development Projects.

**Section 84.04.406 Additional fees to be paid**

Landowners electing to pay the Interim Fee pursuant to Section 84.04.403, shall pay to the City, upon demand made therefor, an amount, if applicable, by which the Interim Fee amount actually paid is less than the amount of the Habitat Conservation Fee when the same is first established and imposed. The City Council, by resolution, may establish policies, guidelines and procedures regarding additional payments required by this Section.

**Section 84.04.407 Refund of Interim Fee paid**

Landowners electing to pay the Interim Fee pursuant to Section 84.04.403, shall be refunded an amount, if applicable, by which the Interim Fee amount actually paid exceeds the amount of the Habitat Conservation Fee when the same is first established and imposed. The City Council, by resolution, may establish policies, guidelines and procedures regarding such refunds required by this Section. The City Council, by resolution, may establish additional policies, guidelines and procedures regarding the refund of the fees actually paid pursuant to this Chapter.

**Section 84.04.408 Deferral of payment of Interim Fee**

The City Council, by resolution, may establish policies, guidelines and procedures regarding the deferral or other adjustment of the time in which the Interim Fee must be paid, including, without limitation, provisions allowing for the payment of fees in installments over time.

**Section 84.04.409 Credits and reimbursements**

The City Council, by resolution, may establish policies, guidelines and procedures regarding credits and reimbursements which may apply to the Interim Fee. Said policies, guidelines and procedures shall be subject to the terms of any written agreement entered into by the City and landowners within the North Natomas Finance Plan Area concerning credits against and reimbursement of fees relating to the conservation of plant and animal species and their habitat.

**Section 84.04.410 Adjustment of fee by resolution**

The amount of the Interim Fee established by this Chapter may be revised periodically by resolution of the City Council.

**Section 84.04.411 Protest of fees**

- a. A landowner subject to a fee established by this Chapter may apply to the City Director of Public Works, or his or her designee (for purposes of this Section, the "Director"), for a reduction, adjustment, or waiver of any one or more of the fees, or any portion thereof. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver, and shall include any and all written materials which the landowner deems appropriate in support of the application.
- b. The application shall be made in writing and filed with the Director at or before the time required for the filing of protests under Government Code sections 66020 and 66021. For purposes of determining the applicable limitations period set forth in Government Code section 66020, the date of the imposition of the fees under this Chapter shall be the date of the earliest discretionary approval by the City of the subject Development Project. The application shall be accompanied by the payment of a filing fee in an amount established by

the City Council. The applicant shall be liable for the actual cost of the City in processing and ruling upon the application to the extent such cost exceeds the filing fee. Such excess amount may be deducted from any refund found due and owing to the applicant or may be added to the amount of fees found to be due or owing from the applicant, as the case may be.

- c. Notwithstanding the filing of an application and the pendency of any hearing or procedure under this Section, the landowner shall pay the development impact fees originally determined by the City in a timely manner pursuant to Section 84.04.405. Such payment shall be deemed to be a payment under protest.
- d.g. The Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the Director shall be final and not appealable, except as provided in subsections ~~(h)~~ and ~~(i)~~ of this Section. The Director shall make his or her determination of the fee calculation within fifteen days from the date of the informal hearing or the date on which said Director sets for the submission of additional engineering or other studies, other information, or additional calculations as found necessary by the Director during the course of the informal hearing. Applicant's failure to submit, on a timely basis, additional information requested by the Director may result in a denial of the application. The applicant shall be notified of the Director's decision, in writing, by the mailing of such decision by first-class mail, postage prepaid, and addressed to the address provided by the applicant.
- e.f. The Director shall consider the following factors in his or her determination whether or not to approve an application:
- (1) The nature and degree that the proposed Development Project impacts on plant and animal species and their habitat.
  - 2 ~~(1)~~ The substance and nature of the evidence presented by the applicant.
  - 3 ~~(2)~~ The facts, findings and conclusions stated in the North Natomas Community Plan, the North Natomas Financing Plan and the Nexus Study, including technical information, studies, and reports contained within and supporting said plans and study, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies, and reports to demonstrate that the fee is inappropriate for the particular development involved.
- f.g. If the application is granted, any change in use within the particular development involved in an application shall invalidate the reduction, adjustment, or waiver of the fee if such change in use would render the same inappropriate.

g. h.

Within ten (10) days of the date of the mailing of the decision of Director's decision, an applicant may appeal the Director's decision to the City Council, by filing a notice of appeal with the City Clerk. The provisions of Chapters 2.05, 2.06 and 2.07 of Title 2 of the Sacramento City Code shall govern the appeal to the City Council. In reaching its decision, the City Council or the hearing examiner, as the case may be, shall consider the factors set forth in subsection (f) of this Section. The decision on the appeal shall be mailed within five (5) days following the hearing held pursuant to this Section by first-class mail, postage prepaid, and addressed to the address provided by the applicant. The decision shall be final and not appealable, except as provided in subsection (i) of this Section.

h. i.

The protest procedures set forth in this Section are administrative procedures which must be exhausted prior to the institution of any judicial proceeding concerning the fees protested. Any petition seeking judicial review of a decision by the City Council shall be made under Code of Civil Procedure section 1094.5 and shall be filed by or before (1) ninety (90) days following the date on which such decision is mailed to the applicant or (2) the expiration of the limitation period set forth in subsection (d) of Government Code section 66020, whichever occurs later. For purposes of determining the applicable limitations period set forth in Government Code section 66020, the date of the imposition of the fees under this Chapter shall be the date of the earliest discretionary approval by the City of the subject Development Project.

**Section 84.04.412 Creation of North Natomas Habitat Conservation Fund**

The Interim Fee collected pursuant to this Chapter shall be deposited in a special fund created specifically to hold the revenue generated by such fee. Said collected fees shall be deposited, managed, and maintained pursuant to provisions of any resolution or resolutions adopted pursuant to subsection (b) of Section 84.04.402. Revenue collected and deposited in such fund may be used solely for the purposes set forth in Section 84.04.413. In this regard, the North Natomas Habitat Conservation Fund is created and established.

**Section 84.04.413 Use of funds**

- a. Funds collected from the fees established by this Chapter and deposited in the North Natomas Habitat Conservation Fund established under Section 84.04.412, shall be used for the purpose of:
  - (1) transferring sums to the person, agency or other entity charged with the responsibility of implementing an adopted Habitat Conservation Plan in the manner and amounts required by such adopted plan;
  - (2) providing refunds as described in Sections 84.04.407 and 84.04.414; and
  - (3) providing reimbursements as described in Sections 84.04.409.

*B.C.* Unless used or refunded as otherwise permitted under this Section, moneys, including any accrued interest, not assigned in any fiscal period shall be retained in the same fund until the next fiscal period.

**Section 84.04.414 Disposition of unexpended or unappropriated fee revenues**

In the event Habitat Conservation Plan is not adopted by the City Council within five (5) years following the enactment of this Chapter, the City Council, by resolution, may authorize the refund of fee revenue collected pursuant to this Chapter.

**Section 84.04.415 Other fee and dedication requirements**

The provisions of this Chapter shall not release any owner of residential or nonresidential property located within the North Natomas Finance Plan Area from the obligation of paying other applicable fees relating to development of property, including, without limitation, the application fees, processing fees, other mitigation fees, and development fees within the control of the City, from complying with any public facility improvement requirements which are imposed pursuant to applicable law, including, without limitation, the provisions of this City Code, and from complying with any requirement to dedicate property for public use pursuant to applicable law, including without limitation, the other provisions of this City Code and the Government Code, at the time of approval of a development agreement, tentative subdivision map, tentative master parcel map, certificate of compliance, building permit or other land use entitlement.