

AMENDED
ORDINANCE NO. 97-046

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF AUG 07 1997

**AN ORDINANCE AMENDING TITLE 84, CHAPTER 84.04
AND ADDING TITLE 84, CHAPTER 84.10
OF THE SACRAMENTO CITY CODE RELATING TO THE
MITIGATION OF DEVELOPMENT IMPACTS ON
NORTH AND SOUTH NATOMAS PLANT AND ANIMAL SPECIES AND
HABITAT AND DECLARING THE ORDINANCE TO BE
AN EMERGENCY ORDINANCE TO BECOME EFFECTIVE
IMMEDIATELY UPON ITS ADOPTION**

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

SECTION 1. Purpose and intent of ordinance.

This ordinance enacts Chapter 84.10 of the Sacramento City Code pursuant to the general powers reserved to the City of Sacramento under its City Charter. The purpose of this ordinance is to establish a Habitat Conservation 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 and South Natomas Community Plan Areas. This ordinance is intended to implement the Natomas Basin Habitat Conservation Plan and the Implementation Agreement entered into between the City, the U.S. Fish & Wildlife Service, the California Department of Fish and Game, and the Natomas Basin Conservancy, which plan and agreement were adopted by the City Council on August 7, 1997, and which provide a method and alternatives by which landowners may satisfy local, state and federal mandated mitigation requirements in order to develop their properties and to construct required infrastructure in the Plan Area. The fee established by this ordinance is one which landowners may elect to pay in lieu of satisfying federal and state endangered species acts by other methods as specified in that plan and agreement. This ordinance will, upon becoming effective, replace the Interim Fee defined in chapter 84.04 of the City Code, as amended; provided, however, that it is the City Council's intention that the provisions of that chapter are not repealed, but are made inapplicable as of August 7, 1997. In the event that the Habitat Conservation Fee established by this ordinance, or the plan and/or

- 1 -

FOR CITY CLERK USE ONLY

ORDINANCE NO. 97-046

DATE ADOPTED: AUG 07 1997

agreement upon which the fee is based, is found to be unlawful by virtue of a final judgment of a court of competent jurisdiction, or is the subject of any judicial order suspending or enjoining its enforceability, implementation or use, then the provisions of Sections 84.04.400 through 84.04.415 shall become immediately applicable and effective upon the date of such judgment or order without the need for any further action by the City Council.

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:

Habitat Conservation Plan, or Plan, means the multi-species Natomas Basin Habitat Conservation Plan together with the Implementation Agreement which accompanies that Plan, adopted by the City Council on August 7, 1997, as said Plan may be amended from time to time.

Habitat Conservation Fee, or Fee, means the Mitigation Fees as defined at section 2.24 of the Implementation Agreement for participation in the Plan where such participation has been elected by a Landowner, the amount of which may change from time to time pursuant to the Plan provisions.

Implementation Agreement means the Implementation Agreement for the Natomas Basin Habitat Conservation Plan, adopted by the City Council together with the Habitat Conservation Plan on August 7, 1997, as said Agreement may be amended 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

FOR CITY CLERK USE ONLY

ORDINANCE NO. 97-046

DATE ADOPTED: AUG 07 1997

of the date of the enactment of this Ordinance, or as it may thereafter be amended or supplemented from time to time.

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 it 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.

Permit Area has the meaning specified in the Implementation Agreement at section 2.27.

Project has the meaning specified in the Implementation Agreement at section 2.29.

SAFCA Permit means the permit issued by the U.S. Army Corps of Engineers to the Sacramento Area Flood Control Agency pursuant to Section 404 of the federal Clean Water Act, in conjunction with the North Area Local Project.

South Natomas Community Plan means the community plan adopted by the City Council, by resolution number 88-1018, dated November 29, 1988, as such plan exists as of the date of the enactment of this Ordinance, or as it may thereafter be amended or supplemented from time to time.

Urban Development has the meaning specified in the Implementation Agreement at section 2.34. **Urban Development Permit** has the meaning specified in the Implementation Agreement at section 2.35.

SECTION 3. Findings.

The City Council finds and declares as follows:

1. Urban Development in the Permit Area cannot proceed 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 and the SAFCA Permit, and as specified in federal and state laws, rules and regulations governing threatened and endangered species found within the Permit Area. As one available option to satisfy those requirements,

FOR CITY CLERK USE ONLY

ORDINANCE NO. 97-046

DATE ADOPTED: AUG 07 1997

landowners seeking to develop their property may participate in the Habitat Conservation Plan, through the payment of the Habitat Conservation Fee. Other options available to such landowners are specified in the Habitat Conservation Plan.

2. Landowners whose land is within the Permit Area must obtain legal protection against potential incidental take of species protected by federal and state endangered species laws in order to proceed with Urban Development. In order to achieve such protection, such landowners must obtain an incidental take permit under Section 10(a) of the federal Endangered Species Act, 16 U.S.C. Section 1539(1)(B), and a management authorization under Section 2081 of the California Fish and Game Code. Such permits and authorizations are available through participation in the Habitat Conservation Plan, or through exercise by a landowner of one of the other options specified in that Plan.
3. The City Council, by resolution, may set the amount of the Habitat Conservation Fee, establish the manner in which payment of the Fee shall be made to the City, provide for appropriate refunds of the Fee actually paid, require payment of additional amounts in the event the Fee required by the Habitat Conservation Plan is increased pursuant to the provisions of the said Plan, and establish provisions whereby the payment of the Fee may be made under protest pursuant to the provisions of Government Code Section 66020, as that section may in the future be amended or renumbered.
4. 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 Urban Development presently proposed in the Permit 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 Permit Area. Such certainty should also allow for greater efficiency on the part of City staff processing and evaluating development applications, thereby making best use of the limited resources of the City government in addressing the needs of that particular area.

- 4 -

FOR CITY CLERK USE ONLY

ORDINANCE NO. 97-046

DATE ADOPTED: AUG 07 1997

- (b) Past, existing, and anticipated building permit applications, tract map activity, inquiries by developers and development in the Permit 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 Urban Development in the said area. The activities and inquiries of members of the public holding interests in the Permit 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 Urban Development in the Permit Area.
- (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 project-specific, individual 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.

SECTION 4. Adoption of Chapter 84.10.

Chapter 84.10 of the Sacramento City Code, 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. Amendment of Chapter 84.04.

Chapter 84.04, section 84.04.400 of the Sacramento City Code is amended to rename the chapter as "Interim Habitat Conservation Fee", and to renumber the first paragraph as paragraph "a", and to add paragraph "b", to read as follows:

- b. Notwithstanding the provisions of paragraph a of this section, or anything to the contrary in this chapter, and subject to the provisions of section 84.10.1012, the provisions of this chapter shall be inapplicable from and after August 7, 1997.

SECTION 6. Effective date.

Based upon the findings set forth above, this Ordinance and any adopted resolution implementing the provisions of this Ordinance are all declared to be emergency measures.

FOR CITY CLERK USE ONLY

ORDINANCE NO. 97-046

DATE ADOPTED: AUG 07 1997

CHAPTER 84.10 HABITAT CONSERVATION FEE

Section 84.10.1000 Purposes.

This ordinance adds Chapter 84.10 to the Sacramento City Code pursuant to the general powers reserved to the City of Sacramento under its City Charter. The purpose of this ordinance is to establish a Habitat Conservation 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 and South Natomas Community Plan Areas. This ordinance is intended to implement the Natomas Basin Habitat Conservation Plan and the Implementation Agreement entered into between the City, the U.S. Fish & Wildlife Service, the California Department of Fish and Game, and the Natomas Basin Conservancy, which plan and agreement were adopted by the City Council on August 7, 1997, and which provide a method and alternatives by which landowners may satisfy local, state and federal mandated mitigation requirements in order to develop their properties and to construct required infrastructure in the Plan Area. The fee established by this ordinance is one which landowners may elect to pay in lieu of satisfying federal and state endangered species acts by other methods as specified in that plan and agreement.

Section 84.10.1001 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 84.10:

Habitat Conservation Plan, or Plan, means the multi-species Natomas Basin Habitat Conservation Plan together with the Implementation Agreement which accompanies that Plan, adopted by the City Council on August 7, 1997, as said Plan may be amended from time to time.

Habitat Conservation Fee, or Fee, means the Mitigation Fees as defined at section 2.24 of the Implementation Agreement for participation in the Plan where such participation has been elected by a Landowner, the amount of which may change from time to time pursuant to the Plan provisions.

Implementation Agreement means the Implementation Agreement for the Natomas Basin Habitat Conservation Plan, adopted by the City Council together with the Habitat Conservation Plan on August 7, 1997, as said Agreement may be amended from time to time.

FOR CITY CLERK USE ONLY

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 it may thereafter be amended or supplemented from time to time.

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 it 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.

Permit Area has the meaning specified in the Implementation Agreement at section 2.27.

Project has the meaning specified in the Implementation Agreement at section 2.29.

SAFCA Permit means the permit issued by the U.S. Army Corps of Engineers to the Sacramento Area Flood Control Agency pursuant to Section 404 of the federal Clean Water Act, in conjunction with the North Area Local Project.

South Natomas Community Plan means the community plan adopted by the City Council, by resolution number 88-1018, dated November 29, 1988, as such plan exists as of the date of the enactment of this Ordinance, or as it may thereafter be amended or supplemented from time to time.

Urban Development has the meaning specified in the Implementation Agreement at section 2.34. **Urban Development Permit** has the meaning specified in the Implementation Agreement at section 2.35.

FOR CITY CLERK USE ONLY

Section 84.10.1002

Establishment of Habitat Conservation Fee

The Habitat Conservation Fee established pursuant to this Chapter 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 and SAFCA Permit. Landowners seeking to develop property within the Permit Area may elect not to pay the fee and to address said requirements by other means specified in the Habitat Conservation Plan.

- a. A Habitat Conservation Fee is established pursuant to the provisions of this Chapter.
- b. The City Council, by resolution, shall establish the specific initial and subsequent amounts of the Habitat Conservation 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 the Habitat Conservation Plan.

Section 84.10.1003

Applicability of fee

- a. The Habitat Conservation Fee shall apply to real property which is within the Permit Area and for which an Urban Development Permit is required under that Plan. A landowner may elect to pay the Fee in lieu of compliance with the Plan pursuant to one of the other available alternatives under said Plan.
- b. Except as may be expressly provided in this Chapter, including, without limitation, those provisions for a deferral in the payment of fees, no Urban Development Permit shall be issued by the city for land within the Permit Area unless and until the Habitat Conservation Fee has been paid to the City or the applicant has otherwise complied with the Habitat Conservation Plan by electing one of the alternative methods of compliance specified therein.
- c. Notwithstanding anything to the contrary set forth in subsection (a) of this Section or in any other provision in this Chapter, the Habitat Conservation Fee shall apply to any Urban 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 development impact 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 development impact fees established as a result of the implementation of the North Natomas Financing

FOR CITY CLERK USE ONLY

Plan, or (3) which is located within the South Natomas Community Plan Area and is subject to any other agreement which requires the payment of development impact fees related to impacts upon species covered by the federal or state Endangered Species Acts.

Section 84.10.1004 Time and manner of payment

- a. In the event a landowner elects to pay the Habitat Conservation Fee, said payment shall be made at the time of the earliest issuance of an Urban Development Permit.
- b. With respect to Urban Development Projects completed or commenced as of the effective date of the ordinance enacting the provisions of this section, and which are subject to the provisions of subsection 84.10.1003(c), the Director may enter into agreements with landowners regarding the amount, time, and manner of payment of fees payable with respect to such Urban Development Projects.
- c. With respect to Urban Development Projects as to which Interim Fees were paid pursuant to Ordinance 95-060 prior to the effective date of the ordinance enacting the provisions of this section, the Director shall collect from the landowner the difference between the Interim Fees paid and the amount of the Habitat Conservation Fee specified in the resolution adopted by the City Council of even date with this ordinance. The City Council, by resolution, may establish policies, guidelines and procedures regarding the payment of the amounts due.

Section 84.10.1005 Deferral of payment of Habitat Conservation Fee

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

Section 84.10.1006 Credits and reimbursements

The City Council, by resolution, may establish policies, guidelines and procedures regarding credits and reimbursements which may apply to the Habitat Conservation 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.

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Section 84.10.1007 Adjustment of fee by resolution

Consistent with the terms of the Habitat Conservation Plan, the amount of the Habitat Conservation Fee established by this Chapter may be revised periodically by resolution of the City Council.

Section 84.10.1008 Protest of fees

- a. Notwithstanding the voluntary nature of the Habitat Conservation Fee, a landowner within the Permit Area may pay the Fee under protest pursuant to Government Code sections 66020 and 66021.
- b. 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 Urban Development Project.

Section 84.10.1009 Creation of North Natomas Habitat Conservation Fund

The Habitat Conservation Fund is created and established. The Habitat Conservation Fee collected pursuant to this Chapter shall be deposited in the Habitat Conservation Fund. Revenue collected and deposited in such fund may be used solely for the purposes specified in the Habitat Conservation Plan.

Section 84.10.1010 Use of funds

- a. Funds collected from the fees established by this Chapter and deposited in the Habitat Conservation Fund established under Section 84.10.1002, shall be used for the purpose of:
 - (1) transferring sums to the Conservancy, as that term is defined in section 2.7 of the Implementation Agreement; and
 - (2) providing reimbursements as described in section 84.10.1006.
- c. Moneys, including any accrued interest, shall be transferred to the Conservancy.

Section 84.10.1011 Other fee and dedication requirements

~~The provisions of this Chapter shall not release any owner of residential or nonresidential property located within the Permit Area from the obligation of paying other applicable fees~~

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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 the Sacramento 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.

Section 84.10.1012 Invalidity

In the event that the Fee or the Plan or the Implementation Agreement, upon which the Fee is based, is found to be unlawful by virtue of a final judgment of a court of competent jurisdiction, or is the subject of any judicial order suspending or enjoining its enforceability, implementation or use, then in that event the provisions of chapter 84.04 shall become immediately effective upon the date of such judgment or order without the need for any further action by the City Council.

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