



2.32

PLANNING AND BUILDING
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

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SACRAMENTO, CA
95834

CAROL SHEARLY
NATOMAS MANAGER

APPROVED

JUN 25 2002

OFFICE OF THE
CITY CLERK

NORTH NATOMAS UNIT
916-808-8368
FAX 916-566-3968

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: ORDINANCE AMENDING TITLE 15, CHAPTER 88, SECTION 15.88.091E OF THE SACRAMENTO CITY CODE RELATING TO PAYMENT OF HABITAT CONSERVATION FEES AT THE TIME OF ISSUANCE OF A GRADING PERMIT AND DECLARING THIS ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ITS ADOPTION.

LOCATION: North and South Natomas

COUNCIL DISTRICT: District 1

RECOMMENDATION: Staff recommends the City Council adopt the attached ordinance amending Section 15.88.091E of the Sacramento City Code related to advance payment of Habitat Conservation Fees by Natomas developers in order to provide funds required for expedient acquisition of mitigation lands for the Natomas Basin Habitat Conservation Plan.

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

FOR COUNCIL MEETING OF: June 25, 2002 (afternoon)

SUMMARY: Section 15.88.091E of the Sacramento City Code currently requires a Natomas developer to pay a catch-up fee for any Habitat Conservation Fee increase approved by Council. Staff is recommending an amendment to the Code section allowing a Natomas developer to prepay HCP fees at the specific request of the City in order to help the City comply with the Settlement Agreement and therefore be protected from an imminent fee increase. This flexibility is necessary for the expedient acquisition of mitigation land pursuant to the Settlement Agreement.

COMMITTEE/COMMISSION ACTION: No action required.

BACKGROUND INFORMATION: On May 15, 2001, Judge David Levi signed a Modified Order in the federal case, National Wildlife Federation v. Secretary of the Interior, approving and ordering implementation of an "Agreement to Settle Litigation" entered into between the plaintiffs in the federal litigation over the NBHCP and the City. Under the conditions of the Agreement, the City may issue grading permits for limited

areas of development in North and South Natomas as long as certain specified conditions are met. Such conditions include, among others, the payment of catch-up fees (pg. 9 & 10 of the Settlement Agreement – Section 1.d.iv).

Payment of Catch-up Fees: As noted in the Settlement Agreement, pursuant to that ordinance adopted by City Council and effective on April 3, 2001 (Ord. 2001-013), City shall require each developer that receives a grading permit through the Settlement Agreement but has not paid the full amount of the (then) current HCP fee of \$3,941 per gross acre because of an earlier prepayment of fees in some lesser amount to pay a catch up fee in accordance with the terms of the April 3 Ordinance. Also, each developer shall pay prior to grading permit an amount equal to the developer's fair share of the amount of any fee increase adopted by the City per Section 1.d.iii) of the Settlement Agreement.

Subsequent to the Settlement Agreement, City adopted Ordinance 2001-021 that defined a grading permit agreement that must be signed by any Natomas developer prior to being issued a grading permit. The agreement required among other things that the developer comply with the NBHCP in effect; comply with the ITP in effect, "3) pay all applicable fee increases and additions, whether adopted by the City before or within six months after issuance of the allowable grading permit ...," and indemnify the City. The requirement to pay all applicable fee increases was intended to ensure that the more expensive lands required by the Settlement Agreement could be acquired.

Rationale for Change to the City Code: Staff is proposing to amend the City Code related to the grading permit agreement in specific circumstances. To comply with the acquisition requirements of the Settlement Agreement, upon occasion the City has requested developers to prepay their HCP fees prior to issuance of grading permits in order to provide funds required for expedient acquisition of mitigation lands by TNBC to meet the conditions of the Settlement Agreement. Several landowners have responded to a recent advance payment request made by the City. It is important that landowners who respond positively to the City's request to fund the acquisition of mitigation land in advance be protected from imminent HCP fee increases.

In order to foster continuing cooperation in the mutually beneficial effort to acquire and preserve mitigation lands, those landowners' interests require the immediate protection from fee increases that the proposed ordinance provides. This ordinance is intended to apply to all landowners who have paid their HCP fees in advance, at the specific request of the City, in the three months preceding the date of this ordinance and to landowners who do so in the future.

FINANCIAL CONSIDERATIONS: There is no impact to the General Fund by this proposal. The mitigation lands required by the Settlement Agreement and the NBHCP are acquired using Habitat Conservation Fees paid by Natomas development. The ordinance amending the City Code provides the City with flexibility to request payment of HCP fees by Natomas developers in advance in order to fund expedient acquisition of mitigation lands required by the Settlement Agreement and NBHCP.


ENVIRONMENTAL CONSIDERATIONS: The project is an amendment of City Code related to prepayment of HCP fees and is not a project as defined by the California Environmental Quality Act (CEQA).

POLICY CONSIDERATIONS: The 1994 North Natomas Community Plan and the Corps 404 permit for the Sacramento Local Area Project required approval of a Habitat Conservation Plan. The Natomas Basin HCP was approved and Incidental Take Permits were granted in 1997. On August 15, 2000, Judge Levi'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 limited development allowed by the Settlement Agreement, which was crafted by all parties to the litigation. The Settlement Agreement required acquisition in certain prioritized areas. Complying with the acquisition conditions of the Settlement Agreement requires cooperation between the City and Natomas developers to ensure that HCP fees are available for the expedient acquisition of mitigation lands in those prioritized areas. It is appropriate for the City to protect from imminent HCP fee increases those developers who have assisted with compliance with the Settlement Agreement allowing Natomas development to move forward as allowed in the Settlement Agreement.


ESBD: None, since no goods or services are being purchased..

Respectfully submitted,



CAROL A. SHEARLEY
Natomas Manager

APPROVED:



ROBERT P. THOMAS
City Manager

Attachment:

Ordinance Amending City Code Section 15.88.091E

APPROVED
JUN 25 2002
OFFICE OF THE
CITY CLERK

ORDINANCE NO. 2002 - 023

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**AN ORDINANCE AMENDING TITLE 15, CHAPTER 88,
SECTION 15.88.091E OF THE SACRAMENTO CITY CODE,
RELATING TO PAYMENT OF HABITAT CONSERVATION FEES
AT THE TIME OF ISSUANCE OF A GRADING PERMIT,
AND DECLARING THIS ORDINANCE TO BE AN EMERGENCY
MEASURE TO TAKE EFFECT IMMEDIATELY
UPON ITS ADOPTION**

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

SECTION 1.

Title 15, Chapter 88, Section 15.88.091E of the Sacramento City Code is amended to read as follows:

- E. The applicant has executed an agreement, in a form acceptable to and approved by the city attorney, which requires that the applicant and its successors in interest agree to: (1) comply with all provisions of the original NBHCP or a revised NBHCP, whichever is in effect; (2) comply with the December 31, 1997 Incidental Take Permit and State Incidental Take Authorization or a new Incidental Take Permit and Incidental Take Authorization, whichever is in effect; (3) pay all applicable fee increases and additions, whether adopted by the city before or within six months after issuance of the allowable grading permit; provided, however that any applicant who has been specifically and expressly asked by the city manager or designee to pay HCP fees earlier than the date of issuance of an allowable grading permit, and who in fact makes the requested early payment, shall not be subject to the "catch up" provisions of this subsection; and (4) release from, and defend and fully indemnify the city and its officers, agents and employees, against any and all costs and damages, including attorney's fees, that may arise in connection with the city's issuance of an allowable grading permit to that applicant, including but not limited to claims arising under the California Mitigation Fee Act, Government Code 66000, et seq. (procedural or substantive) relating to HCP fee

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DATE ADOPTED: _____

increases adopted by the city pursuant to or as a result of the settlement agreement.

SECTION 2

This ordinance is an emergency ordinance, to become effective immediately upon its adoption. The facts constituting the emergency are that as a matter of policy the city on occasion encourages landowners to pay their Habitat Conservation Fees at a date earlier than issuance of grading permit, in order to provide funds required for expedient acquisition of lands by The Natomas Basin Conservancy. It is essential that landowners who respond positively to the City's request be protected from imminent HCP fee increases. Several landowners have responded to a recent advance payment request made by the City. In order to foster continuing cooperation in the mutually beneficial effort to acquire and preserve mitigation lands, those landowners' interests require the immediate protection that this ordinance provides.

SECTION 3

It is the intention of the City Council in adopting this ordinance that it apply to all landowners who have paid their Habitat Conservation Fees in advance at the specific request of the City, in the three months preceding the date of adoption of this ordinance, and to landowners who do so following the date of adoption.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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DATE ADOPTED: _____