



City of Sacramento City Council

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

Meeting Date: 2/22/2011

Report Type: Public Hearing

Title: Natomas Basin Habitat Conservation Plan Fee Adjustment

Report ID: 2011-00114

Location: District 1

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution adjusting the amount of the Natomas Basin Habitat Conservation Plan (HCP) fee, to be effective in 60 days.

Contact: Scot Mende, New Growth Manager, (916) 808-4756; David Kwong, Planning Manager, (916) 808-2691, Community Development Department

Presenter: Scot Mende, New Growth Manager, (916) 808-4756; Community Development Department

Department: Community Development Dept

Division: New Growth

Dept ID: 21001223

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Natamos Basin Conservancy Resolution
- 5-Economic Planning Systems Inc, Memo 11-19-10

City Attorney Review

Approved as to Form
Sabina D. Gilbert
2/9/2011 4:52:49 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
1/18/2011 1:43:11 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 1/24/2011 8:29:36 AM

Assistant City Manager: John Dangberg - 2/9/2011 11:08:26 AM

Description/Analysis

Issue: The annual re-evaluation of the Natomas Basin Habitat Conservation Plan (NBHCP) Finance Model is required, and is performed by the City's NBHCP Plan Operator – The Natomas Basin Conservancy (TNBC). On December 1, 2010, TNBC's Board of Directors recommended that the fee be decreased to reflect lower land prices and recent operations & maintenance experience.

Policy Considerations: The 2003 NBHCP was approved by Council on May 13, 2003; the federal Incidental Take Permit (ITP) was issued by U.S. Fish and Wildlife Service on June 27, 2003, and the amended state ITP was issued by California Department of Fish and Game on July 10, 2003. On an annual basis, the City considers a fee adjustment in order to ensure adequacy of the funding to implement the 2003 NBHCP and comply with the ITP and the related Implementation Agreement.

Committee/Commission Action: The Natomas Basin Conservancy Board of Directors recommended the fee update on December 1, 2010. Their adopted resolution is included as Attachment 3.

Environmental Considerations:

California Environmental Quality Act (CEQA): 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 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 2003 Natomas Basin HCP, and the Comprehensive Drainage Plan, among others.

Sustainability Considerations: Periodic review & adjustment of the HCP fee is consistent with the Sustainability Master Plan – Section 7 – Parks, Open Space & Habitat Conservation, Goal 4: "Preserve prime farmland and critical habitat resources."

Rationale for Recommendation: The HCP fees are adjusted annually, prior to the commencement of the grading season (May 1st). The Natomas Basin Conservancy recommends a downward adjustment to the current fee. (See attachment 3 - the TNBC resolution to adjust the HCP fee.)

Financial Considerations: Developers of land in North and South Natomas currently pay a HCP fee of \$44,050 per gross acre. The Natomas Basin Conservancy's economic consultant - Economic & Planning Systems - completed an update of the HCP Finance Model based on actual costs as well as estimated costs (more specifically land acquisition) that indicates an ability to adjust fees in order to successfully implement the HCP. Under the terms of the 2003 NBHCP agreement between the City and the State and Federal wildlife agencies, the City agreed to have its NBHCP "Plan Operator" (TNBC) update the HCP Finance Model each February for the life of the HCP. The HCP Fee revenue pays for the land acquisition, restoration and enhancement, administration and operations and maintenance, Operations & Maintenance endowment, and supplemental endowment funds

associated with implementing the HCP and mitigating impacts of urban development on the species covered under the NBHCP. Based on the Finance Model update and the judgment of the Natomas Basin Conservancy Board, the Council is being requested to approve an adjustment in the current fee. There is no obligation of the General Fund associated with this requested fee adjustment.

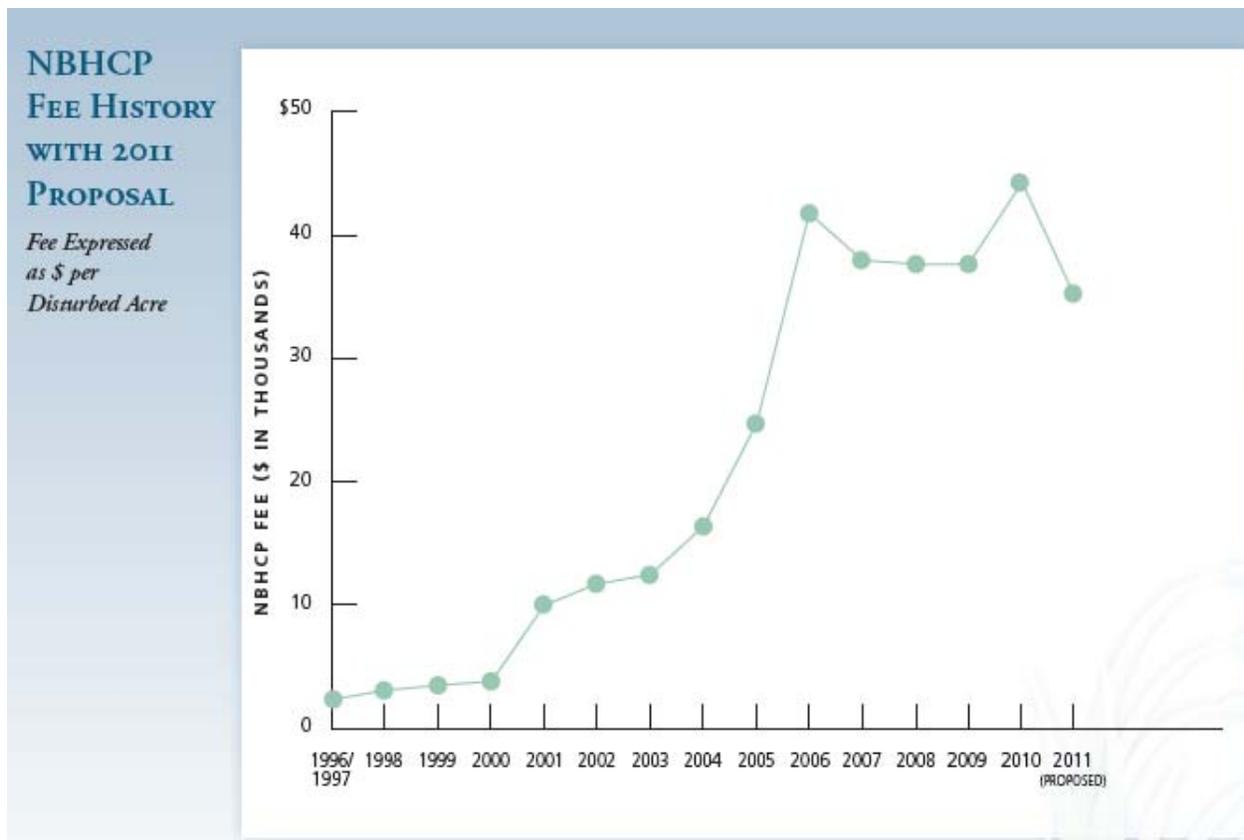
	2009 Fee	2010 Fee	2011 Fee
Full Fee (no land dedication)	\$38,133	\$44,050	\$37,169
Fee w/ Land Dedication	\$20,633	\$26,550	\$22,169

Emerging Small Business Development (ESBD): Not applicable to this report.

BACKGROUND – HABITAT CONSERVATION PLAN FEE:

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, which is used to fund the costs of implementing the Natomas Basin 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. The history of the HCP fee is shown in the graphic and table below:



**TABLE 1
History of HCP Fees**

Date	HCP Fee / Gross Acre	Resolution No.
October 31, 1995	\$2,240 [Interim Fee]	95-060
September 2, 1997	\$2,656	97-508
August 17, 1999	\$3,292	99-473
September 12, 2000	\$3,942	2000-538
June 12, 2001	\$10,021* (incl. \$4,028 premium)	2001-391
May 21, 2002	\$11,962* (incl. \$4,028 premium)	2002-300
June 24, 2003	\$12,270	2003-460
April 20, 2004	\$16,124 (\$8,624 w/ land dedication)	2004-285
April 5, 2005	\$24,897 (\$12,397 w/ land dedication)	2005-223
May 4, 2006	\$41,182 (\$18,682 w/ land dedication)	2006-301
February 13, 2007	\$38,445 (\$18,445 w/ land dedication)	2007-092
February 19, 2008	\$38,133 (\$20,633 w/ land dedication)	2008-097
February 17, 2009	\$38,133 (\$20,633 w/ land dedication)	N/A
March 9, 2010	\$44,050 (\$26,550 w/ land dedication)	2010-127
February 2011	\$37,169 (\$22,169 w/ land dedication)	proposed

* - In 2001, the Council increased the fee to \$10,021 per gross acre to implement the 1997 HCP and the Settlement Agreement. 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 agreement. In 2002, the Council increased the fee to \$11,962 per gross acre – a base fee of \$7,934 and a premium fee of \$4,028 for the agreement.

The Natomas Basin Conservancy (TNBC) is the plan operator of the Natomas Basin HCP. TNBC 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 2003 Natomas Basin HCP, TNBC staff worked with its economic consultant - Economic and Planning Systems (EPS) - to update the HCP Finance Model. Based on the economic model and the judgment of the TNBC, a downward adjustment is needed to accurately reflect the current cost of operating the HCP and thus should be reflected in the HCP fee.

Justification for the HCP Fee Adjustment

In order to implement the HCP, TNBC recommends that the Council approve a fee adjustment. The current fee is \$44,050 per gross acre of development (\$26,550 per acre with land dedication); the proposed fee would be \$37,169 (\$22,169 per acre with land dedication).

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

The proposed 2011 fee represents a decrease from the 2010 fee level. The key components of the proposed fee decrease can be attributed to the following factors:

- The cost of land acquisition is anticipated to decrease from \$35,000 to \$30,000 per acre.
- Restoration & Enhancement contingency reduced from 25% to 15%.
- Habitat and species monitoring expenses decreased
- Water costs and administration costs slightly reduced
- Crop and hunting revenue increased.

The Conservancy is obligated to submit a fee recommendation each year that ensures its ability to successfully implement the NBHCP. A copy of the full fee study (dated November 19, 2010) is available for review at the City Planning Office, 300 Richards Blvd., 3rd Floor, Sacramento, CA 95811 and is also available as an attachment to this report.

Williamson Act Contracts

The California Land Conservation Act of 1965--commonly referred to as the Williamson Act--enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value. Local governments receive an annual subvention of forgone property tax revenues from the state via the Open Space Subvention Act of 1971.

Amendments to the State Budget Act of 2009 essentially suspended the subvention payments to the counties (reduced funding from \$37 million statewide to \$1,000). The Governor signed SB 863 into law on October 19, 2010 creating a program that counties can use when State Williamson Act Subvention funding falls to less than half of the county's "actual foregone general fund property tax revenue". On December 15, 2010, Sacramento County opted not to participate in this program – maintaining the status quo for Williamson Act contracts. Similarly, Sutter County deferred its participation in the program.

The Natomas Basin Conservancy has entered into numerous Williamson Act contracts with the Sacramento County and Sutter County – thus reducing the property tax bills for preserve sites. The Natomas Basin Conservancy Board assumes that the existing Williamson Act contracts will remain in place (but has built in a 15% contingency factor to protect against potential phase-out of the contracts, reassessments and supplemental tax bills for acquisitions) and has assumed that future preserve sites will not be eligible for Williamson Act contracts.

Land Dedication Requirement

In the past couple of years, all large mitigation efforts have been accomplished through land dedication by the developers to TNBC, as opposed to payment of the Land Acquisition portion of the HCP fee. In April 2005, the City Council voted to require developers of 50+ acres to dedicate land in lieu of fee payment – unless the Conservancy deemed it had adequate surplus land such that accepting fees over dedication was helpful to the HCP's implementation; on May 4, 2006 the City Council extended this provision to May 1, 2007. On February 13, 2007, the City Council extended the land dedication in-lieu requirement without a sunset date. No change in this requirement is proposed in this report.

Minimal Development in Natomas Until Levees Fixed

The Natomas Basin is impacted by the Federal Emergency Management Agency's remapping of Natomas into an AE Flood Zone which effectively precludes new development until such time that the levees meet 100-year flood protection standards (or A99 designation) – which is expected to take until at least Mid-2011. Thus, new grading would be limited to infrastructure projects (e.g., pipelines, powerlines, roadways, etc.) and park development.

RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

February 22, 2011

**ADJUSTING THE AMOUNT OF
THE HABITAT CONSERVATION FEE
ESTABLISHED PURSUANT TO CHAPTER 18.40
OF TITLE 18 OF THE CITY CODE**

BACKGROUND:

- 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 (HCP). 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 (TNBC), a non-profit public benefit corporation, is the entity responsible for administration of the Natomas Basin HCP, which is funded by the Habitat Conservation Fee.
- E. On December 1, 2010, the Board of Directors of TNBC requested that the City of Sacramento adjust the Natomas Basin HCP from the current rate of Forty-Four Thousand Fifty Dollars (\$44,050.00) per gross acre) to Thirty-Seven Thousand One Hundred Sixty Nine Dollars (\$37,169.00) per gross acre. If the land dedication option is utilized, the fee would be adjusted from the current Twenty-Six Thousand Five Hundred Fifty Dollars (\$26,550) per gross acre to Twenty-Two Thousand One Hundred Sixty Nine Dollars (\$22,169) per gross acre. The request is based upon a HCP Finance Model dated November 19, 2010 which established the need for an adjustment in the Habitat Conservation Fee to fund actual costs of administering the HCP.
- F. A public hearing on adoption of this resolution to adjust the Habitat Conservation Fee and require land dedication in lieu of payment of a portion of the Habitat Conservation Fee was heretofore noticed and set as part of a regularly

scheduled hearing for February 22, 2011, at 6 PM in the City Council Chamber located at City Hall, 915 I Street, Sacramento, California, 95814.

- G. Pursuant to Government Code Section 66017, development fee adjustments become effective sixty (60) days following their adoption.
- H. On February 13, 2007, by Resolution 2007-092, the City Council permanently established the land dedication requirement.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES 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 No. 97-046 are incorporated herein by reference as findings for purposes of this resolution.
- (b) Participating in the 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 HCP 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, 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 adjusted Habitat Conservation Fee: (i) the amount of fee has been set based upon the HCP Finance Model, dated November 12, 2010, which has been reviewed and considered by the Board of Directors of TNBC, 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 HCP, 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 Habitat Conservation Fee and the adverse environmental impacts it is designed to

mitigate is 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 adjusted by this resolution, is consistent with the City's General Plan, the North Natomas and South Natomas Community Plans, the North Natomas Financing Plan, 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 Thirty-Seven Thousand One Hundred Sixty Nine Dollars (\$37,169.00) per gross acre, and if the land dedication option is utilized, the fee would be set at the rate of Twenty-Two Thousand One Hundred Sixty Nine Dollars (\$22,169) per gross acre.

SECTION 3. Construction of Resolution

The provisions of this 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. The definitions set forth in section 18.40.020 of Chapter 18.40 of Title 18 of the City Code shall apply to the terms used in this resolution.

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 60 days 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.

RESOLUTION NO. 10.12.01

**ADOPTED BY THE BOARD OF DIRECTORS OF
THE NATOMAS BASIN CONSERVANCY
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION
ON DECEMBER 1, 2010**

**A RESOLUTION RECOMMENDING ADJUSTMENT IN THE NATOMAS BASIN
HABITAT CONSERVATION PLAN FEE TO THE CITY OF SACRAMENTO**

WHEREAS, the Conservancy is charged with implementing the Natomas Basin Habitat Conservancy Plan (NBHCP), and

WHEREAS, in order to accomplish its mission the Conservancy receives fees paid to it which are normally collected by the City of Sacramento, and these fees are in turn conveyed to the Conservancy to use in implementing the NBHCP, and

WHEREAS, as required by the NBHCP, each year the Conservancy evaluates the costs associated with implementation of the NBHCP and determines if the fees are adequate, and

WHEREAS, the Conservancy has re-run the NBHCP Finance Model that has been used to evaluate the adequacy of funds necessary to implement the NBHCP, and

WHEREAS, when the fee is deemed in need of adjustment to permit continued successful implementation of the NBHCP, the Conservancy has requested that the City of Sacramento approve a fee level that is adequate, and

WHEREAS, in order to adequately finance the NBHCP's implementation given current levels of income and expense, the Conservancy believes that the fee should be decreased.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE NATOMAS BASIN CONSERVANCY THAT,

1. The Conservancy believes an NBHCP fee of \$44,050.00 per developed acre ("base fee") be decreased to \$37,547.00 per developed acre and requests the City of Sacramento establish this new, requested fee level.

2. The Conservancy believes a fee decrease from \$26,550.00 per developed acre to \$22,547.00 per developed acre with satisfactory land dedication is appropriate with land dedication fee payers and requests the City establish this new, requested fee level.

PASSED AND ADOPTED as of this 1st day of December 2010.

Signed: _____

A handwritten signature in black ink, appearing to read "D. Sullivan", is written over a horizontal line.