

Meeting Date: 11/5/2013

Report Type: Consent

Report ID: 2013-00813

Title: North Natomas Drainage Fees Disbursement and Settlement Agreement

Location: District 1

Issue: Drainage fees have been collected or reserved to reimburse Lennar Communities for drainage improvements benefitting civic uses. Appropriations are necessary to complete the transaction. A settlement agreement is necessary to release the City from any liability for past fee collections.

Recommendation: Pass a Resolution 1) appropriating funds to reimburse Lennar Communities from drainage fees for expenses incurred in the construction of drainage facilities benefitting schools and civic uses; and 2) authorizing a settlement agreement regarding the collection of drainage fees.

Contact: Mark Griffin, Program Manager, (916) 808-8788, Department of Finance

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

1-Description/Analysis

2-Background

3-Resolution

City Attorney Review

Approved as to Form

Michael W. Voss

10/28/2013 9:18:15 AM

Approvals/Acknowledgements

Department Director or Designee: Dennis Kauffman - 10/24/2013 4:17:08 PM

Description/Analysis

Issue: The North Natomas Financing Plan (NNFP) imposes a drainage fee on certain civic uses. The fee represents the fair share payment for constructed drainage facilities and is to be paid to the developer constructing those facilities.

Drainage fees in the amount of \$414,350.50 have been collected from two schools. In addition, \$136,487 has been reserved in the NNFP to pay the fair share for improvements benefitting City property, specifically the North Natomas Library and the adjacent Town Center parcel.

The school funds have been held since 2001. They have not been disbursed because of an inadequate system to enforce the collection of the fees and ambiguities in the underlying agreements. Fees were to be collected at grading permit, map, or special permit. However, the grading permits for the schools were issued on much larger parcels to the same developer seeking reimbursement (Lennar). The maps of these areas were recorded by Lennar. The other fee trigger, special permits, is not required of schools. The underlying agreements, namely the drainage agreements between the City and Lennar and the sales agreements between Lennar and both the Natomas Unified School District (NUSD) and the Twin Rivers Unified School District (TRUSD), contain no obligation to pay the fee.

Six schools were intended to be subject to drainage fees by the NNFP. All schools are on lands developed by Lennar, have drainage improvements constructed by Lennar, and have the same process and agreement issues. Four of these schools have been built. In spite of the difficulties, the fees for two schools were nevertheless paid by NUSD on the basis of invoices.

By state law, the funds held by the City must be either be returned to the payer or disbursed to the developer. Interest must also be paid. At various times over the last eight years, the NUSD, the TRUSD, Lennar, and the City have attempted to resolve the matter.

At this time, the parties agree that Lennar should receive the funds held. Lennar is willing to release any rights it holds to fees not collected from the schools in the past in exchange for the fees on hand with interest and the City's good faith commitment to work with Lennar and the schools to collect fees for the two schools remaining to be built when they are constructed. The intent of the NNFP has always been to charge these fees. The Standard Development Agreement between the City and all developers in North Natomas commits all parties to the terms of the NNFP. The settlement agreement commits the City to explore a workable method to implement the terms of the NNFP on two remaining school sites, if possible.

Staff recommends approval of the settlement agreement and for the payment to Lennar of the drainage fees and associated interest held by the City.

Policy Considerations: California Government Code Section 66000, et. seq. provides

for the imposition of development impact fees and their use. Development impact fees cannot be commingled with other funds, must be used for the purposes for which the fee was imposed or be returned to the payer, and must earn interest. The disbursement to the intended recipient is consistent with state law and with the NNFP. The settlement agreement also releases the City from any liability regarding constructed schools and defines the expectations of the parties regarding two school sites that are consistent with the Standard Development Agreement and the NNFP.

Economic Impacts: This report does not have direct economic impacts.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability: There are no sustainability considerations applicable to administrative activities.

Committee/Commission Action: None

Rationale for Recommendation: The NUSD does not object to the disbursement of funds to the intended recipient. The settlement agreement will permit that disbursement to proceed and will release the City from any known liability regarding the collection of drainage fees from constructed schools. The settlement agreement further defines the intent of the parties to the two remaining school sites, committing the City to its best efforts to find a workable system for the collection of drainage fees.

Financial Considerations: The total of all fees collected is \$550,837.50. Combined interest earned is \$178,234.72, for a grand total of \$729,072.22. These funds are reserved for drainage fee reimbursement purposes in the NNFP accounts and are recommended for disbursement with approval of the settlement agreement. There is no impact on the General Fund or on other activities of the NNFP.

Emerging Small Business Development (ESBD): None. No goods or services are being purchased.

Background

When the North Natomas Community Plan and Financing Plan were under development in the 1990s, a group of landowners, developers, City staff, school staff, and a wide variety of other interested parties formed a "Working Group" to design policies and procedures for City Council approval. There was widespread involvement and buy-in. One feature of the adopted 1999 Financing Plan (Plan) was the option of financing drainage sub-basins with Mello-Roos bond districts, in which case, all land uses would be taxed except school and civic parcels, which were to pay drainage fees (1999 Plan, page IX-4 adopted by Resolution 99-471). If no Mello-Roos were used, there were also to be no drainage fees for civic and school uses. This policy is unchanged today.

The NUSD and the TRUSD constructed four schools out of six sites subject to the drainage fee policy. Fees were collected on two schools, both constructed by the NUSD, on the apparent understanding that the fees were due under the Plan. Payment was in the amount of \$414,350, recorded on August 9, 2001 (receipt CR24HBH206923), and was made on the strength of invoices alone. As far as NUSD, TRUSD and the City can determine, there are no formal agreements between the schools and the City concerning the collection of drainage fees.

No other mechanisms were in place to require payment of the fee by the schools. The drainage agreements for the affected basins (City Agreements 98-109-1, 2001-805, 2002-030; and 98-067) include some reimbursement provisions (two have no provision), but these cannot functionally work for the following reasons. The provisions require the fee "be payable upon such landowner's first recordation of a ... map, or issuance to such landowner of a special permit, whichever first occurs" [City Agreement 98-109-1, Exhibit G, Section 2 (a)]. The developer (Lennar) recorded the maps and the schools are not obligated to acquire special permits from the City. In addition, the six sales agreements between Lennar and the schools have no provision for the payment of drainage fees.

In spite of all the deficiencies, the NUSD has no objection to the disbursement of collected fees to Lennar Communities. A letter from NUSD to Lennar Communities to this effect is included at the end of this section.

Fees were paid on two of four constructed schools. Two school sites remain on which fees are intended to be imposed by the existing NNFP. At this point, it is unknown what practical and reasonable steps can be taken to require payment of the fees on these two schools when they are constructed. A map of all six sites is provided at the end of this section.

The City civic use fees were handled differently. The City, as a party to City Agreement 98-109-1 (Agreement) covering Basin 1, agreed that fees would be determined in accordance with a "Technical Supplement" to the

Agreement. The Technical Supplement accounts for all costs by all developers (the City also constructed facilities) and allocates those costs to each acre by land use. The difference between an owner's cost and benefit represents the amount to be received from or paid to other owners. A payment amount represents the fee. The Technical Supplement is updated periodically to account for new construction and to update estimates of improvements yet to be built. The last update was in February 2010. As shown below, the City's "fee" is \$136,487.

Overall Cost Summary
2010 Technical Supplement Update
Cost Breakdown by Constructing Entity
4/5/2010

Item	Total Current & Future Construction	Total Estimated Obligation	Difference Over (Under)
Revised Estimate 2004 Totals	\$36,479,744		
1 Lennar Constructed Facilities	\$21,499,215		
2 Lennar Future Construction	\$0		
Lennar Total	\$21,499,215	\$12,808,288	\$8,690,926
1 Schumacher Constructed Facilities	\$6,395,686		
2 Schumacher Future Construction	\$1,520,307		
Schumacher Total	\$7,915,993	\$15,048,776	(\$7,132,783)
1 JMA Constructed Facilities	\$1,170,747		
2 JMA Future Construction	\$0		
JMA Total	\$1,170,747	\$1,938,528	(\$767,780)
1 Lewis Constructed Facilities	\$4,536,375		
2 Lewis Future Construction	\$95,389		
Lewis Total	\$4,631,764	\$5,285,641	(\$653,877)
1 City of Sacto Constructed Facilities	\$1,262,024		
2 City of Sacto Future Construction	\$0		
City of Sacto Total	\$1,262,024	\$1,398,511	(\$136,487)
1 Subtotal Constructed Facilities	\$34,864,048		
2 Subtotal Future Construction	\$1,615,696		
Total Check	\$36,479,744	\$36,479,744	\$0

Prepared by:
Wood Rodgers Inc.

The total of all fees collected is \$550,837.50. Combined interest earned is \$178,234.72, for a grand total of \$729,072.22. All amounts have been reserved. The settlement agreement will disburse the funds to Lennar Communities as well as release the City of any liability over the collection of past fees and commit the City to work with Lennar to implement a system for future development that is reasonable and workable.

The letter from NUSD to Lennar Communities representing their position on the fees is as follows:



Board of Trustees
B. Teri Burns
Scott Dosick
Ryan Herche
Susan Heredia
Lisa Kaplan

Chris Evans, Superintendent

May 17, 2013

Don Barnett
Community Planning Manger
Lennar Homes
1075 Creekside Ridge Drive, Suite 100
Roseville, CA 95678

Re: Natomas Drainage Fees

Dear Mr. Barnett:

On July 6, 1999, Lennar Winncrest, LLC ("Lennar") and the Natomas Unified School District (the "District") entered into a Purchase and Sale Agreement for the Natomas Park Elementary School site. In response to entering into that agreement, the District paid approximately \$175,000 to the City for drainage fees related to the construction of the Natomas Park Elementary School. The District paid the drainage fees related to the Natomas Park Elementary School in 2000 during the time the District was building the Natomas Park School facility. These fees have remained on deposit at the City since then.

Next, in August 1999, Lennar and the District entered into a Purchase and Sale Agreement for the Charter School site. The District paid approximately \$240,000 to the City for drainage fees related to the construction of the Charter School. The District paid the drainage fees related to the Charter School also in 2000 during the time the District was building the Charter School facility. These fees have remained on deposit at the City since then.

Finally, on August 13, 2002, Lennar and the District entered into a Purchase and Sale Agreement for the Northborough Elementary School site, the site for the Heron School. No drainage fees were ever paid to the City related to the construction of the Heron School.

In January of this year, you contacted the District to inquire as to the status of the drainage fees. After thorough consideration of the matter, the District is willing to have released to Lennar, the money that is currently deposited with the City. At your request, the District will contact the City and provide them with our approval for the release of the funds. The District is, however, unwilling to pay any additional monies related to the drainage fees with regards to the schools discussed in this letter. The District does not believe that, at this point, there is any legal basis to compel further payment by the District.

Please contact me at (916) 567-5457 if you have any questions / concerns, or if you would like to meet with me regarding this matter.

Sincerely,

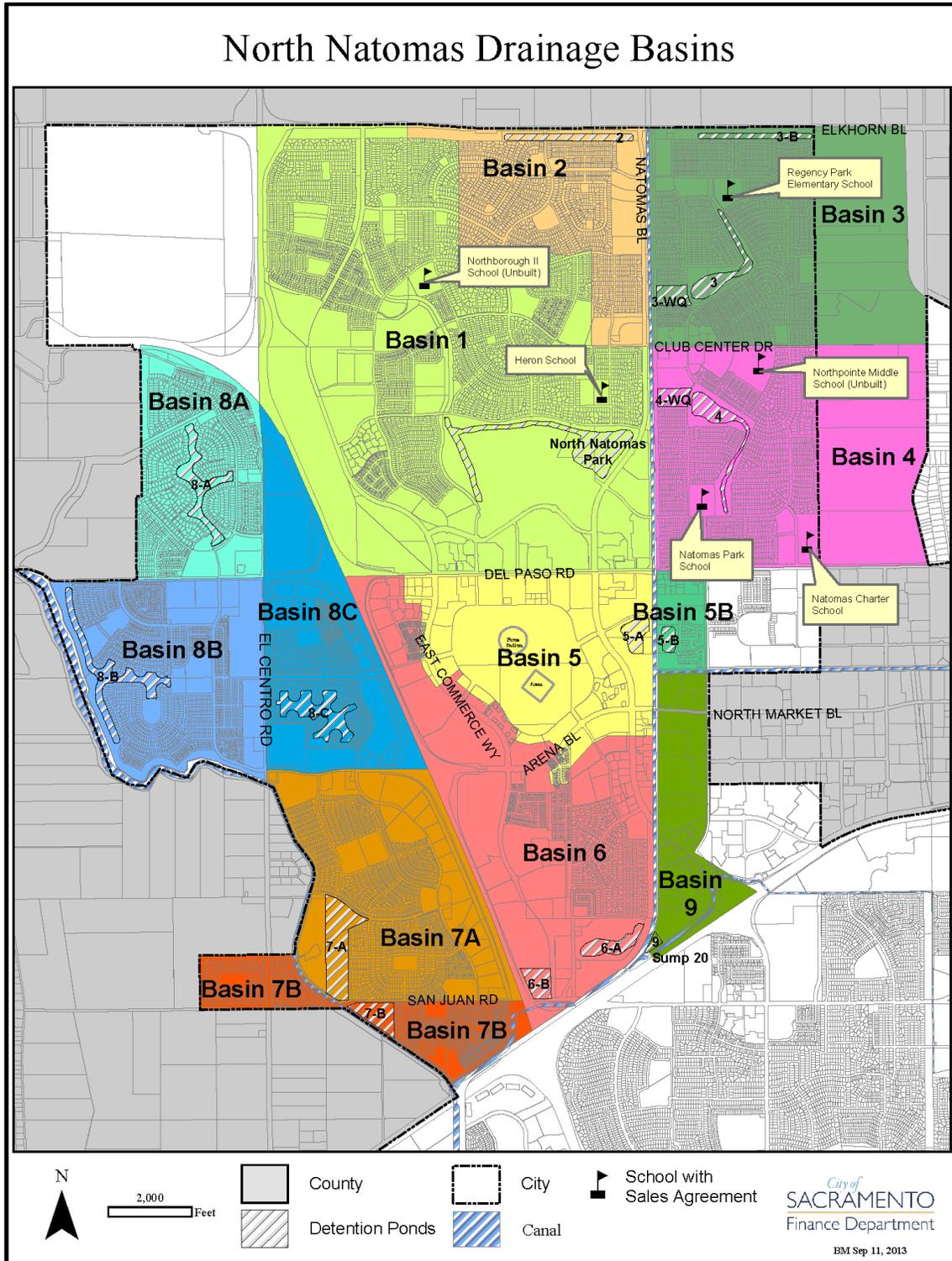
A handwritten signature in blue ink that reads "Douglas Crancer".

Douglas Crancer,
Assistant Superintendent of Business Services

cc: Constantine C. Baranoff
Jeffrey L. Massey
Chris Evans

1901 Arena Blvd., Sacramento, CA 95834
(916) 567-5400

The map showing developed and undeveloped school sites is as follows:



RESOLUTION NO. 2013-____

Adopted by the Sacramento City Council
on October 29, 2013

APPROPRIATION OF NORTH NATOMAS DRAINAGE FEES AND EXECUTION OF SETTLEMENT AGREEMENT

BACKGROUND

- A. Pursuant to the North Natomas Financing Plan (NNFP), drainage fees are to be collected on civic uses to reimburse developers constructing drainage improvements that benefit the civic uses.
- B. Lennar Communities (Landowner) has constructed, and the City has accepted, drainage facilities benefitting civic uses under City Agreements: 98-109-1, dated November 19, 1998; 2001-805, dated September 7, 2001; 2002-030, dated February 7, 2002; and 98-067, dated June 10, 1998 covering drainage Basins 1, 2, 3 and 4 respectively.
- C. In calendar year 2001, the City received drainage fees from the Natomas Unified School District for two schools constructed in Basin 4 in the amount of \$414,350.50.
- D. Pursuant to the NNFP and City Agreement 98-109-1 covering Basin 1, the City set aside \$136,487, representing the City's fair share of the developer's cost for the North Natomas Library parcel and the Town Center parcel.
- E. As required by Government Code Section 66006, all funds collected were not comingled with other sources and all interest earned on collected funds was credited to the purposes for which the fee was collected.
- F. The total of all fees collected and reserved, including interest, is \$729,072.22 through November 1, 2013. An appropriation of drainage fees collected and accumulated interest is necessary to reimburse the Landowner.
- G. The City and Landowner agree that the City shall disburse funds collected from the Natomas Unified School District to date and work with Landowner to implement the terms of the NNFP for the future school sites. The Landowner shall release the City from any claims it may have regarding drainage fees that have not been collected from school districts in the North Natomas Financing Plan area in the past.
- H. The City Council is fully advised in this matter.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1.** The statements of fact in paragraphs A through H of the Background are accurate.
- Section 2.** The City Manager is authorized to appropriate \$729,073 from the fund balance of the North Natomas Community Development Fund (3201).
- Section 3.** The City Manager is authorized to execute a Waiver and Release with Landowner relating to reimbursement for drainage improvements for City civic uses and constructed school facilities pursuant to the North Natomas Financing Plan.