RESOLUTION NO. 2006-301

Adopted By The Sacramento City Council

May 4, 2006

INCREASING 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 March 1, 2006, the Board of Directors of TNBC recommended that the City of Sacramento increase the Natomas Basin HCP from the current rate of Twenty-Four Thousand Eight Hundred Ninety-seven Dollars ($24,897.00) per gross acre) to Forty-one Thousand One Hundred Eighty-two Dollars ($41,182.00) per gross acre. The request is based upon a HCP Finance Model dated March 1, 2006, which established the need for an increase in the Habitat Conservation Fee to fund actual costs of administering the HCP.

F. A public hearing on adoption of this Resolution to increase 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 May 4, 2006, at 2 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 increases become effective sixty (60) days following their adoption.

H. On April 5, 2005, by Resolution 2005-223, the City Council approved a land dedication requirement. The Resolution identifies that this provision will expire unless extended by the City Council.

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 (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 Plan 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 increased Habitat Conservation Fee: (i) the amount of increased fee has been set based upon the HCP Finance Model, dated March 1, 2006, 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 increased Habitat Conservation Fee and the adverse environmental impacts it is designed to mitigate are 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 increased by this resolution, is consistent with the City's General Plan, the North Natomas and South Natomas Community Plans, the North Natomas Financing Plan 2005 Update, 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 Forty-one Thousand One Hundred Eighty-two Dollars ($41,182.00) per gross acre of development.

SECTION 3. Land Dedication Requirement

Developers seeking an Urban Development Permit from the City shall pay all components of the Habitat Conservation Fee ($41,182 per gross acre) except in the specific circumstances stated below. When the specific circumstances apply, the developer is required to dedicate land in lieu of payment of the Land Acquisition Fund of the Habitat Conservation Fee. When the developer is required to dedicate land (or exercises his/her option to dedicate land), the Habitat Conservation Fee is $12,397 per gross acre plus the required mitigation land dedicated to TNBC in compliance with the land acquisition criteria pursuant to the 2003 Natomas Basin HCP. Mitigation land is determined to be required at a ratio of one half acre of mitigation land for every acre of developed land.
The specific circumstances when mitigation land is required in lieu of payment of the Land Acquisition portion of the Habitat Conservation Fee are:

1) land developments of 50 acres or less would continue to enjoy the option of full payment of the Natomas Basin HCP fee or land dedication in lieu of the Land Acquisition portion of the HCP fee;

2) developments of greater than 50 acres up to 100 acres would be required to dedicate land in lieu of the land cost portion of the Land Acquisition Fund, although affected developers may obtain a waiver from TNBC if it can be shown that the Land Acquisition Fund portion of the Natomas Basin HCP fee to be paid could adequately cover the cost to TNBC for land acquisition, and

3) developments of greater than 100 acres must dedicate land in lieu of the land acquisition portion of the Land Acquisition Fund.

In recognition of the fact that it is difficult to acquire land at exactly a specified number of acres, projects in excess of 50 acres must acquire mitigation land but are eligible to pay Land Acquisition fees for any portion of their land, 50 acres or less.

The requirement to dedicate land in lieu of paying fees will expire 1 year following the effective date of this Resolution, unless extended by the City by resolution.

SECTION 4. Construction of Resolution

The provisions of the 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.

SECTION 5. 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 6. Effective Date

This resolution shall take effect 60 days following adoption of this resolution.

SECTION 7. 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.

Adopted by the City of Sacramento City Council on May 4, 2006 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Pannell.

Heather Fargo
Mayor Heather Fargo

Attest:

Shirley Concolino
Shirley Concolino, City Clerk