CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 01/10/06
AGENDA ITEM 2
WORK SESSION ITEM

TO: Mayor and City Council

FROM: Acting Finance Director

SUBJECT: Adoption of a Resolution Accepting the Report and Adopting Findings Related to Fees Collected for Development Projects That are Subject to the Requirements of the Mitigation Fee Act

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution regarding the City's compliance with certain provisions of the Mitigation Fee Act, sometimes referred to as AB 1600.

BACKGROUND:

It is common for local agencies to charge fees on new development to fund construction of capital facilities that will serve the development. The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray cost of public facilities. It was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989.

In order to comply with the Mitigation Fee Act, the City must follow four primary requirements:

1. Make certain determinations regarding the purpose and use of a fee and establish a "nexus" or connection between a development project (or class of project) and the public improvement being financed with the fee;

2. Segregate fee revenue from the General Fund in order to avoid commingling of capital facilities fees and general funds;

3. For fees that have been in the possession of the City for five years or more, and for which the dollars have not been spent or committed to a project, the City must make findings each fiscal year describing the continuing need for the money; and

4. Refund any fees, with interest, for developer deposits for which the findings noted above cannot be made.

The City has complied with numbers 1 and 2 above from the outset since the funds collected are necessary to fund the cost of improvements, which benefit or will benefit the subject development; the attached report enumerates compliance with numbers 3 and 4 for fiscal year 2004-05.

Findings have been made with respect to the portion of any fees remaining unexpended or uncommitted to a project. The findings identify the public purpose for which a particular fee was received, indicate the relationship between the fee and the purpose, and show the continuing need for the funds if the need exists. Refunds of the uncommitted or unexpended portion of fees are to be provided to the depositor for projects for which such need cannot be demonstrated.

Exhibit A to this report is a record of the fees received by the City since January 1989, currently on deposit, in connection with development projects that involve the construction or maintenance of public facilities (street improvements, utility relocations, maintenance districts) and are governed by AB 1600. Included for each applicable deposit is the name of the project and the depositor, the date and amount of the original deposit, the current balance in the deposit account, and a summary of the findings for each deposit.

Exhibit B provides detailed information for each of the summary findings listed on Exhibit A. The narrative includes the specific public improvements for which deposits were received by the City, the relationship between the developer's project and the public improvements, and an explanation of why the funds should be retained after five years if that is the case.

The Council is requested to accept the information regarding AB 1600 deposits contained in Exhibits A and B, and adopt findings as to those funds that remain unexpended five or more years after deposit.

The information contained in the Mitigation Fee Act compliance report has been provided to the Building Industry Association and the affected developers.

Prepared by:

Denise Blohm, Budget Administrator

Recommended by:

Diane Lewis, Acting Finance Director

Approved by:

Jesús Armas, City Manager

Attachments: Exhibit A – Record of Fees
Exhibit B – Summary Finding Detail

FY 2004-05
Report of Findings in Compliance with Mitigation Fee Act

	Applicable Accounts—Project Name	Date of Deposit	Original deposit	Name of Depositor	Balance as of 6/30/04	New Deposits	Interest	Expend In 2004-2005	Refunded as of 6/30/05	Balance as of 6/30/05	Summary Finding
1	The Plymouth Group Tract 6078 (2280-006)	7/13/1992	2,340	The Plymouth Group	4,284	0	115	0	0	4,399	Need for benefit assessment district still exists. **Retain deposit.**
2	Sunnyside Commons Tract 6391 (2280-008)	11/19/1992	3,780	The Plymouth Group	5,111	0	137	0	0	5,248	Need for benefit assessment district still exists. **Retain deposit.**
3	Sunnyside Commons Tract 6260 (2280-009)	9/17/1992	1,620	Curtis S. Petterson	2,862	0	77	0		2,939	Need for benefit assessment district still exists. **Retain deposit.**
4	Sunnyside Commons Tract 6645 (2280-015)	3/25/1994	3,780	The Plymouth Group	6,219	0	167	0	0	6,386	Need for benefit assessment district still exists. **Retain deposit.**
5	Sunnyside Commons Tract 6646 (2280-016)	3/25/1995	3,240	The Plymouth Group	5,377	0	145	0	0	5,522	Need for benefit assessment district still exists. **Retain deposit.**
6	Sunnyside Commons Tract 6713 (2280-028)	6/9/1995	7,920	The Plymouth Group	12,418	0	333	0	0	12,751	Need for benefit assessment district still exists. **Retain deposit.**
7	Garin Crest Tract 6373 (2280-216)	8/23/2000	25,000	Seeno Const.	29,240	0	785	0	0	30,025	Off-site drainage improvements. **Retain deposit.**
8	Bailey Ranch Tract 6169 (2281-001)	5/19/1999	92,048	Signature Properties	114,871	0	1,739	116,610	0	0	Funds expended.
9	Bailey Ranch Tract 6169 (2281-002)	5/19/1999	78,500	Signature Properties	97,964	0	2,633	0	0	100,597	Pro-rata share of Fairview traffic calming study & related improvemetns.
10	Bailey Ranch Tract 6169 (2281-005)	5/18/2000	617,106	Signature Properties	386,449	0	2,233	388,682	0	0	Funds expended.
11	Clarendon Hills Tract 5277 (2311-027)	4/1/1990	17,263	Clarendon Hills Investors Inc.	39,087	0	1,051	0	0	40,138	Need for street extension still exists. **Retain deposit.**
12	So of 92 Fire Equip (2316-006)	9/18/2001	650,000	Hayward Oliver Owners LLC	111,335	0	1,685	113,020	0	0	Funds expended.
	TOTALS		**1,502,597**		**815,217**	**0**	**11,100**	**618,312**	**0**	**208,005**	

Note: Exhibit B contains additional account information.

Exhibit B

FY 2004-05 - Project descriptions and purposes for AB1600 deposits

This information corresponds to the projects listed on Exhibit A.

1. **The Plymouth Group - Tract 6078** (2280-006)**:** The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocate utility poles on Mohr Drive. Completion is anticipated to occur within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

2. **Sunnyside Commons - Tract 6391** (2280-008): The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocate utility poles on Mohr Drive. Completion is expected within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

3. **Sunnyside Commons - Tract 6260** (2280-009): The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocate utility poles on Mohr Drive. Completion is expected within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

4. **Sunnyside Commons - Tract 6645** (2280-015): The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocate utility poles along Mohr Drive. Completion is expected within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

5. **Sunnyside Commons - Tract 6646** (2280-016): The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocate utility poles along Mohr Drive. Completion is expected within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

6. **Sunnyside Commons - Tract 6713** (2280-028): This project is the construction of Phase VI (21 lots) of an approved 117 single-family lot subdivision. The deposit represents the estimated fee the subdivider is responsible to pay toward a benefit district that will be established to relocated utility poles along Mohr Drive. Completion is expected within the next five years. The funds will be retained in the account until the benefit district is formed or relocation of poles is completed.

7. **Garin Crest – Tract 6373** (2280-216): The deposit is related to off-site drainage improvments for the Briargate Way basins as required per conditions of approval no. 30 of Tract 6373. The funds will be retained until these improvements are complete.

8. **Bailey Ranch - Tract 6169** (2281-001): The deposit is related to the subdivision of 391 ± acres into 135 single-family lots. The deposit represented the proportionate share the subdivider was responsible to pay towards providing for water system work at the 1285 reservoir. The funds will have been utilized as part of the new water system for Stonebrae Development.

9. **Bailey Ranch – Tract 6169** (2281-002): The deposit is related to the subdivision of 391 ± acres into 135 single-family lots. The deposit represents the subdivider's proportionate share of the Fairview Traffic Calming Study and related improvements. The funds will be expended this coming year per Memorandum of Agreement with Alameda County.

10. **Bailey Ranch – Tract 6169** (2281-005)**:** The deposit is related to the subdivision of 391 ± acres into 135 single-family lots. The deposit represents the proportionate share the subdivider is responsible to pay towards required Scenario 3 traffic improvements. The funds were expended on expended on Second Street improvements.

11. **Clarendon Hills - Tract 5277** (2311-027)**:** The deposit was collected in connection with a 285 condominium project (Phase I of a 488 unit condominium subdivision). The developer was required to deposit funds equal to the subdivision's proportionate share of the estimated cost for the extension of Vanderbilt Street to Overhill Drive. The funds will be retained until used for the extension, which is dependent upon future development.

12. **So of 92 Fire Equipment** (2316-006): The deposit is related to the subdivision of 251 ± acres into 22 business park lots and 538 single-family lots. The developer was required to deposit $650,000 for a new fire engine and installation of traffic preemption devices to improve fire service capabilities for the development. The fire engine has been purchased and the traffic preemption improvements are completed, fully utilizing these funds.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 06-___

Introduced by Council Member_____

RESOLUTION ACCEPTING THE REPORT AND ADOPTING FINDINGS RELATED TO FEES COLLECTED FOR THE DEVELOPMENT PROJECTS SUBJECT TO THE REQUIREMENTS OF THE MITIGATION FEE ACT

WHEREAS, Government Code section 66006, part of the Mitigation Fee Act, which is sometimes referred to as Assembly Bill 1600, requires the City to make findings each fiscal year describing the continuing need to retain fees collected from developers but remaining unexpended and/or uncommitted after a period of five years; and

WHEREAS, the funds maintained for such period of time must be refunded if the requisite findings cannot be made; and

WHEREAS, the City has unexpended fees which it needs to retain for future expenditures.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby accepts the report of the Acting Director of Finance and Internal Services dated January 10, 2006, and adopts the findings contained therein, copies of which are attached hereto as Exhibit "A" and Exhibit "B".

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: CITY COUNCIL:
MAYOR:

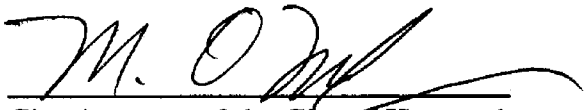
NOES: CITY COUNCIL:

ABSTAIN: CITY COUNCIL:

ABSENT: CITY COUNCIL:

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:



City Attorney of the City of Hayward