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DATE: September 16, 2008
TO: Mayor and City Council
FROM: Director of Finance
SUBJECT: Adoption of a Resolution Accepting the Report and Adopting Findings Related to Fees Collected for Development Projects, which 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.

SUMMARY

Staff is requesting that Council review the information regarding AB 1600 deposits contained in Attachments A and B, and adopt findings as to those funds that remain unexpended five or more years after deposit.

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 Items 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 Items 3 and 4 above for FY 2008.

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.

DISCUSSION

Attachment 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 which 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.

Attachment B provides detailed information for each of the summary findings listed on Attachment A. The narrative includes the specific public improvements for deposits that 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.

FISCAL AND ECONOMIC IMPACT

None.

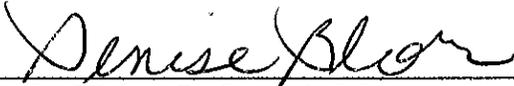
PUBLIC CONTACT

None.

SCHEDULE

This report is prepared annually in compliance Assembly Bill 1600.

Prepared by:



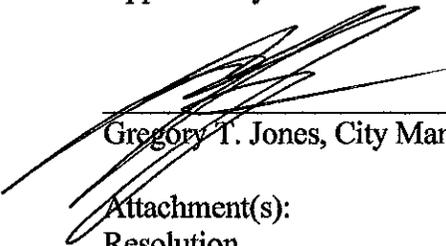
Denise Blohm, Budget Administrator

Recommended by:



Debra Auker, Director of Finance

Approved by:



Gregory T. Jones, City Manager

Attachment(s):

Resolution

Attachment A – FYE 2008 Mitigation Fee Act – Report of Findings

Attachment B – FYE 2008 Mitigation Fee Act – Project Descriptions

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 08-

True
9/10/08

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 which remain 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 that 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 Director of Finance dated September 16, 2008, and adopts the findings contained therein, copies of which are attached hereto as Attachment A and Attachment B.

IN COUNCIL, HAYWARD, CALIFORNIA September 16, 2008

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

FYE 2008
Mitigation Fee Act - Report of Findings

	Applicable Accounts—Project Name	Date of Deposit	Original deposit	Name of Depositor	Balance as of 6/30/07	New Deposits	Interest	Expend In FY 2006-07	Refunded as of 6/30/08	Balance as of 6/30/08	Summary Finding
1	The Plymouth Group Tract 6078 (2280-006)	7/13/1992	2,340	The Plymouth Group	4,725	0	235	0	0	4,960	Need for benefit assessment district still exists. Retain deposit.
2	Sunnyside Commons Tract 6391 (2280-008)	11/19/1992	3,780	The Plymouth Group	5,636	0	281	0	0	5,917	Need for benefit assessment district still exists. Retain deposit.
3	Sunnyside Commons Tract 6260 (2280-009)	9/17/1992	1,620	Curtis S. Petterson	3,156	0	158	0	0	3,314	Need for benefit assessment district still exists. Retain deposit.
4	Sunnyside Commons Tract 6645 (2280-015)	3/25/1994	3,780	The Plymouth Group	6,859	0	342	0	0	7,201	Need for benefit assessment district still exists. Retain deposit.
5	Sunnyside Commons Tract 6646 (2280-016)	3/25/1995	3,240	The Plymouth Group	5,930	0	296	0	0	6,226	Need for benefit assessment district still exists. Retain deposit.
6	Sunnyside Commons Tract 6713 (2280-028)	6/9/1995	7,920	The Plymouth Group	13,694	0	684	0	0	14,378	Need for benefit assessment district still exists. Retain deposit.
7	Garin Crest Tract 6373 (2280-216)	8/23/2000	25,000	Seeno Const.	32,246	0	1,610	0	0	33,856	Off-site drainage improvements. Retain deposit.
8	Clarendon Hills Tract 5277 (2311-027)	4/1/1990	17,263	Clarendon Hills Investors Inc.	43,106	0	2,152	0	0	45,258	Need for street extension still exists. Retain deposit.
	TOTALS		64,943	8 depositors	115,352	0	5,758	0	0	121,110	

Note: Attachment B contains additional account information.

FYE 2008
Mitigation Fee Act - Project Descriptions

This information corresponds to the projects listed on Attachment A.

1. **The Plymouth Group - Tract 6078 (2280-006)**
 - Deposit Date: 7/13/1992
 - Balance: \$4,960
 - 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)**
 - Deposit Date: 11/19/1992
 - Balance: \$5,917
 - 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)**
 - Deposit Date: 9/17/1992
 - Balance: \$3,314
 - 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)**

- Deposit Date: 3/25/1994
- Balance: \$7,201
- 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)**

- Deposit Date: 3/25/1995
- Balance: \$6,226
- 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):**

- Deposit Date: 6/9/1995
- Balance: \$14,378
- 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):**

- Deposit Date: 8/23/2000
- Balance: \$33,856
- The deposit is related to off-site drainage improvements 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. **Clarendon Hills - Tract 5277 (2311-027):**

- Deposit Date: 4/1/1990
- Balance: \$45,258
- 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.