

RESOLUTION NO. 2008-054

Adopted by the Sacramento City Council

January 29, 2008

AUTHORIZING THE SEPARATE PROCESSING AND APPROVAL OF ENTITLEMENTS FOR THE GREENBRIAR PROJECT, NOTWITHSTANDING CITY RESOLUTION NO. 2001-518

BACKGROUND

- A. On July 24, 2001, the City Council approved Resolution No. 2001-518 to temporarily establish restrictions on the approval of entitlements on three properties outside of the City of Sacramento (Camino Norte, West Lakeside, and Greenbriar Farms).

- B. Resolution No. 2001-518 was enacted pursuant to the "Agreement to Settle Litigation By and Between National Wildlife Federation, Environmental Council of Sacramento, Friends of the Swainson's Hawk, Mountain Lion Foundation, Planning and Conservation League and the Sierra Club, the City of Sacramento, Natomas Estates LLC and Kern Schumacher. This Settlement Agreement arose out a lawsuit filed in the U.S. District Court for the Eastern District of California under the federal Endangered Species Act (FESA) as well as National Environmental Policy Act (NEPA) and Section 706 of the Federal Administrative Procedure Act, 5 U.S.C. Sec. 706. The primary challenge of the lawsuit was to the adequacy of the Natomas Basin Habitat Conservation Plan (NBHCP) and the adequacy of the environmental review undertaken for that plan.

- C. The Settlement Agreement followed a decision by the district court granting the Plaintiff's motion for summary judgment on four counts under the FESA and one count under NEPA. Thereafter, the U.S. Fish and Wildlife Service and the City, along with other public entities, initiated efforts to revise the NBHCP and to undertake further environmental review. Pursuant to the Settlement Agreement, a limited amount of development was allowed to occur in the Permit Area covered by the NBHCP, pending completion of the Revised NBHCP and issuance of a new Incidental Take Permit (ITP). The right to engage in the limited amount of development was conditioned upon compliance with certain measures, including the City's adoption of

Resolution No. 2001-518.

- D. Following adoption of Resolution No. 2001-518, the City, Sutter County and The Natomas Basin Conservancy (TNBC) prepared a revised NBHCP ("2003 NBHCP") that was reviewed and approved by the U.S. Fish & Wildlife Service and California Department of Fish & Game (the "Wildlife Agencies"), Subsequent to the adoption of Resolution No. 2001-518, a revised NBHCP was reviewed and approved, following additional environmental review under CEQA and NEPA, and a new ITP was issued. The Wildlife Agencies and Permittees entered into an Implementation Agreement and issued new ITPs to the City, Sutter County and TNBC. These decisions were challenged in federal and state courts, and these decisions were upheld, and the challenges rejected.
- E. With respect to future development in the Natomas Basin outside of the City and Sutter's respective Permit Areas as defined in the 2003 NBHCP ("Future Urban Development"), Section 3.1.1 of the 2003 NBHCP Implementation Agreement ("IA") provides, in part, that "CITY and SUTTER further agree that in the event this future urban development should occur, prior to approval of any related rezoning or prezoning, such future urban development shall trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development and/or possible suspension or revocation of CITY's or SUTTER's Permits in the event the CITY or SUTTER violate such limitations." By its terms, the Settlement Agreement expired on October 1, 2002, provided that certain obligations (the City's obligation to Acquire Mitigation Lands and its obligation to establish the Mitigation Cushion) survived the expiration of the Settlement Agreement and the issuance of the Revised NBHCP and the related HCP.
- F. By its terms, the Settlement Agreement expired on October 1, 2002, provided that certain obligations (the City's obligation to Acquire Mitigation Lands and its obligation to establish the Mitigation Cushion) survived the expiration of the Settlement Agreement and the approval of the Revised NBHCP and the issuance of the related ITP to the City.

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

Section 1. The City Council of the City of Sacramento rescinds Resolution No. 2001-518 to the extent that it restricts or prohibits the City from approving separately the first stage entitlements for the Greenbriar project. The provisions of Resolution No. 2001-518 shall remain in effect as to other properties within the Joint Vision area.

Section 2. The City acknowledges and agrees that prior to approval of any related rezoning or pre-zoning by the City for Future Urban Development, the City will conduct a reevaluation of the Natomas Basin HCP and incidental take permits, and prepare a new effects analysis pursuant to the 2003 Revised Natomas Basin HCP and Section 3.1.1 of the NBHCP IA , as amended. The City further acknowledges that such Future Urban Development may trigger potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits by U.S. Fish & Wildlife Service or the California Department of Fish & Game to the permittee for that additional Future Urban Development prior to tentative map, development agreement, and final map approval.

Adopted by the City of Sacramento City Council on January 29, 2008 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk