



FROM 4.29.97
TO 5.6.97
CONTINUED

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DEPARTMENT OF UTILITIES
ENGINEERING SERVICES

CITY OF SACRAMENTO
CALIFORNIA

FROM 5.6.97
TO 5.20.97
CONTINUED

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April 16, 1997

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: APPROVAL OF THE NORTH NATOMAS COMPREHENSIVE DRAINAGE PLAN, CERTIFICATION OF THE NORTH NATOMAS COMPREHENSIVE DRAINAGE PLAN ENVIRONMENTAL IMPACT REPORT, ADOPTION OF THE FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTION OF THE MITIGATION MONITORING PLAN

LOCATION AND COUNCIL DISTRICT: North Natomas Community Plan Area (District 1)

RECOMMENDATION:

Staff recommends that Council adopt the attached resolution which approves the Comprehensive Drainage Plan, certifies the Environmental Impact Report (EIR), adopts the Findings of Fact and Statement of Overriding Considerations, and adopts the Mitigation Monitoring Plan for the Comprehensive Drainage Plan within the North Natomas Community Plan area.

CONTACT PERSON: Gary A. Reents, Engineering Services Manager, 433-6633

FOR COUNCIL MEETING OF: April 29, 1997

SUMMARY

A Comprehensive Drainage Plan for the North Natomas Community Plan area has been developed. The City completed and circulated a draft North Natomas Comprehensive Drainage Plan EIR for a 45-day public review and comment period that began on December 23, 1996 and ended on February 6, 1997. The City responded to all comments received in a final EIR which was circulated on April 7, 1997. The Comprehensive Drainage Plan, and the draft and final EIRs are now being presented to Council for approval.

Mary Lou -

Janelle dropped

three off for

May 6th -

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Council.

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CITY OF SACRAMENTO

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A697-053

Sierra Club Mother Lode Chapter and Sacramento Group

April 29, 1997

To: Mayor and City Council

Re: FEIR, North Natomas Drainage Plan

The Environmental Council and Sierra Club Sacramento asked the City Utilities Department to delay bringing the FEIR for the North Natomas Drainage Plan to the Council until the US Fish and Wildlife Service had completed its review of the City's application for a 10 (a) incidental take permit (under federal Endangered Species Act) for North Natomas. The 10 (a) permit is required for the Drainage Plan to be implemented.

If the City proceeds without the 10 (a) permit, it will be committing an unlawful take under the federal Endangered Species Act. If the City moves forward without first obtaining an incidental take permit, the City's action may force us to initiate a citizen suit under the federal Endangered Species Act.

We believe that it is premature to adopt a final EIR. The conditions for a Section 10 (a) permit are still under discussion, and the final content, if issued, is not known. It is possible that the 10 (a) permit may differ from the FEIR. In our opinion, the response to our comments in the FEIR is inadequate.

There are a number of reasons why the FEIR is inadequate, and why the drainage plan as proposed does not mitigate take to "less than significant" as stated by the EIR consultant Jones and Stokes. Attached are comments by Giant Garter Snake expert George Hansen, which we incorporate into this letter. The comments below summarize the points in his letter.

- 1) An earlier FEIR adopted by the City assumed a different drainage plan, using parallel canals. The present FEIR does not establish a biological basis for replacing a biologically superior design with an inferior design, rejected in the past as inadequate to mitigate the impacts on threatened species.
- 2) The present drainage plan design reduces mitigation ratio requirements to one-quarter what was required under the previous FEIR. The 1994 FEIR stated:

"Impacts . . . relating to the loss of Giant Garter Snake habitat have been avoided or substantially lessened by the mitigation measures adopted in subparagraph d. above because the measures would require strict controls over the manner and timing of any alterations to existing Giant Garter Snake habitat, including its destruction, and would provide specific details and procedures to be followed for the creation of new, replacement Giant Garter Snake habitat at a ratio of 2:1 in order to ameliorate the effects of habitat disturbance and the time period necessary for new emergent wetlands vegetation to establish itself and mature." (p. 41)

3) Jones and Stokes has omitted critical information regarding Giant Garter Snake habitat requirements. Recent documented scientific evidence clearly does not support the conclusions reached by Jones and Stokes. These include:

- a) Hansen and Brode, 1993, found that GGS is highly reluctant to utilize reconstructed habitats;
- b) Laguna/Elk Grove Creek mitigation strategy failed to retain GGS;
- c) Sacramento Regional Water Treatment facility/ Beach Lake, "managed marsh" mitigation strategy failed to retain GGS;

4) The Drainage Plan design has shifted from a steep-sided, V-shaped or U-shaped ditch or canal profile to a 2:1 or 3:1 sideslope design to "increase both the amount of open water habitat and potential wetland and upland habitat on the canal banks." This shift is detrimental to GGS, and no biological evidence is presented to support it. The slopes on the West Drain will be flattened to be stable and those on the East and Main Drain will be widened and slope dressing will be applied.

The City Utilities and FEIR claim that the shift in drainage plan design is mitigated for by the payment of HCP fees, or, if the HCP is not approved, by alternative mitigation. We object to this approach because:

- 1) the City must have a 10 (a) permit to proceed with alterations to existing canals because these are primary GGS habitat, and the USFWS must approve the conditions for this permit to be issued;
- 2) the alternative mitigation listed is inadequate, and does not meet the requirements adopted by the Council in 1994 as part of the unified replanning of North Natomas;
- 3) the HCP fees as presently set are inadequate to mitigate for the loss of GGS and the loss of GGS habitat.

Thank you for this opportunity to comment on behalf of Sierra Club and the Environmental Council of Sacramento.



Andrew Sawyer
Mother Lode Chapter Chair
ECOS Litigation Chair



Judith Lamare
Sacramento Group Chair

wetlands, the specific designated area for the wetlands and supporting watershed, a monitoring program and provisions for long-term maintenance of the created wetlands, fencing and buffer details, and provisions for future ownership or stewardship acceptable to the City of Sacramento. The plan shall specify vegetative performance criteria and standards to judge the success of the recreated wetlands, and remedial actions to be taken if the performance standards are not met. If special status species are found, mitigation shall occur per the appropriate guidelines (if established) or through consultation with the appropriate regulatory agency.

2. The applicant shall obtain the applicable permit(s) from the U.S. Army Corps of Engineers and the California Department of Fish and Game for any proposed modifications to wetlands.

Impact

4.5-7 Loss of Wetland Habitat of Giant Garter Snake

The enlargement and abandonment of existing drainage canals would remove important habitat for the Giant Garter Snake, which is listed as Threatened by the State and is a category 1 candidate for federal listing. This is considered a significant impact.

Wetland habitat for giant garter snakes in the proposed Plan Update area occur almost exclusively along drainage canals, and impacts would be determined, therefore, by the drainage plan that is eventually adopted. The Comprehensive Drainage Plan (CDP) would not alter or enlarge the East and West Drainage canals, and would avoid disruption of wetland and riparian habitats along 6.3 miles of existing canals. As was the case with the 1986 NNCP, the Natomas East Drainage Canal would not be affected, and thus, no direct impacts on its riparian and wetland habitat are anticipated. The previous 1986 NNCP EIR identified the elimination of most or all of the riparian and wetland habitat along the East and West Drainage canals as a result of necessary widening and deepening. The proposed Plan Update and Comprehensive Drainage Plan (CDP) will allow the existing RD 1000 canals to be virtually undisturbed, and new drains will be constructed parallel to the existing drains. Approximately fifty feet of buffer will separate the parallel canals. As such, the CDP precludes having to modify 6.3 miles of existing canals. Under the CDP, dredging in the East and West Drainage canals will essentially be eliminated. Dredging will be limited to two crossings of the East Drain and an inverted siphon crossing of the West Drain. Also, dredging impacts to giant garter snakes, spawning fish, and other aquatic species may be reduced by eliminating the need to extensively modify the East and West Drainage canals.

Mitigation

4.5-7 Loss of Wetland Habitat of Giant Garter Snake

Implementation of the following mitigation measures addressing the loss of wetland habitat of the Giant Garter Snake would result in a less-than-significant impact.

The 1986 NNCP EIR mitigation states that wetland areas (drainage canals) should be restored with emergent vegetation. Existing drainage ditches should be diked and allowed to dry out slowly while emergent plants in newly restored areas are establishing. This allows a transition period for emergent vegetation and provides an opportunity for CDFG to relocate the snakes if they desire.

The 1986 Findings determined that this mitigation measure is incorporated within the Vegetation and Wildlife component of the Design and Environmental Standards section. These measure will substantially lessen but not eliminate adverse impacts.

Impacts to the Giant Garter Snake will be lessened through avoiding urban drainage into Fisherman's Lake, eliminating disturbance to the existing East and West canals and by providing new separate canals which may provide new habitat areas for the snake.

Since the 1986 Plan, the California Department of Fish and Game has prepared a report entitled the Status and Future Management of the Giant Garter Snake (*Thamnophis gigas*) Within the Southern American Basin, Sacramento and Sutter Counties, California, by John M. Brode and George E. Hansen, January 1992. Within this document are mitigation guidelines that should be followed for giant garter snake habitat that is not designated to be preserved. The following information is excerpted from the above-referenced report.

Mitigation should be designed so that there is no net loss of giant garter snake habitat in quantity or quality. Relocation or replacement of giant garter snake habitat does not meet the habitat quality goal for the short term. It may take 3-5 years, or longer, for newly constructed canals to provide the habitat needed to support resident populations of giant garter snake.

Because newly created giant garter snake habitat takes several years to reach maturation, replacement of existing giant garter snake habitat requires compensation at a 2:1 or greater ratio to achieve viable giant garter snake population levels. Compensation greater than parity is required to overcome interim population declines that occur during the time between destruction of the original habitat and maturation of the new habitat. Replacement or supplemental giant garter snake habitat should be constructed as soon as possible after a conservation plan is approved. The timing of these activities should follow the Department of Fish and Game guidelines. A portion of these guidelines are reproduced below. For a thorough discussion, please refer to the entire giant garter snake document referenced above.

March 19, 1997

to Ms. Jude Lamare
Sierra Club Sacramento and
Friends of the Swainson's Hawk
1823 Eleventh Street
Sacramento, CA 95814

Fax (916) 447-8689
Tel (916) 447-4956
or 444-0910

from George E. Hansen
3230 Brookwood Road
Sacramento, CA 95821

Tel (916) 489-2571

Re Natomas Basin Habitat Conservation Plan (NBHCP)

Dear Jude:

Thank you for dropping off the reports (NORTH NATOMAS COMPREHENSIVE DRAINAGE PLAN [dated December 1996] and SACRAMENTO CITY'S RESOLUTION 94-258 [DATED MAY 3, 1994]). I have reviewed them briefly for issues directly related to the giant garter snake, and responded below. Generally, giant garter snake biology is sufficiently well known for Jones and Stokes to have provided more detail regarding mitigation. By omitting information or including misinformation, broad definitions of giant garter snake habitat requirements and other needs are created which allow the preparers to repeatedly and erroneously claim that "Implementation of the following mitigation measures would reduce this impact to a less-than-significant level."

Following is a brief review of GIANT GARTER SNAKE ISSUES contained within the CITY OF SACRAMENTO'S DRAFT EIR for the NORTH NATOMAS COMPREHENSIVE DRAINAGE PLAN (NNCDP) (prepared by JONES AND STOKES ASSOCIATES December 1966).

The DRAFT EIR, under Construction-Related Impacts States (p 3-16):

" **Impact: Mortality of or disturbance to Giant Garter Snakes due to Construction of Detention Basins and Trunk Lines in Rice Fields, Ditches, or Canals.** Giant garter snake habitat (i.e., ditches and canals) is known to be present in Natomas Basin agricultural fields. Constructing....in agricultural fields could disturb or kill giant garter snakes in wetland habitats...."

"**Mitigation.** Implementation of the following mitigation measures would reduce this impact to a less-than-significant level."

COMMENT: Although the mitigation measures listed in the DRAFT EIR'S Mitigation Measure 3-1 may help to reduce impacts to giant garter snakes during and following construction, there is no

evidence that these are adequate to reduce impacts to a less-than-significant level. In fact, my recent experience with such mitigation suggests that even strict adherence to these mitigation measures may fail to provide detectable reduction of impacts. Additionally, no mitigation is offered for the loss of giant garter snakes and their supporting habitat that will be lost due to "...continued cumulative losses of biotic resources as a result of urbanization..." (DRAFT EIR p 6-6) that is encouraged by this growth inducing project.

Instead, studies conducted within the Natomas Basin demonstrated the reluctance of giant garter snakes to utilize such reconstructed habitats (Hansen and Brode 1993). In these studies, giant garter snakes that were able to flee the destruction of their existing canal/drain habitats crowded into adjacent undisturbed canals and ditches. This temporarily increased the numbers of snakes (based upon sightings/hour) along these adjacent habitats. Giant garter snake mortality also increased temporarily along these adjacent habitats (based upon dead and injured animals encountered), with road killed snakes and victims of other accidents common in the area for over a year.

However, within two years the numbers of giant garter snakes observed along these adjacent habitats had decreased to pre-construction levels. Since giant garter snakes had not returned to the relocated canal/ditch habitats during that period, and since giant garter snake levels had apparently returned to original densities elsewhere in the Natomas Basin, it appears that the Natomas Basin giant garter snake population had not "absorbed" either the construction impacts nor these "displaced" snakes, but instead had suffered a long term loss equivalent to the percentage of habitat that was "relocated". Viewed as mitigation for impacts to giant garter snakes, this "habitat reconstruction and replacement" was a failure.

Other attempts at mitigating construction impacts upon giant garter snakes have also failed. At Laguna/Elk Grove Creeks, habitat was fragmented, dewatered, reconstructed, and maintained as parkway and managed marsh in the interest of "conserving" the giant garter snakes and their habitat that existed there prior to construction. Here, mitigation similar to that proposed in this DRAFT EIR was carried out but impacts remained significant despite CDFG's pre-construction optimism. Even though mitigation was conducted, no giant garter snakes have been seen in the region since.

During recent attempts at creating "managed marsh" habitats within the Sacramento Regional Water Treatment facility near Beach Lake, canal/ditch and slough habitats known to support the giant garter snake were destroyed and converted to shallow water seasonal managed marshes which are unsuitable for giant garter

snakes. I support the creation of bird habitat, but not at the expense of existing supporting habitat of the giant garter snake. Again, mitigation was carried out as proposed, but impacts remained significant despite the planner's optimism.

The DRAFT EIR, under Construction-Related Impacts States (p 3-17):

" **Impact: Loss of Giant Garter Snake and Waterbird Foraging Habitat due to Construction of Detention Basins and Trunk Lines in Rice Fields.** Constructing detention basins in rice fields would eliminate...giant garter snake summer habitat and waterbird foraging habitat in the Basin."

COMMENT: First, flooding within detention basins destroys the suitability of the habitat for giant garter snakes through siltation, liquefaction of soils, destruction of burrows, cracks and other soil structure, removal of sheltering vegetation and individual snakes. This damage occurs during the winter and displaced snakes when they are cold, slow, and defenseless. Resulting habitat damage requires years to recover, and will never recover in a flood detention basin flooded annually. Thus, more than summer foraging habitat would be lost by converting rice land to flood detention basin.

Second, habitat features that benefit waterbirds as foraging habitat are detrimental to giant garter snakes. There is an alarming trend by USFWS, CDFG, and many habitat managers and planners to view wading bird or waterbird habitat as being equivalent to giant garter snake habitat. This is simply not true. Since wading birds count among the primary predators of giant garter snakes, their habitat must contain sheltering vegetation and other structure to shelter the snakes from the birds. This requires that habitats be steep sloped, with densely vegetated water, water margin, slope, and bank top. Expanses of shallow water, especially open shallow water, are hazardous to these snakes. Why are waterbird habitat needs being discussed under Giant Garter Snake Mitigation anyway?

It is interesting that the DRAFT EIR considers the construction of Detention Basins to represent a loss of giant garter snake habitat that requires mitigation (Mitigation Measure 3-2, p 3-18), yet the NATOMAS BASIN HCP refers to these Basins as giant garter snake mitigation habitat. The former view is correct.

The DRAFT EIR, under Construction-Related Impacts States (p 3-21):

" **Impact: Loss of Giant Garter Snake...due to Levee Construction and Canal Widening along the West Drainage Canal.**

Habitat loss would be partially mitigated by designing the levee banks to increase available habitat. In contrast to the existing steepside canal banks, the proposed canals would have 2:1 or 3:1 sideslopes, which would increase both the amount of open water habitat and potential wetland and upland habitat on the canal banks."

COMMENT: This is one of the main reasons why giant garter snake mitigation has failed. USFWS, CDFG, and myself have agreed (based upon field studies) that giant garter snakes benefit from steep sided, V-shaped or U-shaped ditch or canal profiles which allow snakes that are basking at the top of the slope to quickly "launch" or dive into the water using gravity to aid speed. Since level areas and gentle slopes benefit its predators rather than giant garter snakes, these snakes are seldom seen in ponds or other areas with gently sloping banks. These gently sloping banks are avoided even when these are present in habitats that otherwise support giant garter snakes.

Ricefields provide an exception to this, but the snakes (usually gravid females seeking brood areas) use these only when they are flooded and fully vegetated with a protective cover of emergent rice plants. Additionally, steep sided canal/ditch habitat lies adjacent to all Natomas Basin rice fields as part of the required agricultural infrastructure and provides nearby habitat for female giant garter snakes using the rice fields.

The DRAFT EIR, under Construction-Related Impacts States (p 3-24):

" Impact: Loss of Giant Garter Snake Habitat due to Levee and Ditch Construction along Elkhorn Boulevard.

Giant garter snakes are known to occur in the Elkhorn Boulevard area, although habitat quality is narrow with minimal cover."

COMMENT: "Narrow habitat" is what is supporting giant garter snakes in the Natomas Basin today. Being narrow does not in itself detract from the suitability of giant garter snake canal/ditch habitat as it now serves rice agriculture, and its importance should not be minimized in order to lessen the mitigation required.

The DRAFT EIR, under Construction-Related Impacts States (p 3-25):

" Impact: Loss of Giant Garter Snake Habitat due to Levee and Ditch Construction along Elkhorn Boulevard.

....Jones and Stokes Associates estimates that 11.6 acres of this habitat (ruderal) could be created....creating a net

increase in habitat of 4.4 acres. This amount of habitat creation exceeds the Natomas Basin HCP habitat mitigation requirements (which requires 0.5 acre for every 1 acre affected in the basin)."

Here we talk about 0.5:1 mitigation. However, within the earlier CITY OF SACRAMENTO'S RESOLUTION 94-258 (DATED 04/21/94), the giant garter snake was to receive 2:1 mitigation due to its special needs (see below).

From: CITY OF SACRAMENTO'S RESOLUTION 94-258 DATED 04/21/94

20. c. Proposed mitigation. States (p 40):

"...Because relocation or replacement of Giant Garter Snake habitat will not meet the habitat quality goal in the short term, replacement of existing habitat will require compensation at a 2:1 ratio in order to overcome possible population declines that may occur during the time between destruction of the original habitat and the maturation of new habitat."

and 20. c. Proposed mitigation. States (p 41):

"Impacts...relating to the loss of Giant Garter Snake habitat have been avoided or substantially lessened by the mitigation measures adopted in subparagraph d. above because the measures would require strict controls over the manner and timing of any alterations to existing Giant Garter Snake habitat, including its destruction, and would provide specific details and procedures to be followed for the creation of new, replacement Giant Garter Snake habitat at a ratio of 2:1 in order to ameliorate the effects of habitat disturbance and the time period necessary for new emergent wetlands vegetation to establish itself and mature."

The original "double ditch systems" etc. that were proposed to mitigate for lost canal/ditch habitat was meant to serve this 2:1 mitigation ratio. Even though approved as "reasonable mitigation" within RESOLUTION 94-258, this mitigation seems to have disappeared by the last draft of the EIR, replaced by the new 0.5:1 "HCP mitigation ratio". This reduction in the mitigation ratio makes mitigating impacts of construction upon giant garter snakes much more difficult to achieve.

Please let me know what you would like to see more (or less) of.

Sincerely,



George E. Hansen