



13.2

PLANNING AND BUILDING
DEPARTMENT

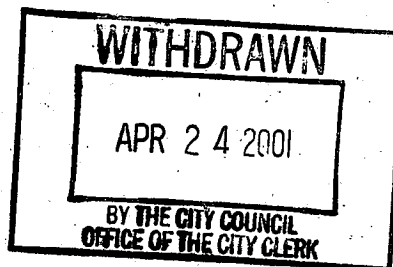
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City Council
Sacramento, California



Honorable Members in Session:

SUBJECT: PRINCIPLES OF SETTLEMENT FOR THE NATOMAS BASIN HABITAT CONSERVATION PLAN LITIGATION

LOCATION/ COUNCIL DISTRICT: North and South Natomas
District 1

RECOMMENDATION: City staff requests direction from the City Council related to the Principles of Settlement being used by all parties involved in settling the Natomas Basin Habitat Conservation Plan (NBHCP) federal litigation.

CONTACT PERSON: Carol Shearly, North Natomas Manager, 264-5893

FOR COUNCIL MEETING OF: April 24, 2000 (evening)

SUMMARY: During the last few months, parties in the *National Wildlife Federation et. al. v. Secretary of the Interior Bruce Babbitt* case have been meeting to negotiate a settlement satisfactory to all parties. The Principles of Settlement identify the basic agreement to date. With direction from the Council on the principles, a legal settlement agreement will be drafted for consideration by the Council on May 3, 2001.

COMMISSION ACTION: No action has been taken by the Planning Commission on this item.

BACKGROUND INFORMATION:

Natomas Basin Habitat Conservation Plan and Incidental Take Permit: The Natomas Basin HCP was approved by the City Council on August 7, 1997 (Ord. No. 97-046 and Reso. No. 97-459) and the Implementation Agreement (IA) was executed on December 31, 1997. The HCP is the conservation plan supporting a federal incidental take permit (ITP) under Section 10(a)(1)(B) of the Endangered Species Act (ESA) and a state permit under Section 2081 of the California Fish and Game Code. The federal and state permits were also issued on December 31, 1997. The HCP applies to the 53,341 acre interior of the Natomas Basin. The Basin contains incorporated and unincorporated areas within the jurisdictions of the City of Sacramento, Sacramento County, and Sutter County.

The goal of the HCP is to preserve, restore, and enhance habitat values found in the Natomas Basin while allowing urban development to proceed according to local land use plans. The HCP establishes a **multi-species conservation program** to mitigate the expected loss of habitat values and incidental take of protected species that would result from urban development, operation of irrigation and drainage systems, and rice farming.

Federal Lawsuit: On August 15, 2000, and January 26, 2001, Judge David Levi issued Orders invalidating the City's ITP in the case of *National Wildlife Federation et. al vs. Secretary of Interior Bruce Babbitt*. Since the August ruling, the City has been working with US Fish and Wildlife Service (USFWS) to get a new ITP. Much progress has been made to revise the NBHCP to address the judge's concerns raised in the Orders. We have executed a contract with CH2MHill to conduct an Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for the Revised NBHCP. Economic and Planning Systems (EPS) and May Consulting are completing the economic analysis and the biological study, respectively, to be included in the Revised NBHCP. Sutter County is participating with the City in revising the NBHCP and sharing the cost of the EIR/ EIS consultants. RD1000 and Natomas Mutual are willing to participate with the City on the Revised NBHCP subject to an Indemnification Agreement. The City anticipates obtaining a new ITP by the end of 2001.

However, without an ITP, urban development may not be able to continue during this construction season. Therefore, the City, the Plaintiffs, USFWS, The Natomas Basin Conservancy, and the developers who intervened in the case have been negotiating a settlement to allow limited development to go forward during the 2001 construction season.

Principles of Settlement: Basically, the Plaintiffs' interests are: 1) to protect Fisherman's Lake, 2) to begin establishing preserves in the Swainson's hawk mitigation zone (Zone 1), 3) to begin establishing preserves to benefit the giant garter snake (Zone 2), and 4) no new required mitigation land to be acquired in Sutter County with HCP fees from the allowable limited development. The City's interest is to allow limited development during the 2001 construction season while we continue to revise the NBHCP and conduct the EIR/ EIR in order to obtain a new ITP. These Principles of Settlement are being used to reach accord. No doubt, changes will be made to the principles before the Council meeting on April 24, 2001. City staff anticipates distributing the Principles of Settlement exhibit during the Council meeting.

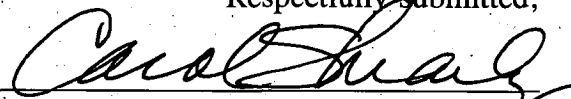
FINANCIAL CONSIDERATIONS: If approved, the Settlement Agreement will result in increased costs to implement the NBHCP. The increased costs will be paid for through an increase in the development impact fee for habitat conservation (HCP fees). The Natomas Basin Conservancy will likely be acting on a fee increase in the near future and will ask the Council to approve such a fee increase.

ENVIRONMENTAL CONSIDERATIONS: No environmental review has been done for this agenda item. The proposed Settlement does not result in measures any different from those contemplated under the HCP and its supporting environmental documentation, and otherwise results in no conceivable adverse environmental effect. Previous environmental review has been conducted related to the Natomas Basin HCP, including but not limited to, the 1986 North Natomas Community Plan Environmental Impact Report (EIR), the Supplement to the 1986 NNCP EIR prepared for the 1994 North Natomas Community Plan (SEIR), and the North Natomas Comprehensive Drainage Plan EIR. The City is currently conducting an EIR/ EIS for the Revised NBHCP.

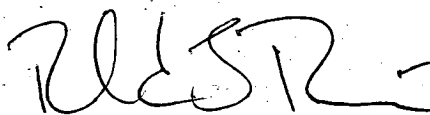
POLICY CONSIDERATIONS: The 1994 North Natomas Community Plan requires approval of a Habitat Conservation Plan and the Corps 404 permit for the Sacramento Local Area Project has a condition that required the establishment of a Habitat Conservation Plan prior to completion of the flood protection improvements. The Natomas Basin Habitat Conservation Plan was developed to comply with these two requirements. The incidental take permit issued by US Fish and Wildlife Service was deemed invalid by Judge Levi in the *National Wildlife Federation et. al. v. Secretary of the Interior Bruce Babbitt* case. The City is now revising the NBHCP and conducting an EIR/ EIS in order to obtain a new incidental take permit. It is appropriate for the City to seek a settlement to allow limited development to go forward during this construction season until a new ITP can be obtained.

ESBD: None at this time.

Respectfully submitted,



CAROL A. SHEARLY
Natomas Manager



APPROVED:

ROBERT P. THOMAS
City Manager