

Office of Planning and  
Environmental Review  
Leighann Moffitt, Director



Interim County Executive  
Ann Edwards

**ENDORSED FILED**

July 15, 2021

SEP 23 2021

Susan E. Green, Presiding Judge  
Sutter County Superior Court  
1175 Civic Center Boulevard  
Yuba City, CA 95993

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER  
CLERK OF THE COURT  
By JACKIE LASWELL Deputy

**Re: Response to Sutter County Civil Grand Jury Report "Development in South Sutter – Fowl Play in the Natomas Basin?"**

Dear Ms. Green:

The Sacramento County Office of Planning and Environmental Review appreciates the opportunity to review and respond to the 2020-2021 Sutter County Civil Grand Jury Report entitled "Development in South Sutter – Fowl Play in the Natomas Basin". Although the majority of the Report focuses on the City of Sacramento and Sutter County's development activities and the Natomas Basin Conservancy's efforts to acquire and/or manage lands consistent with the Natomas Basin Habitat Conservation Plan (NBHCP) and Metro Air Park Habitat Conservation Plan (MAPHCP), the Report mentions two pending Specific Plans proposed by private developers in unincorporated Sacramento County. Specifically, the report expresses concern that current plans for development in Sacramento County (not a member of the conservancy) will disrupt planned Sutter County development in the Natomas Basin.

The Report correctly states that Sacramento County is not a signatory to the NBHCP. However, the potential for additional urban development beyond the current City of Sacramento boundaries and approved Metro Air Park in unincorporated Natomas has been the subject of much discussion over the last three decades. Sacramento County, with the concurrence and cooperation of City of Sacramento management, took the lead in responding to requests from development interests to pursue potential development starting around 2008. The Sacramento County 2030 General Plan was approved in 2011 and includes an overlay on the Land Use Diagram recognizing the Natomas Joint Vision area as a location where Sacramento County would study potential urbanization. The related General Plan Policy LU-114 states:

"It is the policy of Sacramento County that development and open space preservation in the Natomas Joint Vision Overlay Area occur in a comprehensive, responsible and cohesive manner that best addresses land use, economic development and environmental opportunities and challenges in Natomas."

Applications from the various landowners led to the Board of Supervisors' formal initiation of the master plan process for Grandpark Specific Plan in March 2016 and the Upper Westside Specific Plan in February 2019. In initiating this master plan process, Sacramento County staff and the applicants for both Grandpark and Upper Westside were fully aware of the existing NBHCP and MAPHCP requirements that at the end of the 50-year permitting period, there be one preserve block of at least 2,500 contiguous acres and that the remaining preserves be in blocks of at least 400 acres and be connected by water. The preserves must be 50% in rice cultivation, 25% in managed marsh habitat and 25% in upland Swainson's hawk habitat. Both HCPs assume that above and beyond the mitigation lands and in-perpetuity preserves, an additional 15,095 acres of land will remain committed to agriculture in the basin and that 12,193 acres of exempt, already approved/entitled development exists.

Sacramento County is also cognizant of the fact that development in the Natomas Basin has been met with challenges from environmental groups due to the presence of numerous threatened, endangered or special status species. Two of the species of greatest concern are the giant garter snake and the Swainson's hawk. There have been several lawsuits filed over past environmental approvals associated with the NBHCP and the MAPHCP. A final ruling by United States District Judge David F. Levi on September 7, 2005 in the National Wildlife Federation, et al., v. Gale Norton case, declared the HCPs valid and cleared the way for development. Among other things, in the National Wildlife Federation case the environmental groups unsuccessfully argued that because Sacramento County was not a signatory to the HCPs, the HCPs were flawed because they relied on land in unincorporated Sacramento County for future mitigation. However, with respect to the issues of potential future growth in Sacramento County, Judge Levi ruled as follows:

"The NBHCP and Biological Opinion (BiOp) utilized by the Secretary of the Interior and United States Fish and Wildlife Service do assume that development in the basin will be limited to the 17,500 acres [15,517 acres under the NBHCP and 1,983 acres from the previously approved MAPHCP to total 17,500 acres cumulatively] in the permit areas and relies on that assumption in concluding that sufficient habitat will remain for the covered species. This assumption is based on the current land use plans of Sacramento County. The NBHCP, BiOp, and EIR/EIS also conclude that because any future development in the Basin not covered by the HCP and ITPs [Incidental Take Permit allowing for "take" of an endangered species] would likely result in injury to listed species, any future development in the Basin would require new federal approvals. Any such approvals would in turn require a new HCP and ITP for the particular project, and could also lead to revision of the existing NBHCP, were the additional development to exceed assumed limits."

Judge Levi went on to say:

"The NBHCP anticipates that development by the City and Sutter will be limited to 15,517 acres – 8,050 acres within the City [of Sacramento] and 7,467 acres in Sutter County – and provides that approval of any development beyond this limit – whether by the City and Sutter or by other entities – will trigger reevaluation and possible amendment of the plan, and could result in suspension or revocation of the City and Sutter permits."

With regard to the City/County Natomas Joint Vision, which plaintiffs claimed would fatally undermine the NBHCP, Judge Levi ruled as follows:

"The Service, and the court, are entitled to assume at this point that future development will not be permitted if sufficient mitigation land is unavailable and the development will result in jeopardy."

The judge footnoted the above sentence with the following statement:

"The court notes, however, that the Service and those seeking an ITP in the future will face an uphill battle if they attempt to argue that additional development in the Basin beyond 17,500 acres will not result in jeopardy. The NBHCP, BiOp, EIR/EIS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use."

Sacramento County Planning staff recognizes that any new development in the Natomas Basin above the 17,500 acres already approved and permitted by the Natomas Basin and Metro Air Park HCPs will require careful coordination and consideration of existing approved developments, their mitigation strategies, and the regional conservation context. Sacramento County has no intention of jeopardizing the existing HCPs or ITPs in Natomas, and will include full analysis of the cumulative impacts of the proposed Grandpark and Upper Westside projects as well as other reasonably foreseeable development projects in the Environmental Impact Reports for both projects. Such analysis will also include an evaluation of each project's proposed conservation strategy and the potential effects on the viability of the existing HCPs in the context of seeking additional development within the Sacramento County unincorporated portion of the Basin as contemplated in the County's 2011 General Plan.

We look forward to continuing dialogue regarding these important matters. Please contact Todd Smith, Principal Planner at (916) 874-6918 or [smithtodd@saccounty.net](mailto:smithtodd@saccounty.net) if you have any questions.

Sincerely,



Digitally signed by Leighann Moffitt  
DN: cn=Leighann Moffitt, o=Sacramento County, ou=Planning  
and Environmental Review, email=moffitt@saccounty.net, c=US  
Date: 2021.07.16 15:37:42 -0700

Leighann Moffitt, AICP  
Planning Director

cc: Steven Hartwig, Deputy County Executive  
Todd Smith, Principal Planner

**RECEIVED**

**JUL 21 2021**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF BUTTE**