

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**  
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December 4, 2002

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: **City of Sacramento Prepared Addendum to Supplemental  
Environmental Impact Report for 1994  
North Natomas Community Plan**

**DISCUSSION**

The North Natomas Community Plan [NNCP] was adopted by the Sacramento City Council in 1994. The North Natomas community is bounded by Elkhorn Boulevard to the north, Interstate 80 to the south, Steelhead Creek (the Natomas East Main Drainage Canal) to the east, and the West Drainage Canal, Fisherman's Lake and Highway 99 to the west. The North Natomas Community Plan represents about 9,000 acres: 7,438 acres lie within the City of Sacramento, and 1,600 acres lie within the unincorporated County of Sacramento [Panhandle].

The North Natomas Community Plan has subsequently been amended by numerous actions of the City Council. Generally, land use densities and non-residential intensities have been reduced from the original plan. To date, entitlements to approximately 70 – 75 percent of the NNCP area have been approved by the Sacramento City Council. Approximately 60 percent of this area has been graded, with 25 percent of the residential and 16 percent of the non-residential uses built. The mitigation measures for the original project are still applicable. The mitigation monitoring plan for the approved NNCP continues to be implemented.

**AREA PROPOSED FOR ANNEXATION [PANHANDLE]**

On December 12, 2000, the City of Sacramento City Council adopted Resolution 2000-734 initiating a proposed annexation known as the Natomas Panhandle, which encompassed the entire 1600 acres.

Subsequently, the project was modified to annex only the territory north of Del Paso Road. On September 12, 2002, the City of Sacramento Planning Commission found that

an Addendum to the previous environmental document that was prepared and certified by the Sacramento City Council to be adequate; the Commission then forwarded the project application to the City Council.

The 1994 North Natomas Community Plan designates the Panhandle area for low density residential, medium density residential, high density residential, general public facilities, employment center, light industrial uses, and parks/open space. The number of dwelling units is estimated to be 2,514 units with an estimated population of 6,787 (2.7 persons per household).

The proposed prezone and land use plan is consistent with the 1994 North Natomas Community Plan. **No changes to the original land use in the North Natomas Community Plan have been proposed.**

The proposed annexation lies within the existing Sphere of Influence for the City of Sacramento. The City Planning Commission and staff have made the following recommendations to the City Council:

1. Adopt a Resolution ratifying the Addendum to the Supplemental Environmental Impact Report for the 1994 North Natomas Community Plan.
2. Adopt an Ordinance to approve the rezoning of 595 +/- acres within the proposed North Panhandle Annexation Area.
3. Adopt a resolution initiating the annexation of the North Panhandle area.

The City Council has not taken action; the item is scheduled for a public hearing on January 16, 2003.

### **PROPOSED LAND USES WITHIN PANHANDLE ANNEXATION AREA**

The proposed project [Panhandle Annexation] is consistent with the adopted City of Sacramento General Plan and North Natomas Community Plan.

### **LAFCo ANNEXATION PROCESS**

Government Code 56375 states that “A Commission shall require, as a condition to annexation, that a city prezone the territory to be annexed. However, the Commission shall not specify how or in what manner the territory shall be rezoned. The decision of the Commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city.”

Since the City of Sacramento is required to prezone, it becomes the lead agency for the preparation of any required environmental documents, LAFCo shall act as a responsible agency.

### **ENVIRONMENTAL CONSIDERATIONS (ADDENDUM)**

The City of Sacramento Environmental staff has reached the following conclusion regarding the preparation of an Addendum to the adopted Supplemental EIR:

“An Addendum may be prepared if only minor technical changes or additions are necessary to make a previously certified EIR adequate.

CEQA provides that a subsequent, or supplemental EIR, shall be prepared if certain conditions or circumstances exist. In general, a subsequent, or supplemental EIR must be prepared if there are changes in the project, changes in the circumstances, or new information that requires substantial changes to the previous environmental document.

The standards, or requirements [Section 15162, California Code of Regulations, Title 14, Chapter 3] for the preparation of a Supplemental EIR are as follows:

1. “Substantial changes are proposed in the project that will require major revisions to the previous EIR because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.
2. Substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revisions of a previous EIR because of the involvement of new significant environmental effects on or a substantial increase in the severity of previously identified effects.”

The ultimate development and build out of the North Panhandle area was included and evaluated in the North Natomas Community Plan EIR. The environmental analysis provided in the City Addendum does not identify new significant environmental effects or a substantial increase in the severity of previously identified effects. City staff concludes the adopted mitigation measures and impact in the 1994 SEIR remain adequate.

The project does not require major revisions of the previous SEIR based on any new or previously considered environmental effects resulting from substantial changes in the circumstances under which the project is undertaken. The only changes in circumstances for this project area are: (1) a habitat conservation plan (HCP) adopted for the project area after completion of the SEIR is no longer valid. The HCP is currently in the process of being revised; however, the impacts to biological resources remain unchanged. Preparation of an HCP was one of the mitigation measures included in the NNCP EIR, and it remains a mitigation measure now. (2) The City’s stormwater management program and the State General Permit for Construction Activities were not in place at the

time of the NNCP SEIR, which identified surface and groundwater quality impacts as significant and unavoidable. With these programs in place, surface water impacts are less-than-significant. (3) In 1995, the City of Sacramento and the Sacramento Area Flood Control District developed the North Natomas Comprehensive Drainage Plan which created or modified stormwater detention basins, detention basin pump stations, and trunk lines, the Draft EIR for which was completed in 1996. The Natomas Comprehensive Drainage Plan provides the North Natomas area, an area that was previously subject to flooding, with 500-year flood protection, allowing future planned and approved development in the North Natomas area. As part of the Plan, the Sacramento Area Flood Control Agency completed levee and pump station work on the Steelhead Creek Levee in early 1998. Consequently, the Federal Emergency Management Agency has adopted new regulations that allow for unrestricted development on lands included in the NNCP. The Natomas Basin has been reclassified from A99 flood zone to X zone, for which there are no restrictions on development (FIRM map, July 6, 1998).

3. New information of substantial importance that was not known or could not have been known without the exercise of reasonable diligence at the time the previous EIR was certified shows any of the following:
  - a. The previous project will have one or more significant effects not discussed in the EIR.
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR.
  - c. Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt them.
  - d. Mitigation measures or alternatives that are considerably different from those analyzed in the previous document would substantially reduce one or more significant effects, but the project proponents decline to adopt them.

The proposed North Panhandle Annexation is part of a series of actions that are logical parts in the chain of contemplated actions analyzed in the NNCP SEIR. The annexation would not generate any significant effects not discussed in the SEIR, nor does it cause an increase in the severity of any previously identified significant effects. No new feasible alternatives or mitigation measures that would substantially reduce a significant impact have been identified or are necessary for this project. All of the mitigation measures approved for the NNCP SEIR that are relevant to development and buildout of the annexed area would apply and new mitigation measures or alternatives are not necessary.

In summary, the City of Sacramento Environmental Services Manager acting as the lead agency has determined that the proposed Panhandle rezoning and annexation would not create any new or additional significant environmental impacts that have not already been evaluated in the 1994 Supplemental Environmental Impact Report (SEIR) for the 1986 North Natomas Environmental Impact (EIR), nor would the proposed annexation increase the severity of any previously identified impacts. The Addendum to the SEIR has been prepared in accordance with CEQA Guidelines 15164.

### **STANDARDS FOR ADEQUACY OF AN EIR**

There are no clear cut standards or requirements that determine whether or not a new EIR must be prepared. The lead agency must examine a number of factors in its decision.

The need to prepare a new EIR or Supplemental EIR is not dependent on the age of the document but on whether or not substantive changes have occurred in the project that, in fact, trigger environmental impacts that have not previously been addressed or identified. The threshold becomes a subjective independent judgment that can be challenged.

The NNCP (project) has already been approved; it was already determined that many issues could not be mitigated to less than significant level. The City of Sacramento's Addendum identifies that the proposed project is consistent with the original NNCP and it will not increase environmental impacts that have not been previously identified.

According to California Code of Regulations, Title 14, Chapter 3, the lead agency must also consider the following:

#### **15151. Standards of Adequacy of an EIR.**

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

#### **15152. Tiering.**

- (a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (Such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrow projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR on negative declaration solely on the issues specific to the later project.

- (b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

**15152 (f) (3) (c).**

- (3) Significant environmental effects have been “adequately addressed” if the lead agency determines that:
- (A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;
  - (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or
  - (C) **they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent’s willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.”**

**COURT DECISIONS**

The use of an Addendum has been challenged over the years. The courts have ruled for and against this approach to environmental documentation. While the courts have issued rulings, the court has not issued specific factors or standards that determine when the use of an Addendum is appropriate.

The following information indicates only general parameters that are considered in environmental documentation by the courts.

1. “An agency’s decision not to prepare a supplement to an EIR will be upheld if supported by substantial evidence.

Under some circumstances, an EIR prepared for an earlier project may adequately address the environmental impacts of a later project, and the lead agency may rely on the existing document as its Draft EIR rather than preparing a new EIR or a Supplement to an EIR. Such reliance is only proper, however, where both the impacts of the two projects and the circumstances involved are essentially the same.”<sup>1</sup>

2. In another case, “the court also rejected the petitioners’ argument that the respondent agency should have issued findings prior to approving the use permit. The court reasoned as follows:

“Nothing in the Code or Guidelines suggests new findings are required when an addendum is prepared. Here the “unavoidable adverse impacts” described in the addendum are the same as those described in the original EIR. If the significant effects as found in the original EIR have been addressed by findings, and an addendum is only proper where no new significant environmental impacts are discovered, why should new findings be required in connection with preparation of an addendum? The only purpose of findings is to address new significant effects to show the lead agency has properly considered ways in which to mitigate or avoid such effects.”<sup>2</sup>

### **NNCP EXISTING MITIGATION MEASURES**

The 1986 NNCP EIR and the 1992 Supplemental EIR analyzed the following areas:

- Population, Employment and Housing
- Land Use
- Transportation
- Air Quality
- Noise
- Public Services
- Public Health and Safety
- Geology and Soils
- Agricultural Lands
- Hydrology and Water Quality
- Biological Resources
- Historic and Cultural Resources
- Aesthetics
- Recreation

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<sup>1</sup> Guide to the California Environmental Quality Act. [Remy, Thomas, Duggan, Moose] 1990.

<sup>2</sup> 204 Cal. App. 3d at 1552 [252 Cal.Rptr. 79, 88.]

The Sacramento City Council approved the NNCP subject to numerous mitigation measures. **The City previously determined that the NNCP had significant and unavoidable environmental impacts.**

In summary, the City of Sacramento may nevertheless approve the project if it first adopts a “Statement of Overriding Considerations” setting forth the specific reasons why the agency found that the project’s benefits rendered acceptable its unavoidable adverse environmental effects. [Guideline Section 15093.]

Thus, in practical terms, the decision whether or not to approve a project that will cause unmitigatable significant environmental impacts is often left to the discretion of agency decision makers, particularly for projects that are quasi-legislative in character. Local governments may be willing to tolerate traffic, noise, air and water pollution, loss of agricultural land, loss of wild life habitat in exchange for economic growth, increased tax revenue, increased housing units, economic diversification, etc.

The following chart provides a summary of the issues and unavoidable impacts.

<b><u>Issue</u></b>	<b><u>Finding</u></b>
Land Use	Cumulative loss of agricultural land; analysis considered Metro Air Park; proposed development in Sutter County; airport terminal expansion; and <b>annexation</b> of the Panhandle area.
Transportation & Circulation	Analysis indicated traffic volumes on major roadway would exceed acceptable LOS.
Air Quality	Buildout of NNCP would result in an increase in regional air pollutants.
Biological Resources	Buildout will impact biological resources. HCP to provide mitigation.
Noise	Traffic generated noise impacts are anticipated for the NNCP Area and South Natomas.
Drainage and Flood Control	The NNCP results in drainage impacts arising from the conversion of agricultural land to urban uses. Changes in Development patterns will require more or less facilities, depending upon development intensity and density.
Flood Control	Since adoption of the NNCP SEIR, the level of flood Protection has been increased because of new levee improvements, i.e., greater flood protection is being provided.



The City of Sacramento Addendum to the NNCP SEIR concludes the following:

“While no development would take place as part of the project, areas would be pre-zoned for residential uses. The proposed land use analysis determined that the North Panhandle and pre-zoning are consistent with the adopted City General Plan.

There would be no additional areas of agricultural land converted to urban uses beyond what was presented in the SEIR.

Therefore, City staff concludes: The overall land use pattern of the proposed North Panhandle Annexation and Pre-zoning is consistent with the intent of the NNCP. No new agricultural land conversion would occur. Therefore, there are no significant differences in land use impacts between the proposed North Panhandle and NNCP.”

To date, the existing SEIR has not been found to be inadequate or deficient even though the NNCP has been amended. Based on Section 15162, staff believes that Section 15162 consists of two components. The first part is to evaluate changes in the project description; changes in project circumstances; and significant new information. The second part of the test is whether the identification of any of the events in the first part lead to the identification of significant new environmental effects that were not previously evaluated, or in the substantial increase in severity of previously considered effects. Unless both parts of the test are met, the need for subsequent analysis under Section 15162 is not required.

As identified, it appears that many previous impacts have been reduced, e.g., flooding and drainage. Currently, the HCP is under reevaluation which may result in a change in the habitat mitigation ratio.

### **CREATION OF AN ISLAND**

In previous correspondence to the City of Sacramento, LAFCo staff has indicated that the City should not request an annexation that would result in the creation of an island unless it could justify this request based on information and compelling reasons, and not solely to eliminate protest. LAFCo staff still maintains this position.

The applicant will need to address service delivery issues related to the creation of an island if the application is not amended to exclude the island. However, if the entire area is included within the proposed annexation, LAFCo staff believes that the City of Sacramento’ existing SEIR addendum (copy attached) should be sufficient for LAFCo to make an informed decision regarding the proposed Panhandle Annexation to the City of Sacramento because the proposed land uses are consistent with the existing General Plan and Community Plan and the existing Master Services Element.

## **STATUS OF HABITAT CONSERVATION PLAN (HCP)**

On August 17, 1997, the Sacramento City Council adopted the Habitat Conservation Plan (HCP) for the North Natomas Community Plan. An “Incidental Take Permit,” which provides legal protection for grading activities against incidental impacts to designated habitat was also issued. The HCP and Incidental Take Permit were legally challenged by a consortium of interested environmental groups, led by the Friends of the Swainsons Hawk.

On May 8, 2001, the City Council approved an Interim Settlement Agreement to allow for limited development of previously entitled land. This interim agreement allows development to proceed prior to adoption of a revised HCP, and issuance of a new Incidental Take Permit.

The interim settlement agreement requires the City of Sacramento to meet specific terms and conditions primarily focused on maintaining a mitigation land bank prior to the disturbance of habitat. It also allows certain development projects to proceed while the City of Sacramento and Sutter County prepare an EIR/EIS for the revised habitat plan.

The area proposed for annexation, because it is under the jurisdiction of the County of Sacramento, is not included in the Settlement Agreement, as the County, to date, has chosen not to participate in the HCP.

However, the area proposed for annexation will become subject to the Incidental Take Permit and revised HCP once annexation is completed and it becomes part of the North Natomas Community Plan.

If annexation is completed prior to the development of the North Panhandle area (only that portion north of Del Paso Road is subject to the existing and revised HCP); the Natomas Basin HCP would determine the required mitigation. In addition, no development is proposed by this annexation and any subsequent development proposal would be required to undergo environmental review.

The Revised HCP is currently under environmental review. The EIR/EIS is being circulated and has not yet been approved. The proposed mitigation requires that ½ acre be preserved for every acre that is approved for development. The EIR/EIS will also evaluate several other alternative mitigation measures.

NOTE: The area south of Del Paso Road, which is being urbanized within the unincorporated area of the County, is not subject to the existing or revised HCP, as it is deemed to be developed.

PB:Maf  
Attachment  
(North Natomas Community Plan)