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February 13, 2017

Ms. Dana Mahaffey, Associate Planner  
City of Sacramento, Community Development Department  
Environmental Planning Services  
300 Richards Boulevard, Third Floor  
Sacramento, CA 95811

RE: Notice of Availability, Draft Addendum to EIR, Environmental Checklist, and Effects Analysis and Conservation Strategy for the Greenbriar Project (SCH No. 2995962144) (P11-093.)

Dear Ms. Mahaffey:

The Conservancy serves as Plan Operator for the City's interest in the Natomas Basin Habitat Conservation Plan (NBHCP). As such, the Conservancy's job is to serve as a steward and implementing arm for the City's investment and interest in the NBHCP. The City continues to have a substantial entitlement in its Incidental Take Permit's "Permitted Acres," in excess of twice the acreage proposed in the subject project, and larger than many HCPs permitted in the state and nation in recent years. Moreover, the City has affirmed its commitment to successful implementation of the NBHCP through representations in various legal actions as well as the NBHCP's Implementation Agreement (NBHCP IA) it has executed with the State of California and the U.S. Government.

The Conservancy's interest here is not to decide whether projects get approved or disapproved, but rather, whether it can continue to implement the NBHCP as envisioned and assured in the founding and successor documents and agreements, including, but not limited to, the NBHCP and the NBHCP IA.

In an effort to affirm its ability to successfully implement the NBHCP, the Conservancy has engaged the assistance of third-party experts. Two documents are relevant here. One is a memo from Economic and Planning Systems dated April 12, 2016 ("Natomas Basin Habitat Conservation Plan Estimated Acres Distribution"). See attached. This document reviews the acreage amounts committed and represented as allocated and allocable in the NBHCP. Of particular relevance, here is that portion discussed as "Land committed to agriculture." See Figure 1 in the document, which compares acreage allocations in 2003 (associated with the initiation of the 2003 NBHCP) and in 2016. It shows the land committed to agricultural uses declining with various projects and with the proposed Greenbriar project based on information available to the Conservancy and its consultant. The illustration highlights the acreage counted on to facilitate the Conservancy's implementation of the NBHCP's Operating Conservation Program has been reduced and is proposed for further reduction.



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In this regard, we request that in approving any projects that exceed the 17,500 Permitted Acres authorized in the NBHCP, the City consider the impact of further development on the Plan Operator's ability to fulfill requirements and carry out the NBHCP Operating Conservation Plan successfully. As the NBHCP Plan Operator, the Conservancy is aware that for each acre in the Natomas Basin that is no longer available to the Parties to the NBHCP for mitigation action, additional biological function will likely be needed from the balance (remainder) of the acres.

The second attached exhibit, dated March 14, 2014, reviews for the Conservancy the constraints to development outside the authorized 17,500 acres as contained in the 2003 NBHCP (see "Natomas Basin Development Constraints") and associated documents. This exhibit captures for readers the many references in the relevant documents upon which the NBHCP was authorized how development beyond the 17,500 acres would be addressed.

In this respect, we simply remind the City of its obligations in this regard, and urge that it review each of these points to make sure that it (the City) is in compliance with its assurances in federal and state court as well as in the NBHCP IA.

Thank you for giving us the opportunity to highlight a few of the key points that should be helpful to the City as it considers new projects in the Natomas Basin and determines if they are consistent and compatible with its assurances, commitments and representations that have guided the initiation and successful implementation of the NBHCP since its inception.

Sincerely,

The Natomas Basin Conservancy, a California  
Non-profit Public Benefit Corporation

*John Roberts for John Roberts.*

by: John Roberts  
Executive Director

enclosures: April 12, 2016 and March 14, 2014 memos from Economic and Planning Systems



## **MEMORANDUM**

To: John Roberts and Kim Burns, The Natomas Basin Conservancy

From: Allison Shaffer and Tim Youmans

Subject: Natomas Basin Development Constraints; EPS #132155

Date: March 14, 2014

*The Economics of Land Use*



At the request of The Natomas Basin Conservancy (TNBC), Economic & Planning Systems, Inc. (EPS) researched various documents for information on the level of anticipated and allowed development within the Natomas Basin under the requirements of the 2003 Natomas Basin Habitat Conservation Plan (NBHCP). EPS found several relevant references to restrictions on development as listed below and detailed in the indicated pages of the documents. These references discuss the expectation that urban development generally will not occur outside of the 17,500 acres of the Permit Areas, as well as the requirements if development was to occur outside of the Permit Areas.

- Final NBHCP (April 2003): Page IV-11 – IV-12, Section e.
- Implementation Agreement for the NBHCP (2003): Page 29, #4.
- Biological and Conference Opinion on Issuance of Incidental Take Permits to the City of Sacramento and Sutter County for Urban Development in the Natomas Basin, Sacramento and Sutter Counties, California (June 24, 2003) (Biological Opinion): Page 11-12.
- Federal Court Decision CIV-S-04-0579 DFL JFM (September 7, 2005): Page 6, lines 10-17; Page 21, lines 10-23; Page 30, footnote 13.
- Federal Court Decision CIV-S-99-274 DFL JFM (August 15, 2000): Page 12, lines 1-12.

The relevant text from these sources is cited in the remainder of this memorandum.

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**Final NBHCP (April 2003): Page IV-11 – IV-12,  
Section e**

- "2. Under the adopted land use plans and policies, extensive analysis and amendments to the adopted plans and policies would be required prior to the approval of urban development outside of the Permit Areas."
- "3. Under the provisions of the NBHCP, neither the City or Sutter County may approve any urban development beyond the Authorized Development until the applicable Permittee conducts an evaluation of the effects of the additional development on the NBHCP's Operating Conservation Program, and the City's or the County's permit is amended to include the new areas or a new permit is issued for such additional areas."
- "4. Discretionary actions ... which are required for the approval of major urban development by the City of Sacramento, the County of Sutter or the County of Sacramento are subject to review under CEQA. In accordance with CEQA, such analysis would consider both the effects of the actions on federal and state-listed species and the effects of the actions on federal and state-listed species and the effects of the actions on the effectiveness of the NBHCP."
- "5. In the event Sacramento County proposes to expand the Sacramento International Airport, such actions would be subject to Section 7 review under the ESA, CESA compliance, and CEQA and NEPA analyses. As part of these reviews, Sacramento County would be required to evaluate the effects of such activities on state and federally-listed species and the NBHCP."

**Implementation Agreement for the NBHCP (2003):  
Page 29, #4**

"The 15,517 acres of Authorized development related incidental take within the City and Sutter County combined with the 1,983 acres of development related take within Sacramento County for the MAP project represent a total of 17,500 acres of potential urban development in the Natomas Basin which has been analyzed in the NBHCP as Planned Development .... Any development within the City of Sacramento beyond the 8,050 acres to be covered under its incidental take permits, within Sutter County, beyond the 7,467 acres to be covered under its incidental take permits, or within Sacramento County beyond the MAP project, will not be covered under the respective incidental take permits and will trigger a reevaluation of impacts to and mitigation for biological and other resources in the Natomas Basin and amendment of the NBHCP and the incidental take permits or development of a new HCP and issuance of new incidental take permits to address such impacts and mitigation as appropriate."

**Biological Opinion: Page 11-12**

"The effectiveness of the NBHCP'S OCP to adequately minimize and mitigate the effects of take of the Covered Species due to authorized development depends on the City and Sutter confining development to their respective permit areas and limiting their combined total development to 15,517 acres. The OCP and the NBHCP's effects analysis account for a combined total of 17,500 acres of Planned Development occurring in the Basin (i.e., 15,517 acres within the City and Sutter County's Permit Areas and 1,983 acres of Metro Air Park development in Sacramento

County). Because the NBHCP'S OCP is based upon the City limiting total development to 8,050 acres within the City's Permit Area, approval by the City of future urban development beyond the 8,050 acres or outside of its Permit Area would constitute a significant departure from the NBHCP'S OCP.... Similarly, approval by Sutter of development within the Basin beyond the authorized 7,467 acres or outside of the Sutter Permit Area would constitute a significant departure from the NBHCP's OCP.... Any additional urban development within the Basin that occurs outside of the City's and Sutter's Permit Areas, with the exception of the MAP development, also would constitute a significant departure from the NCHCP's OCP...."

**Federal Court Decision CIV-S-04-0579 DFL JFM  
(September 7, 2005): Page 6, lines 10-17**

"The NBHCP anticipates that development by the City and Sutter will be limited to 15,517 acres - 8,050 acres within the City 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."

**Federal Court Decision CIV-S-04-0579 DFL JFM  
(September 7, 2005): Page 21, lines 10-21**

"The NBHCP and BiOp do assume that development in the Basin will be limited to the 17,500 acres in the permit areas and relies on that assumption in concluding that sufficient habitat will remain for the covered species. (AR 1026.) This assumption is based on the current land use plans of Sacramento County. (*Id.* At 121, 1055.) The NBHCP, BiOp, and EIR/EIS also conclude that because any future development in the Basin not covered by the HCP and ITPs 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 the assumed limits in the NBHCP."

**Federal Court Decision CIV-S-04-0579 DFL JFM  
(September 7, 2005): Page 30, footnote 13**

"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."

**Federal Court Decision CIV-S-99-274 DFL JFM  
(August 15, 2000): Page 12, lines 1-12**

"The Plan is based on certain key principles and assumptions. First, the Plan assumes that only 17,500 acres of Basin land will be developed over the 50 year life of the permit, and that a substantial portion of the undeveloped land will remain in agriculture, particularly rice, which is believed to have unique value as habitat for the GGS. The Plan's conclusion that a ratio of .5 acres of reserve lands for each 1 acre of developed land will ensure the biological needs of the protected species is based on the assumption that a considerable portion of the undeveloped and

agricultural lands in the Basin will remain undeveloped, thereby augmenting the habitat value of the reserve lands.”

## **MEMORANDUM**

To: John Roberts and Kim Burns, The Natomas Basin Conservancy  
From: Allison Shaffer and Jamie Gomes  
Subject: Natomas Basin Habitat Conservation Plan Estimated Acres Distribution; EPS #152113  
Date: April 12, 2016

*The Economics of Land Use*



At the request of The Natomas Basin Conservancy (TNBC), Economic & Planning Systems, Inc. (EPS) estimated the distribution of acres located within the boundaries of the Natomas Basin. EPS estimated the acreage distribution both at the time the Final Natomas Basin Habitat Conservation Plan (NBHCP) was adopted in 2003 and currently. **Table 1** summarizes the estimated acres, and **Table 2** details the estimates. **Figure 1** shows the information graphically.

Note that the data in these tables represent EPS's best estimates to date, given the information available. If new information is obtained, there could be changes in the distribution of acres estimates. In developing the acres estimates, EPS consulted and obtained information from the following sources:

- Final NBHCP (April 2003)
- NBHCP Final Environmental Impact Report/Environmental Impact Statement (April 2003)
- Federal Court Decision CIV-S-04-0579 DFL JFM (September 7, 2005)
- Biological and Conference Opinion on Issuance of Incidental Take Permits to the City of Sacramento and Sutter County for Urban Development in the Natomas Basin, Sacramento and Sutter Counties, California (June 24, 2003)
- Implementation Agreement for the NBHCP (2003)
- City of Sacramento Staff
- County of Sacramento Staff
- TNBC

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**Table 1** and **Table 2** show the change in the Natomas Basin acres distribution since the 2003 NBHCP was implemented. The NBHCP Area consists of approximately 53,500 acres in total. When the NBHCP was adopted, 17,500 acres were designated for development (referred to as the Permit Area), 8,750 acres were required for habitat mitigation for this development (referred to as Permit Area Mitigation), and an estimated 12,200 acres of existing development were exempt from the requirements of the NBHCP, nearly completely because it was already urbanized. The remaining 15,100 acres were to be committed for agriculture. As stated in the September 2005 Federal court decision listed above and frequently discussed elsewhere:

*"The NBHCP, BiOp, EIR/EIRS, 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." (p. 30, footnote 13)*

Since adoption of the NBHCP, however, some of the approximately 15,100 acres committed for agriculture have been developed or used for supplemental mitigation beyond the Permit Area Mitigation. This development and mitigation can be divided into four categories as summarized below and shown in the tables and figure:

- **Development Outside the NBHCP's Permit Area:** Urban development that has occurred in Sacramento County in areas that are not part of the 17,500-acre NBHCP and MAPHCP Permit Area.
- **Proposed Greenbriar Project:** A proposed project in the City of Sacramento that is not part of the 17,500-acre Permit Area. The 1,041 acres for this project include both the project acres and required offsite habitat mitigation acres.
- **Supplemental Mitigation:** Required mitigation for development outside the 17,500-acre Permit Area approved by the Wildlife Agencies.
- **Sacramento Area Flood Control Agency Natomas Levee Improvement Project:** Levee construction for the Natomas Levee Improvement Project (NLIP) and required mitigation acreage for this construction.

**Table 1** estimates that approximately 3,300 acres of the base 15,100 acres committed for agriculture have been or are proposed to be converted to other uses, leaving approximately 11,800 acres currently committed for agriculture.

This conversion of acres previously designated for agriculture will result in fewer acres remaining as habitat for the major Covered Species. All of the documents discussed above consistently mention that their findings are based on 16,000 acres of Giant Garter Snake habitat and between 13,000 acres and 15,000 acres of Swainson's Hawk habitat remaining after development of the Permit Area is completed. EPS did not have enough information, however, to estimate the extent of the loss of species habitat because of the conversion of acres out of agriculture, so such estimates are not included in this analysis.



**Table 1**  
**Natomas Basin Habitat Conservation Plan Acreage Calculations by Type**  
**Summary of Estimated NBHCP Area Acres Distribution**

Land Use	Distribution of Acres [1]		
	Base (2003 NBHCP)	Current Estimated (2016)	Difference
<b>NBHCP Committed Acres (Excluding Agriculture)</b>			
Permit Area Development	17,500.0	17,500.0	0.0
Exempt Development	12,192.5	12,192.5	0.0
Permit Area Mitigation	8,750.0	8,750.0	0.0
Supplemental Mitigation	0.0	234.7	234.7
SAFCA Natomas Levee Improvement Project	0.0	1,600.0	1,600.0
Proposed Greenbriar Project	0.0	1,041.0	1,041.0
Other Development Outside HCP's Permit Area	0.0	438.0	438.0
<b>Total Acres Excluding Agriculture</b>	<b>38,442.5</b>	<b>41,756.2</b>	<b>3,313.7</b>
<b>Land Committed to Agriculture [2]</b>	<b>15,094.5</b>	<b>11,780.8</b>	<b>(3,313.7)</b>
<b>Total Acres in NBHCP Area</b>	<b>53,537.0</b>	<b>53,537.0</b>	<b>0.0</b>

sum

[1] See **Table 2** for detail.

[2] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states:  
 "The NBHCP, BiOp, EIR/EIRS, 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." (p.30, footnote 13). Similar references are found throughout the referenced documents.

**Table 2**  
**Natomas Basin Habitat Conservation Plan Acreage Calculations by Type**  
**Estimated NBHCP Acres Distribution**

Item	Source	Estimated Distribution of Acres		
		Base (2003 NBHCP)	Current (2016)	Difference
<b>Permit Area Development</b>				
City of Sacramento	Final NBHCP (April 2003)	8,050.0	8,050.0	0.0
Metro Air Park	Final NBHCP (April 2003)	1,983.0	1,983.0	0.0
Sutter County	Final NBHCP (April 2003)	7,467.0	7,467.0	0.0
<b>Subtotal Permit Area Development</b>		<b>17,500.0</b>	<b>17,500.0</b>	<b>0.0</b>
<b>Permit Area Mitigation</b>				
City of Sacramento	Final NBHCP (April 2003)	4,025.0	4,025.0	0.0
Metro Air Park	Final NBHCP (April 2003)	991.5	991.5	0.0
Sutter County	Final NBHCP (April 2003)	3,733.5	3,733.5	0.0
<b>Subtotal Permit Area Mitigation</b>		<b>8,750.0</b>	<b>8,750.0</b>	<b>0.0</b>
<b>Exempt Development (Dev. Before 1997)</b>				
City of Sacramento	City of Sacramento	4,168.0	4,168.0	0.0
Sutter County [1]	Final NBHCP (April 2003); p. II-3	898.0	898.0	0.0
<b>Sacramento County</b>				
Panhandle Industrial Area	City and County of Sacramento	838.0	838.0	0.0
49er Truck Stop and Driving Range	City and County of Sacramento	31.2	31.2	0.0
Tomato Patch	City and County of Sacramento	12.3	12.3	0.0
Leona Circle	City and County of Sacramento	33.0	33.0	0.0
Teal Bend Golf Course	City and County of Sacramento	259.0	259.0	0.0
Airport & Airport Buffer Lands	City and County of Sacramento	5,953.0	5,953.0	0.0
<b>Subtotal Sacramento County</b>		<b>7,126.5</b>	<b>7,126.5</b>	<b>0.0</b>
<b>Total Exempt Development</b>		<b>12,192.5</b>	<b>12,192.5</b>	<b>0.0</b>
<b>Proposed Greenbriar Project (Outside HCP Permit Area) [2]</b>				
Greenbriar Site	City of Sacramento	0.0	577.0	577.0
Offsite Mitigation	City of Sacramento	0.0	464.0	464.0
<b>Subtotal Greenbriar</b>		<b>0.0</b>	<b>1,041.0</b>	<b>1,041.0</b>
<b>Other Development Outside HCP's Permit Area</b>				
Development Since 1997 [3]	TNBC	0.0	58.0	58.0
Proposed High School in Natomas Unified School District	City and County of Sacramento	0.0	40.0	40.0
Additional Airport Lands	City of Sacramento	0.0	340.0	340.0
<b>Subtotal Sacramento County</b>		<b>0.0</b>	<b>438.0</b>	<b>438.0</b>
<b>Supplemental Mitigation</b>				
Existing Supplemental Mitigation [4]	NBHCP Fee Update- 2013	0.0	205.7	205.7
Mitigation for County Development Since 1997 [5]	Estimated	0.0	29.0	29.0
<b>Subtotal</b>		<b>0.0</b>	<b>234.7</b>	<b>234.7</b>
<b>SAFCA Natomas Levee Improvement Project [6]</b>	SAFCA	<b>0.0</b>	<b>1,600.0</b>	<b>1,600.0</b>
<b>Total Committed Acres Excluding Agriculture</b>		<b>38,442.5</b>	<b>41,756.2</b>	<b>3,313.7</b>
<b>Land Committed to Agriculture [7]</b>		<b>15,094.5</b>	<b>11,780.8</b>	<b>(3,313.7)</b>
<b>TOTAL NBHCP Area Acres</b>		<b>53,537.0</b>	<b>53,537.0</b>	<b>0.0</b>

acres

[1] The NBHCP may contain conflicting information concerning Sutter County exempt land. The total acres shown in this table is the sum of the Highways and Urban acres shown in Table II-1 on page II-3 of the Final NBHCP (April 2003). On page III-17 of the Final NBHCP, it is stated that "Prior to 1997, a total of 146 acres of urban development and 291 acres of roads and highways existed in Sutter County," resulting in a total of 437 exempt acres, approximately 400 fewer acres than shown in this table.

[2] From Staff Report to City of Sacramento Planning and Design Commission (January 17, 2013).

[3] From current TNBC Schedule of Subject Acreage and Fees Paid.

[4] Metro Air Park mitigation (200 acres) plus 2 RD1000 easements (5.7 acres).

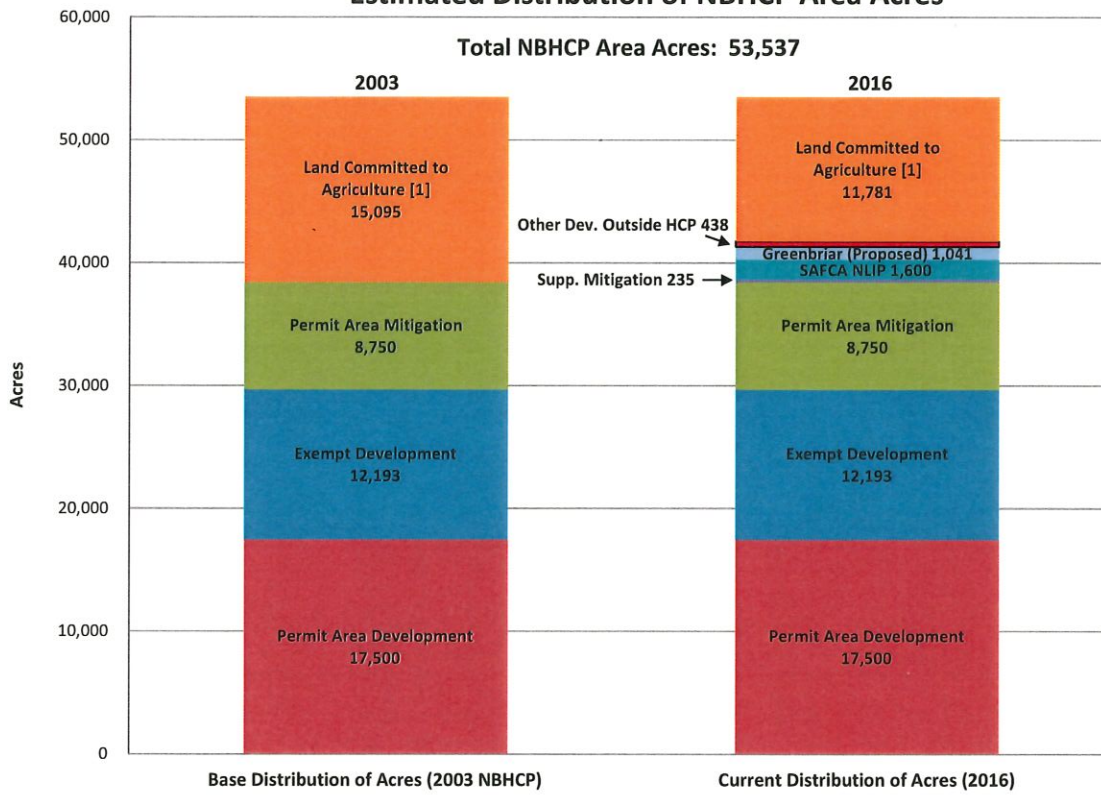
[5] Estimated as 0.5 \* 54.5 acres of County development that paid NBHCP mitigation fees since 1997.

[6] 1,380 current acres + 220 additional acres estimated for Federal phase of project.

[7] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states:

"The NBHCP, BiOp, EIR/EIRS, 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." (p.30, footnote 13)

**Figure 1**  
**Estimated Distribution of NBHCP Area Acres**



[1] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states:  
"The NBHCP, BiOp, EIR/EIRS, 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 land will remain in agricultural use." (p.30, footnote 13)

chart1