

April 10, 2025

Honorable Members of the Board of Supervisors
County of Sacramento
700 H Street
Sacramento, CA 95814

RE: Urbanization in the Sacramento County portion of the Natomas Basin (Revised)

Dear Supervisors Serna, Kennedy, Desmond, Rodriguez and Hume:

This communication is for the purpose of keeping you informed about efforts to implement the Natomas Basin Habitat Conservation Plan (NBHCP). It takes into account that the County is actively engaged in entertaining urban development proposals in the Sacramento County portion of the Natomas Basin.

As background, the "Parties" to the NBHCP include the City of Sacramento, the County of Sutter, the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS).¹ The Conservancy acts as "Plan Operator" of the NBHCP. It also acts as Plan Operator for the Metro Air Park Habitat Conservation Plan (MAPHCP)² in the Sacramento County portion of the Basin. The Conservancy holds approximately 2,500 acres of mitigation land in the Sacramento County portion of the Basin,³ and last year paid in excess of \$288,000 in property taxes to the County. Property tax receipts from Metro Air Park are also significant to this discussion, as the Conservancy has assisted in the development of the industrial park through MAPHCP implementation. The Conservancy has over 25 years of successful implementation of the HCPs.

The HCPs have been heavily adjudicated in both State and federal court. The most prominent of these cases was the *National Wildlife Federation v. Norton* case (see more detailed references below) that concluded with a June 2005 ruling by the federal court's David Levy. We urge County officials to review the highlights of that case because much of what the Conservancy asserts in matters of urban development in the Natomas Basin stems from it. The [decision in that case](#) can be found on the Conservancy's website.

In the *National Wildlife Federation v. Norton* decision, the U.S. District Court for the Eastern District of California reviewed a legal challenge concerning the U.S. Fish and Wildlife Service's (FWS) approval of the Natomas Basin Habitat Conservation Plan (NBHCP). The case centered on whether the habitat conservation plan and the associated incidental take permit (ITP) complied with the federal Endangered Species Act (ESA), particularly concerning development impacts within and beyond a 17,500-acre permit limit in the Natomas Basin.

The key findings of that decision relevant to this conversation include:

EXECUTIVE OFFICER

John R. Roberts
Executive Director

¹ The County of Sacramento was invited and encouraged to be a part of the NBHCP process in the late-1990s and again in the early 2000s but declined. Placeholder language remains in most of the HCP governing documents for the County of Sacramento.

² The Conservancy has worked with Sacramento County on the Metro Air Park project in the past.

³ The Conservancy owns and manages more than 5,300-acre Basin wide.

1. 17,500-Acre Permit Limit: The court examined the 17,500-acre cap on permitted development within the Natomas Basin. This limit was a critical component of the NBHCP and the related biological opinion (BiOp), Environmental Impact Report/Environmental Impact Statement (EIR/EIS), and Findings and Recommendations issued by the USFWS. The 17,500-acre threshold was intended to balance development with conservation efforts, maintaining agricultural uses on remaining lands to support habitat for the HCPs' Covered Species. Mitigation land required under the HCPs must be in the Natomas Basin.

2. Activities Outside the Limit: The court highlighted that development outside the 17,500-acre boundary would not be protected by the existing incidental take permit. Our interpretation of the ruling is this: any additional development outside the 17,500-acre Permit Area would require new ESA compliance measures, including potential new incidental take permits. It must also demonstrate the proposed development wouldn't confound implementation of the HCPs.

3. Swainson's Hawk Zone: The ruling underscored the significance of the one-mile Swainson's Hawk Zone, an area critical to the habitat of the Swainson's hawk, one of the HCPs' Covered Species. The court stressed that the NBHCP's effectiveness depended on preserving this zone to mitigate habitat loss.

The court offers a key footnote to explain its reasoning and conclusions on the matter:⁴

"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 the 17,500 acres will not result in jeopardy. The NBHCP, BiOp, EIR/EIS, the Finding 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. (AR 20-24, 862, 866-67, 1171-72, 1617-18)."

This signals the court's skepticism toward any future attempts to expand development without reevaluating the environmental impacts under the ESA.

Conclusion

The view of the Natomas Basin Conservancy, acting as Plan Operator for the Natomas Basin Habitat Conservation Plan and the Metro Air Park Habitat Conservation Plan, is that urbanization outside the 17,500-acre Permit Area must comport with the federal court decision and the HCPs' underlying documents. The City of Sacramento, the County of Sutter, and to some considerable degree, the County of Sacramento (through the Metro Air Park Habitat Conservation Plan) have invested heavily in the success of the HCPs and their effective implementation. At mid-point in that implementation process,

⁴ See footnote 13.

it's shown to be effective at mitigating for the habitat lost and compromised by urbanization. However, advancing urbanization outside the 17,500-acre Permit Area is the most threatening impediment to that very implementation. It is not a stretch to state that if not tempered, advancing urbanization outside the 17,500-acre Permit Area is likely to serve as the death knell for the HCPs, their implementation, and in some cases, the species that have been and are being mitigated through them.

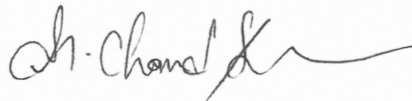
In sum, the Conservancy repeats a written statement sent by it to the County's Planning Director on April 24, 2024, as follows:

Prior development interests, both public and private, have invested millions of dollars in the Natomas Basin in an earnest effort to fully comply with the HCPs under the watchful eye of the State and federal authorities. A quarter century of compliance is under our belt, so to speak. The Covered Species displaced by urban development have enjoyed a rich place to retreat to and find refuge in the mitigation lands acquired and administered under the HCPs. We can't jeopardize this investment and compliance record.

Our recommendation to the County of Sacramento's Board of Supervisors in this regard is this: when urbanization project proposals come before it, the proponents of these projects should be required to provide a full and comprehensive response to this question: will this project in any way compromise the ability of the Natomas Basin Habitat Conservation Plan and/or the Metro Air Park Habitat Conservation Plan to be implemented as approved by the State of California and the U.S. Government?

We stand ready to assist the County further understand the key importance of the HCPs' implementation in considering matters of urbanization.

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



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Its Board Chair

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