

## **2006 – 2007 REPORTS**

### **North Natomas: Development Gone Awry**

#### **Issue**

Does the reality of the development in North Natomas today reflect the City of Sacramento's original planning goals?

Until minimum flood protection is certified in North Natomas, is public safety at risk by allowing continued development?

#### **Reason for Investigation**

The Grand Jury issued an interim report entitled "The Kings and City and County of Sacramento: Betrayal in the Kingdom?" That report noted that the arrival of the Kings put pressure on Sacramento to allow development in North Natomas. That Grand Jury investigation led to an investigation concerning the development of North Natomas.

#### **Method of Investigation**

The Grand Jury did archival research and conducted approximately 40 interviews including numerous public officials at various levels of local government. In addition, persons versed in land development, building, bonds, environmental issues, and flood issues, were interviewed.

The Grand Jury reviewed agreements, memoranda, drafts, resolutions, legal opinions, maps, correspondence, media articles and other documents including the following:

- City and County of Sacramento General Plans
- North Natomas Community Plans and Maps
- North Natomas Financing Plans
- North Natomas Nexus Study
- Environmental reports for development and planning in North Natomas
- Documents relating to floods, most specifically concerning North Natomas
- Documents relating to transportation
- Published materials
- Internet research

## **Executive Summary**

North Natomas has rapidly developed from a flood prone agricultural area to what is, in essence, a city within the City of Sacramento. The original owners of the Kings were the primary movers for development in North Natomas. On May 13, 1986, by Resolution No. 86-348 the city amended the General Plan to allow development in North Natomas. The City of Sacramento entered into a development agreement with the Kings' owners on October 6, 1987. The city made the land use decision to allow development, in part, on fiscal considerations associated with new development. This type of land use has come to be known as "the fiscalization of land use" in California.<sup>1</sup> However, due to a number of reasons including flood issues, building/development did not start in earnest until 1998. The Grand Jury investigation has shown that although many officials in the City of Sacramento have been involved in the planning and development of North Natomas, there were various mistakes and shortcomings associated with the actual results. This report briefly reviews the development history of North Natomas and concludes with two major recommendations: first, a truly independent fiscal and compliance audit should be conducted regarding the planning and execution of the North Natomas development, and second, that all building, not just planning, be halted in North Natomas until the minimum 100-year flood protection is certified by the federal government.

## **Background and Facts, Part I**

### **Development Criteria**

The area referred to as North Natomas 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 area is 9,038 acres: 7,438 acres in the city and 1,600 acres in the county. The community is located in the northwest portion of the City of Sacramento and has a population of approximately 60,000 people, with shopping centers, commercial buildings, Arco Arena, and an extensive infrastructure.

Before 1961, North Natomas was in the unincorporated area of the county and was zoned for agriculture. At the request of property owners approximately 6,500 acres were annexed to the city by 1961. In the early 1960s the selection of routes for two interstate highways, Interstate 5 and Interstate 80, which now go through the Natomas area, took place. In 1973, the City of Sacramento added an Open Space and Conservation Element to its City General Plan and in 1974 adopted a City Wide General Plan which contained the city's policy against leap-frog development and encouraged urbanization only adjacent to existing urbanized areas. On April 13, 1982, the city adopted a "Growth Policy for the City" by Resolution No. 82-251 which provided in part:

North Natomas is, for the most part, high quality, economically productive

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<sup>1</sup>The California Planning Roundtable, *Restoring The Balance: Managing Fiscal Issues And Land Use Planning Decisions In California*, October 1997. "A policy environment in which land-use decisions are made mostly or entirely based on fiscal considerations, rather than with an eye toward healthy and balanced communities."

agricultural land and there is no suitable land in the Sacramento area which can be substituted which is not already under production; and there are no remaining physical barriers within either the city or county which will limit the extent of urbanization if North Natomas is opened for urban development.

The entire North Natomas area was designated as “agriculture” in the General Plan. Shortly after adopting the city growth policy that sought to preserve agricultural land in North Natomas, there were efforts under way to thwart the spirit and intent of the policy. Developers who had purchased the Kansas City Kings in 1983, along with others, filed five applications seeking development entitlements to convert agricultural land to urban uses in North Natomas. In December 1983, and January 1984, the applications sought development entitlements for 2,662 acres of North Natomas land designated as agricultural. The granting of the applications would require the city to amend the 1974 City General Plan or the growth policy adopted by the city council in 1982. In response to the applications, the city authorized \$1.5 million to fund the North Natomas Community Planning Studies. The planning studies’ scope of work, approved in February 1984, proposed the city coordinate with the county and the Sacramento Area Council of Governments (SACOG), in the preparation of a preferred land use plan and alternative land use plans for North Natomas. The scope of work also proposed the preparation and processing of a single environmental impact report (EIR) for subsequent city and county actions in the community plan. The city analyzed the individual land use applications which the city had received against land use alternatives in the EIR.<sup>2</sup> The planning studies ultimately led to the adoption of the 1986 North Natomas Community Plan (NNCP) and a General Plan which did open the area to development.

While the city’s planning process was progressing for North Natomas, the Sacramento County Board of Supervisors, on May 15, 1985, approved a use permit for a warehouse in the county to be used as a temporary arena on North Market Boulevard in North Natomas. The permit also allowed for rezoning the adjacent acres for office buildings. In 1985, the Kings played their first game in Sacramento in the temporary facility. The Kings’ owners, under a short time frame imposed by the National Basketball Association to build a permanent arena, increased their efforts with the city for approval to build an arena in North Natomas and to develop commercial buildings on their adjacent property. The owners of the Kings were the primary movers, with the support of other developers, to have the city allow development in North Natomas.

On May 13, 1986, the city, by resolution No. 86-348, amended the 1974 General Plan to allow development of North Natomas. Resolution No. 86-348 adopted the NNCP which provides, in part,

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<sup>2</sup> Five alternatives analyzed in the EIR were:

Alternative A: No Project. Use would remain agricultural and no additional urban growth would occur in the city area.

Alternative B: Permit urbanization east of Interstate 5 (I-5). Area west of I-5 and a portion of the area south of Elkhorn Boulevard would remain agricultural.

Alternative C: An estimated 31,052 housing units would be developed with an estimated total population of 63,907 persons. Under this alternative there would be a 200-acre sports complex.

Alternative D: Allow all the area east and west of I-5 to be urbanized.

Alternative E: Incorporate the five land use applications filed with the city for the North Natomas area. This alternative would allow for an estimated 42,752 housing units and estimated population of 76,626 persons and the 200-acre sports complex.

that development of North Natomas should be guided by the following principles and goals:

- The development will provide stimulus needed to reverse the city's long-standing inability to attract major industrial employers and new sources of employment and housing at a central urban location within the Sacramento Metropolitan Area.
- The community should contain optimum amounts of land devoted to parks, recreational facilities and open space.
- The new North Natomas Community must be financially sound. This means that the mix and intensity of land uses within the area must be financially capable of supporting not only the capital costs of the infrastructure required for its development, but also the ongoing costs of maintaining that infrastructure and providing quality public services, including the acquisition and maintenance of a regional park.
- The net tax revenues generated by development of the North Natomas Area must provide an . revenue surplus for use throughout the city.
- The initial phase of the development must afford an intensity and mix of land uses to ensure economic viability for the proposed private development of a sports arena. It should also be adequate to fund the excess capacity of the North Natomas Area infrastructure which must be constructed in that phase to serve subsequent phases of development.
- The development of the area should contain an adequate mix of employment generating land uses and housing for employees. A jobs-to-housing ratio goal of 60% is reasonable and attainable.
- The intensity and mix of land uses within the area should recognize and protect future operations of the Sacramento Metropolitan Airport.

On October 6, 1987, the city entered into a development agreement for the arena, a stadium, related parking and other facilities.

Sacramento city's stated planning goals for Natomas placed heavy emphasis on fiscal objectives: to attract major industrial employers, to provide new sources of employment, and to generate ongoing reserve surplus for use throughout the city.

The fiscal concerns facing Sacramento in 1986 were not unique to Sacramento. Proposition 13, which cut local tax revenues, has had the effect in California of forcing local government to find alternative sources of revenue for infrastructure and for providing basic services. The city and other local governments throughout California have sought ways to maximize their revenue and minimize their costs. This has led to development fees or impact fees to pay for roads, sewers and parks. Besides development fees, local governments started encouraging development that increases sales tax revenues, such as shopping malls and car dealerships. The California Planning Roundtable stated:

By its very nature, land-use planning is supposed to be a balancing act. Through the planning process, local elected officials and local citizens consider the full range of activities required to create a healthy community-housing, shopping, jobs, recreational opportunities, transportation facilities, open space.

Today, however, land-use planning no longer ensures a healthy balance in California communities. Simply put, cities and counties assess the value of new

real estate development projects by asking, Will the project bring in money – or cost money to service? Cities compete with each other for commercial centers<sup>3</sup>

By 1990, little development had taken place in North Natomas except the construction of the arena and the beginning of construction of a stadium/sports complex. After adoption of the North Natomas Community Plan in 1986, environmentalists filed lawsuits which held up development. These suits were settled in 1988. Other matters holding up development were flood issues and the reluctance of developers to agree among themselves, and with the city, on funding infrastructure and community facilities.

The city created and provides some financial assistance to the North Natomas Transportation Management Association. The Association in its literature describes North Natomas as follows:

Rising from the plains just north of downtown Sacramento, the North Natomas community is the result of a far-reaching vision, based upon brilliant planning and first-class implementation. Residents, environmentalists, planners, developers, business owners and a host of other people and organizations conceived the North Natomas Community Plan as the blueprint for this area through decades of collaboration. The result is one of the most ‘livable communities’ in the region and a community that serves as a model for the rest of the nation.

The concept as proposed for the development of North Natomas was to create small, self-contained “villages” consisting of residences, shops and work places all within walking distance. There were to be bike trails, local schools in each village, a jobs-to-housing ratio of 60%, and the attraction of new industrial employers. All of this development was to be financially capable of supporting not only the capital costs of the infrastructure required for development, but also the ongoing costs of maintaining that infrastructure and providing quality public services, including the acquisition and maintenance of a regional park.

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<sup>3</sup> The California Planning Roundtable, “*Restoring The Balance: Managing Fiscal Issues and Land Use Planning Decisions In California*,” October 1997. An in depth discussion of the Fiscalization of Land use is beyond the scope of this report. The following are informative and particularly relevant given the explosive growth of shopping malls and competition for sales tax revenue between local units of government in Sacramento County:

- Miscznski, Dean J., “*The Fiscalization of Land Use*,” in John J. Kirlin and Donald R. Winkler (Eds.). California Policy Choices, Vol. 3, University of Southern California, Los Angeles, 1986.
- Regional Tax-Base Sharing. See Sacramento Regional Smart Growth Act of 2002 (AB 680-Steinberg), Sacramento: Bill would have pooled and redistributed tax revenue, derived from new development within the Sacramento region. One third of the pooled revenue would have been redistributed to cities based on population. Another third would stay in the city where the development is located. The final third would have gone to the host city provided it meets certain “smart growth” goals, including affordable housing creation, open space preservation, and infill development. The cities in the Sacramento region opposed the bill and it did not pass.

What are the results of this model of planning and implementation?

- The city lacks the financial resources to develop all the planned parks, especially the regional park.
- No police substation has been constructed as required by the NNCP.
- The creation and maintenance of a 250 foot buffer along the boundary (Fisherman's Lake Buffer) has not been maintained.
- Natomas Landing development on 69 acres on the north east corner of Del Paso Road and El Centro Road along I-5 had been designated for office/employment complexes; it is currently planned for commercial development and will add to the already congested traffic problem at this intersection.
- It is predicted that it is going to take \$800 million to extend light rail from downtown to the airport, and to provide service to Natomas with an estimated implementation date of 2027. When the money will be forthcoming and from where is uncertain. The Grand Jury has been advised that there may be less environmentally damaging and less expensive means of providing transportation to and through Natomas than a fixed rail traversing the American River Parkway, crossing major highways and running on already overcrowded major surface streets.
- Del Paso Road, a major east west thoroughfare, has been constructed with no side walks on either side of a school. There is no sidewalk along one long stretch of the road near schools and the town center.
- Some bike trails are dangerous to enter and exit.
- There is no bus transportation on the west side of I-5.
- Population growth was underestimated by at least 10 to 15% causing under allocation for park land.<sup>4</sup>
- "Smart growth" principles, i.e., building communities conducive to walking, avoiding long traffic commutes for work and local neighborhood shopping, intended in the plans for the area were violated by allowing huge shopping centers to be developed that contribute to major traffic congestion and which are not transportation friendly or within easy walking distance to and from the local neighborhoods.

There is no program in place to prevent surface water pollution from being discharged into the Sacramento River. Street drains carry water directly from the street gutters into the local detention basins. Pollutants such as pesticides, fertilizers, eroded soil and oil are carried to the detention basins. There is no formal program in place to analyze the sediments and soil in the drainage detention basins to assure the public that pollutants are not being discharged into the Sacramento River.

The city provides little to no current information to keep the public informed or to help consumers educate themselves before buying a home. The city web site is difficult at best to navigate and is not kept up-to-date. Current information either is not available at public counters or does not exist.

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<sup>4</sup> The North Natomas Financing Plan Area had a total neighborhood and community parks acreage requirement of approximately 285 acres. Additional acreage was required to account for the difference between the planners' estimate in the North Natomas Community Plan and the city's Quimby Park Ordinance of five acres per one thousand residents which led to retention basins being counted as park land.

The development has caused ever increasing costs of providing and maintaining municipal services and amenities such as parks and a police station, while the city is left with the financial burden.

The planning and implementation of the development in North Natomas raises the following questions: Who within the city has responsibility, who has oversight of the implementation of the community plans, and who has actual knowledge of what is happening?

The city is continuing its efforts to add new areas into the development of North Natomas on the east, west and to the north up to the Sutter County line. The combined areas of the proposed developments are larger than the current developed area of North Natomas. The city is presently pursuing the following annexation and/or sphere of influence efforts: Natomas Panhandle (M05-031; PO5-077), addition of 1,465 unincorporated acres between Elkhorn Boulevard and I-80; Greenbriar (M05-046; P05-069), the addition of 577 unincorporated acres at the northwest intersection of I-5 and Highway 99/70; Natomas Joint Vision (M06-047), the addition of 25,000 acres north of Elkhorn Boulevard to the Sutter County line.<sup>5</sup> All these areas, as they are developed, will pose additional traffic burdens to the existing traffic problems. In addition, these new developments will cause problems for the Natomas Basin Habitat Conservation Plan. The building and the development continue in North Natomas and the efforts to expand are progressing even though the area is at risk of flood.

## **Background and Facts, Part II**

### **Development in a Flood Plain**

The Natomas basin is a deep flood plain and is currently vulnerable to potential flood damage and loss of life. Following major flooding in 1986, the Corps of Engineers (the Corps) evaluated the Sacramento flood control system. It determined the system inadequate to meet the minimum 100-year level of flood protection required by the National Flood Insurance Program managed by the Federal Emergency Management Agency (FEMA).<sup>6</sup> The Corps estimated that flood depths likely to result from a 100-year flood would range from two feet to an excess of fifteen feet in the Natomas basin. Under FEMA's regulations this finding would have stopped all building.<sup>7</sup>

In 1987, FEMA indicated it was going to redraw the flood maps to place North Natomas outside of the 100-year flood plain protection. Sacramento, in response, requested the redrawing be delayed for five to ten years. If FEMA would delay the remapping, the city could proceed with the expected growth. Additionally, property owners would not be required to purchase flood insurance. FEMA denied this request.

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<sup>5</sup> The sources of the numbers in parentheses and descriptions of the areas are the March 2007 City of Sacramento Annexation Status Report and the City of Sacramento Planning Department web site.

<sup>6</sup> Sacramento Area Flood Control Agency, Vol. 4, Fall 2006, *Flood Watch* newsletter. "100 Year Protection: Estimated 1 in 100 chance of flooding in any given year. 200 year protection: Estimated 1 in 200 chance of flooding in any given year."

<sup>7</sup> This report is limited in scope to North Natomas.

In 1988, Sacramento was successful in getting federal legislation passed delaying FEMA from using the new Base Flood Elevations (BFE) to regulate development in the Natomas flood plain until November 7, 1992. FEMA created a special A99 flood zone. Flood zones are defined by FEMA and describe land area in terms of its risk of flooding. These zones are depicted on a community's Flood Hazard Boundary Map or a Flood Insurance Rate Map. Each zone reflects anticipated severity of flooding in the area, and generally includes regulations concerning building in the zone.<sup>8</sup>

In February 1990, the City adopted a Land Use Planning Policy Within the 100-year Floodplain (Flood Policy). The Flood Policy imposed a de facto moratorium on residential development in the Natomas area during the period it would take to get recertified protection and imposed conditions on all non-residential building permits to meet certain criteria to minimize risks due to flood.

Sacramento's continued reliance on FEMA's minimum 100-year standard is not prudent.<sup>9</sup> This is an insurance requirement, not a safety standard. Testimony supporting the authorization of the Corps' American River project before the House Interior Committee on July 23, 1992, puts this matter in perspective:

. . . FEMA's 100-year requirement is not a public safety standard. It is an insurance standard only, created as a compromise between the Federal government and local development interests in order to facilitate widespread participation in the NFIP [National Flood Insurance Program].

As FEMA itself acknowledges, the 100-year standard is not meant as a particular substitute for public safety determination in particular circumstances. This is because the 100-year standard is essentially a frequency threshold that takes no local variable into account, such as the depth and severity of flood damages in one flood plain versus another . . . .

The Congress passed legislation in 1992 directing FEMA to create a new "AR" flood zone designation applicable to communities such as Sacramento. The rationale was that a previously certified 100-year flood protection system had been decertified due to updated hydrologic data. FEMA was prohibited from requiring elevation of improvements to existing structures.

In 1998, the Corps certified that levee work in the North Natomas area had raised the flood protection level to the 100-year standard, and the de facto moratorium applied by the city in 1990

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<sup>8</sup> FEMA zones applicable to Sacramento are as follows:

AE: If building in the flood area, requires that the lowest floor of new construction be elevated to one foot above the BFE.

AR: If work is proceeding with approved levee work or dam alterations, new construction must be elevated to place the first floor three feet above the adjoining land if the expected BFE is no more than five feet above grade.

A99: A special zone for Sacramento, and a few other communities, which allows building without restriction as long as a federal levee project is underway and construction has reached a specified level.

<sup>9</sup> Department of Water Resources' letter to the City of Sacramento, November 21, 2006.



was lifted. Development in the area expanded at an accelerating rate; in excess of 30,000 people have been allowed to buy, build, and live in this area historically subject to flooding.

As a result of the high water event in 2005 which exposed some levee weakness, and in view of Hurricane Katrina, The Sacramento Area Flood Control Agency (SAFCA) requested that the North Natomas flood control system be re-evaluated. The Corps found that North Natomas is without adequate flood protection. FEMA has indicated that the area will be re-mapped to reflect the newly identified risk.

However, the city allows building to go on in North Natomas even though the area is at risk of flood. In the event of the need for mass evacuation of this area, there is no way for it to be accomplished in a timely and safe manner. Some streets in Natomas could be under one foot of water and impassible in less than an hour, and there are no specifically designated shelters for the citizens to get out of a flood and wait for evacuation.

SAFCA, the Corps and Department of Water Resources (DWR) have given the city notice that the Natomas area lacks 100-year flood protection. DWR in a letter dated November 21, 2006, to the city, which was published in the newspaper stated:

It is prudent to consider additional local efforts to protect the public against this higher risk including the following:

- Limitation on new construction until minimum flood protection is achieved.
- Building design requirements on any new construction related to potential depth of flooding and resident survivability.

If the city chooses not to follow the advice of DWR concerning limiting further construction in North Natomas, could the city be held responsible for flood related damages? In considering that issue, the known foreseeable risk of flooding would be a significant factor. Unless the risk is abated, the city's reasons for allowing continued building would have to be weighed against the benefit of cessation of further development.

## **Findings and Recommendations, Part I**

**Finding 1.** The planning and implementation of the development of North Natomas, and the push to develop to the Sutter County line, constitute the fiscalization of land use. In May 1986, the city rejected the no project alternative (Alternative A) and the limited development alternative (Alternative B) for fiscal reasons. The city noted when it made findings on May 13, 1986, (Resolution No. 86-348, adopting findings of fact and statement of overriding considerations supporting the NNCP and conforming to the general plan amendments), that the North Natomas area was going to grow in the unincorporated areas and other places in the region and that the city would not fiscally benefit unless it allowed the development to proceed on land within the city with full build out in the entire Natomas basin.

**Recommendation 1.** An independent fiscal and compliance audit needs to be conducted to determine whether the city has met the stated fiscal goals and whether development has actually been completed and built in a timely and proper manner. This audit needs to be conducted by persons versed in land use and development, fiscal issues related to development, and familiar with municipal financing. Further, the audit needs to be conducted and overseen by some entity or independent persons not in association with the city.

The audit should observe the actual results of development and compare the results to the stated goals for developing North Natomas.

The following issues need to be addressed in the audit:

1. Has the development enhanced the city's ability to attract major industrial employers?
2. Does the area contain optimum amounts of land devoted to parks, recreational facilities and open space?
3. What has been and will be the fiscal impacts of the development on the city, i.e., is the revenue derived from the development supporting not only the capital cost of the infrastructure required for the development, but also the ongoing cost of maintaining that infrastructure including the development and maintenance of the regional park?
4. Do the actual tax revenues generated by the development of North Natomas provide an ongoing revenue surplus for use throughout the city?
5. Has the jobs-to-housing ratio goal of 60% been achieved?
6. Have the various fiscal devices that the city used to assist the developers provided a clear audit trail to determine that builders/developers did what they were supposed to do with the money and in a timely and proper manner?

The audit report should be made readily available to the public at the same time it is given to the city.

**Finding 2.** There is no information currently being provided to the California Central Valley Regional Water Quality Control Board as to the content of the water, sediment and soil in the drainage detention basins in North Natomas. The city may be allowing untreated surface water containing pollutants, such as pesticides, to reach the Sacramento River.

**Recommendation 2.** The city should develop and then conduct, on a regular basis, an analysis of the water, sediments and soil in the drainage detention basins and provide that information to the Central Valley Water Quality Control Board.

## **Findings and Recommendations, Part II**

**Finding 3.** The plans to evacuate the area in case of a flood event are still being developed. However, to ignore the advice of DWR and to continue allowing building in the Natomas flood plain after the city has been put on notice that it does not meet the minimum flood protection status, raise the question of potential responsibility for flood related damages and loss of life.

**Recommendation 3.** The city should immediately stop allowing any further building in the North Natomas flood plain. The restriction should remain in effect until the federal government certifies the flood protection as meeting the minimum 100-year flood level. The city could allow for continued planning, and the maintenance of existing structures. In addition, the city should build or retrofit community buildings to a height sufficient to enable the buildings to act as a shelter for people to gather until help arrives.

### **Response Requirements**

**Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by October 1, 2007, from:**

- **Sacramento City Council**