25

DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 200
SACRAMENTO, CA
95814-2998

BUILDING INSPECTIONS
916-449-5716

PLANNING
916-449-5604

APPROVED
BY THE CITY COUNCIL

MAR 07 1989

OFFICE OF THE
CITY CLERK

February 28, 1989

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Appeal of the Planning Commission's Approval of a Special Permit to Extend the Hours of Operation of an Existing Mini-Mart and Service Station (Exxon) to 24 Hours in the C-2 Zone (P88-443)

LOCATION: 4011 Freeport Boulevard

SUMMARY

On December 1, 1988, the Planning Commission approved a Special Permit to extend the hours of operation for an existing mini-mart/service station from 6:00 a.m. to 11:00 p.m. to 24 hours.

A property owner in the surrounding neighborhood has filed an appeal of the Commission's approval. The appellant cites the 24 hour operation would increase crime, noise and nuisance in the area.

BACKGROUND INFORMATION

The applicant is proposing to extend the hours of operation of an existing mini-mart and Exxon service station to 24 hours. The size of the building or number of gas pumps would not be increased. The subject business currently operates from 6:00 a.m. to 11:00 p.m. and has a liquor license to sell alcohol with restrictions (no individual bottles of beer, wine must be 750 ml or larger and in a four pack only). The ABC liquor license is only for beer and wine and can be sold no later than 11:00 p.m.

In evaluating the proposed request, staff took into consideration the Police Department's comments that this area is in a low crime area which is quiet with minimum reports of loitering or theft. The Police Department also concluded the extended hours to 24 hours would not impact the surrounding area.

/

FEBRUARY 20th, 1990

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Appeal of the Planning Commission's Approval of a Special Permit Tutoral the Sons of Quaccia of an Fishing Club-Lodge and Dove Station (Zone, 20 Acres in the C-2 Zone (P90-082)

LOCATION: 4011 Freeport Boulevard

SUMMARY

On December 11, 1989, the Planning Commission approved a Special Permit for the Sons of Quaccia for an existing club-lodge-service and dove shoot from 8:00 a.m. to 11:00 p.m. on 20 Acres.

A property owner in the area has filed an appeal contending the Fish and Game Commission approval. The applicant states the Sacramento County Sheriff serve noise and nuisance to the area.

BACKGROUND INFORMATION

The applicant is proposing to operate the club-lodge and an outdoor dove and Tuesday through Saturday to 24 hours. The size of the building is approximately 1,000 square feet. The applicant proposes operating approximately from 8:00 a.m. to 11:00 p.m. and has a liquor license to sell alcohol in conjunction with the activity and consumption of beer, wine and 7Up at the lounge in a four pack only). The ABC liquor license is a 42 for beer and wine only. He would be open from 11:00 p.m.

In evaluating the proposed project, staff took into consideration the fact Department's concerns that a dove shoot in the area would be consistent with adjacent uses in the area. The Department also stated the dove shoot would not adversely impact the surrounding area.

The subject business is existing and located on a major commercial street (Freeport Boulevard). The impact on surrounding properties is minimal in that William Land Park is located across the street to the west; a restaurant to the north; a mortuary and apartments to the south; and a parking lot to the east. In addition, the mini-mart business is in a neighborhood with a limited number of businesses selling alcohol and remaining open 24 hours. The 24 hour service would benefit the local community by increasing the availability of goods and services. The Commission; therefore, approved the Special Permit to operate the mini-mart/service station on a 24 hour basis.

APPELLANT'S COMMENTS

The appellant submitted a letter of opposition on November 29, 1988 to the Planning Division. This letter, however, was misfiled and therefore, the Commission was not aware of any neighborhood opposition. The appellant, however, did not appear at the Commission's hearing. The appellant objects to the Special Permit in that "the 24 hour operation runs counter to the enhancement of the residential character which exists in this neighborhood which we are trying to improve." A letter of opposition from the mortuary was received after the Commission hearing date, citing litter, loud noise and vandalism, in addition, a petition signed by seven residents and businesses in the immediate area (attached are letters of opposition).

VOTE OF THE PLANNING COMMISSION

On December 1, 1988, the Planning Commission voted six ayes, two absent (one vacant seat) to approve the Special Permit with conditions.

RECOMMENDATION

The Planning Commission and staff recommend the City Council deny the appeal based on the attached findings.

Respectfully submitted,

Michael M. Davis
Director of Planning and Development

FOR CITY COUNCIL INFORMATION
WALTER J. SLIPE
CITY MANAGER

MMD:AG:rt
attachments
P88-443

District No. 8
March 7, 1989

Appeal of Bev Waters vs.
City of Sacramento Planning
Commission's Approval of Special
Permit to Expand Hours of Operation
of a Min-Mart/Service Station to 24
Hours at 4011 Freeport Boulevard (P88-443)

Notice of Decision
and
Findings of Fact

At its regular meeting of February 7, 1989, the City Council heard and considered evidence in the above entitled matter. Based on verbal and documentary evidence at said hearing, the Council denied the appeal based on the following findings:

1. The project, as conditioned, will not adversely effect the peace or general welfare of the surrounding neighborhood in that:

   a. The subject site is located in a well established neighborhood which is crime free;

   b. The quantity of alcohol sold at the site is limited and the hours to sell alcohol is restricted from 6:00 a.m. to 11:00 p.m.;

   c. Adequate on-site parking has been provided;

   d. The 24-hour service will benefit the local community.

2. The project, as conditioned, will not enlarge or encourage the development of a skid row or blighted area in that the current area and subject site are in a good condition and no adverse impacts will be created with a 24 hour business.

3. The project is consistent with the General Plan in that the plan designates the site for Community Neighborhood/Commercial and Offices.

_____
MAYOR

ATTEST:

_____
CITY CLERK

P88-443

Sacramento City Planning Commission
VOTING RECORD

25

MEETING DATE December 1, 1988
ITEM NUMBER 26
PERMIT NUMBER P88-443

ENTITLEMENTS

- [ ] GENERAL PLAN AMENDMENT
- [ ] COMMUNITY PLAN AMENDMENT
- [ ] REZONING
- [x] SPECIAL PERMIT
- [ ] VARIANCE
- [ ] TENTATIVE MAP
- [ ] SUBDIVISION MODIFICATION
- [ ] LOT LINE ADJUSTMENT
- [ ] ENVIRONMENTAL DET.
- [ ] OTHER _____

STAFF RECOMENDATION
- [x] Favorable [ ] Unfavorable
  w/cond.
- [ ] Correspondence
- [ ] Petition

LOCATION 4011 Freeport Blvd.

PROPONENTS	NAME	ADDRESS

OPPONENTS	NAME	ADDRESS

MOTION # _____

	Yes	No	Motion	Second
GASTON	✓			
HOLLICK	absent			
HOLLOWAY	✓		✓	
ISHMAEL	✓			
NOTESTINE	✓			
OTTO	✓			✓
RAMIREZ	absent			
~~[illegible]~~				
CHINN	✓			

MOTION

- [ ] TO APPROVE
- [ ] TO DENY
- [x] TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT
- [ ] TO APPROVE/DENY BASED ON FINDINGS OF FACT IN STAFF REPORT
- [ ] INTENT TO APPROVE/DENY SUBJECT TO COND. & BASED ON FIND. OF FACT DUE
- [ ] TO RECOMMEND APPROVAL & FORWARD TO CITY COUNCIL
- [ ] TO RECOMMEND APPROVAL SUBJECT TO COND. & FORWARD TO CITY COUNCIL
- [ ] TO RATIFY NEGATIVE DECLARATION
- [ ] TO CONTINUE TO _____ MEETING
- [ ] OTHER _____

PLANNING AND DEVELOPMENT

CITY PLANNING COMMISSION

1231 "I" STREET, SUITE 200, SACRAMENTO, CA 95814

25

APPLICANT EXXON 70121 - 7011 Freeport Blvd., Sacramento, CA 95822
OWNER Exxon Company - P O Box 4415, Houston, Texas, 77210
PLANS BY Exxon Company - P O Box 4415, Houston, Texas 77210
FILING DATE 10/17/88 ENVIR. DET. Exempt 15301 REPORT BY BW:vf
ASSESSOR'S PCL. NO. 018-0011-020

APPLICATION: Special Permit to expand the hours of operation of an existing mini-mart to 24 hours in a 975± square foot building on .32± acres in the General Commercial (C-2) zone.

LOCATION: 4011 Freeport Boulevard

PROPOSAL: The applicant is requesting the necessary entitlements to expand the hours of operation at an Exxon gas station and mini-mart.

PROJECT INFORMATION:

General Plan Designation:	Community Neighborhood/Commercial and Offices
Existing Zoning of Site:	C-2
Existing Land Use of Site:	Exxon Gas Station and Mini-Mart

Surrounding Land Use and Zoning:

North: Restaurant; C-2
South: Mortuary; C-2
East : Multi-Family; R-3
West : William Land Park; R-1

Parking Required:	4 spaces
Parking Provided:	4 spaces
Property Dimensions:	90' x 155'
Property Area:	0.32± acres
Square Footage of Building:	975± sq. ft.
Height of Building:	16 ft.
Topography:	Flat
Street Improvements:	Existing
Utilities:	Existing
Exterior Building Materials:	Tan cement plaster
Roof Material:	Metal Shake

PROJECT EVALUATION: Staff has the following comments:

A. Land Use and Zoning

The subject site is a 0.32± acre lot located on the northeast corner of Freeport Boulevard and 15th Street. The subject site is zoned General Commercial (C-2) and is designated as Community Neighborhood/Commercial and Offices in the General Plan. Surrounding land uses include a restaurant to the north, zoned C-2; a mortuary to the south, zoned C-2; Multiple family to

the east, zoned R-3 and William Land Park to the west, zoned R-1. Mini-marts and convenience markets are allowed under the zoning and General Plan designation but are subject to a special permit if the business remains open between 11:00 p.m. and 6:00 a.m. of the following day.

B. Applicant's Proposal

The applicant is proposing to expand the hours of operation of an existing Mini-mart and gas station to 24 hours. The applicant does not intend to increase the 975± square foot building or the number of gas pumps. The applicant has indicated to staff that the business intends to operate in a manner consistent with the general health and welfare of the community. There will be three employees per shift and the building's total capacity is 15 employees.

C. Staff Analysis

The existing business has been in operation for almost 10 years and still appears to be in excellent condition. Currently, the use is in a well established neighborhood with a limited number of businesses selling alcohol and remaining open after hours. The Police Department has indicated to staff that this is a crime free area which is quiet with minimum reports of loitering or thefts. The Police Department feels that the 24 hour business will not impact the surrounding area since no individual bottles of beer is sold and wine is sold in bottles 750 ml and more and in a four pack only. As a condition for approval, the Police Department requested that the property be posted prohibiting patrons to enter or remain on the premises with an open alcoholic container.

The subject site currently operates from 6:00 a.m. to 11:00 p.m. and has a liquor license to sell alcohol with restrictions on the quantity of liquor sold. Staff feels that the 24 hour service will benefit the local community by increasing the availability of goods and services. The increase in the hours of operation will not impact the area since the property only abuts residential to the east. In addition, the use does not conflict with the existing commercially zoned strip along Freeport Boulevard and Sutterville Road.

Staff supports the applicant's request to expand the hours of operation to 24 hours since this is a crime free area and the 24 hour service will not impact the adjacent residential community.

The subject site has adequate landscaping and parking. There is currently one pole sign and two attached signs on the site. The applicant is not proposing any new signs.

Agency Comments

The proposal was submitted to the City's Traffic Engineer, City Police and the City's Parks and Recreation Division. The following comments were received:

Police Department:

The Police Department has indicated to staff as a condition for approval, the property must be posted as follows:

> "It is unlawful to enter or remain on these premises, adjacent parking lot or adjacent public sidewalk or street with an open alcoholic beverage container." P.C. 647 E(a) S.C.C. 26.24C

Lettering to be block style, and a minimum of 2-1/2 inches in height. Notices to be clearly visible to the patrons of the licensee and parking lot and to persons on the public sidewalk.

ENVIRONMENTAL DETERMINATION: The proposed project has been determined to be exempt from environmental review pursuant to State EIR Guidelines (CEQA, Section 15301).

RECOMMENDATION: Staff recommends the Commission approve the special permit subject to conditions and based upon findings of fact which follow:

Conditions

The property shall be clearly posted against patrons entering or remaining on the premises, adjacent parking lot or adjacent public sidewalk or street with an open alcoholic beverage container.

Findings of Fact

1. The proposal, as conditioned, will not adversely affect the peace or general welfare of the surrounding neighborhood in that:

   a. the subject site is located in a well established neighborhood which is crime free;

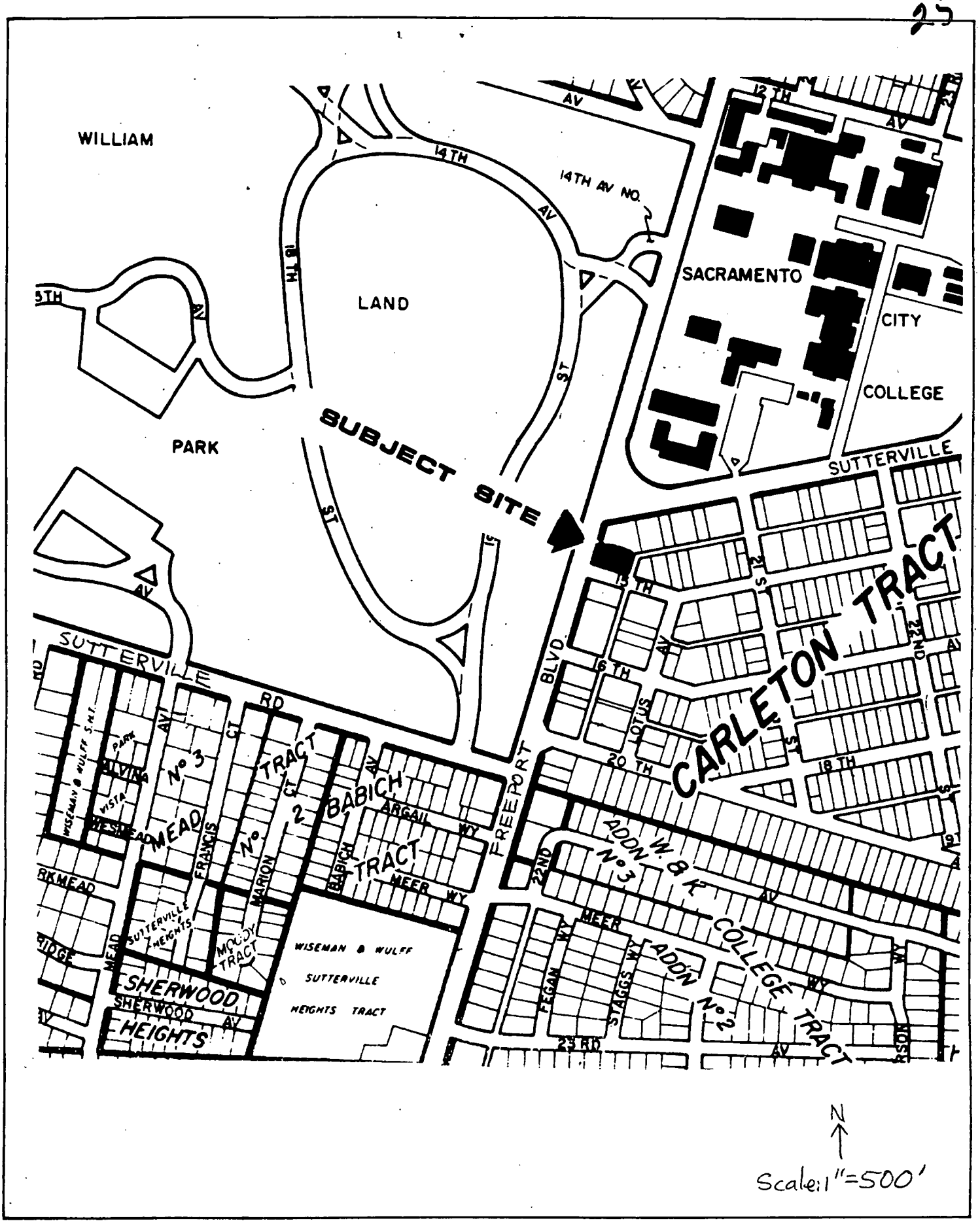
   b. the quantity of alcohol sold at the site is limited;

   c. adequate on-site parking has been provided; and

   d. the 24 hour service will benefit the local community.

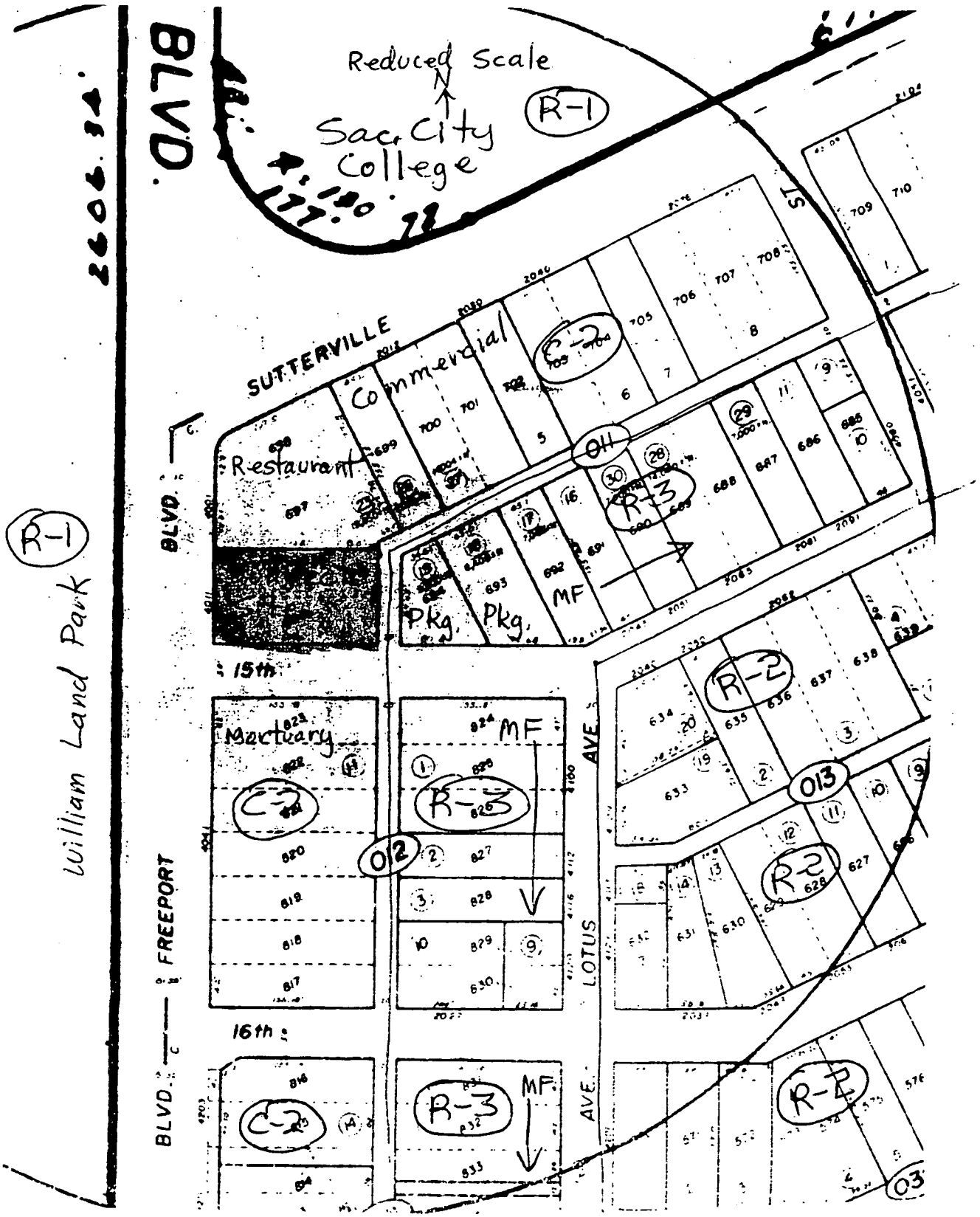
2. The proposal, as conditioned, will not enlarge or encourage the development of a skid row or blighted area in that the current area and subject site is in excellent condition and no impacts will be created with a 24 hour business.

3. The proposal is consistent with the General Plan in that the plan designates the site for Community Neighborhood/Commercial and Offices.



VICINITY MAP

P-88-443 12-1-88 9 item 2e

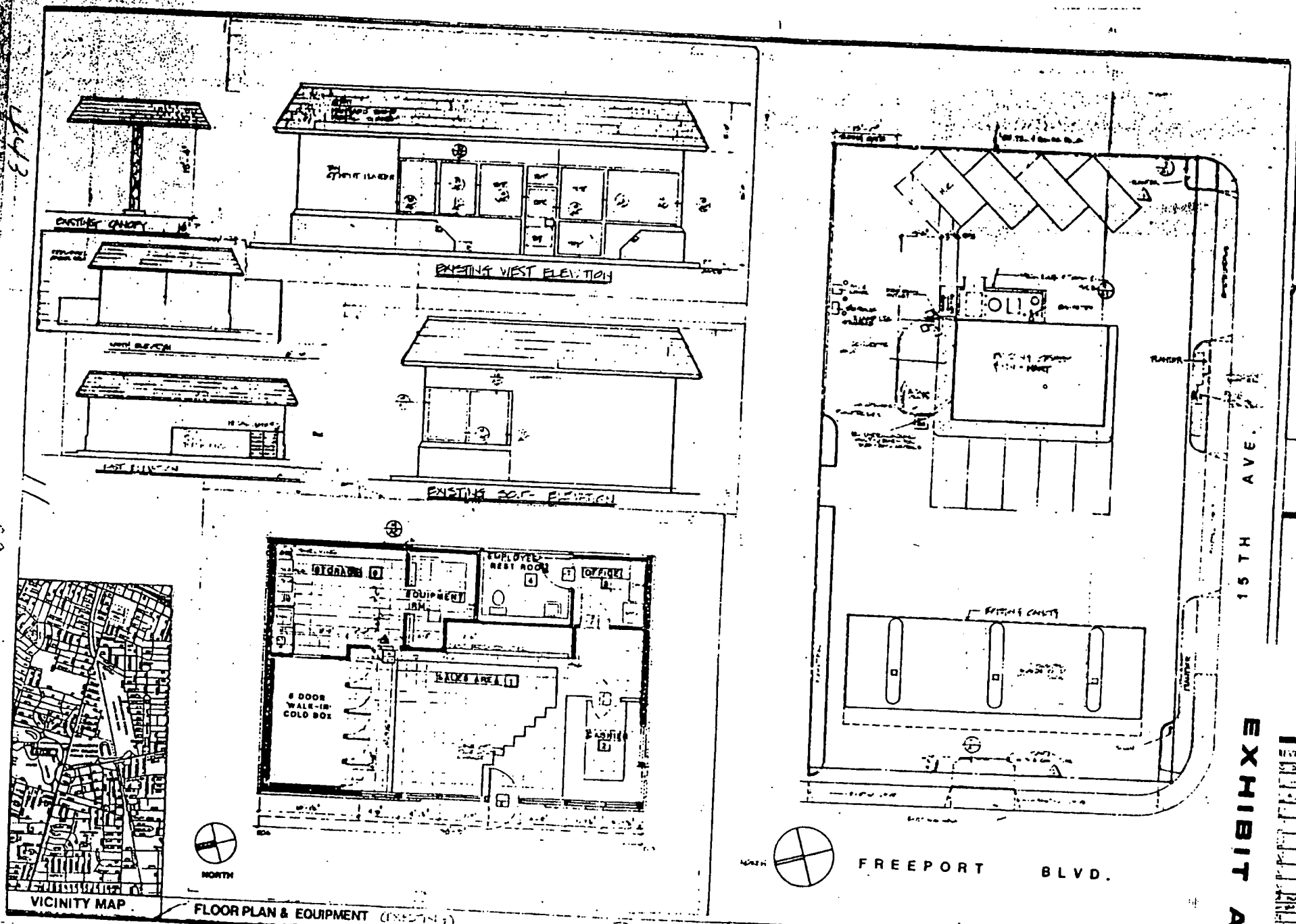


LAND USE & ZONING MAP

P-88-443

12-1-88 10

item 26


EXISTING WEST ELEVATION
EXISTING CANOPY
EXISTING SOUTH ELEVATION
STORAGE
EQUIPMENT RM
EMPLOYEE REST ROOM
OFFICE
SALES AREA
6 DOOR WALK-IN COLD BOX
NORTH
VICINITY MAP
FLOOR PLAN & EQUIPMENT (EXISTING)
SITE PLAN (EXISTING)
15TH AVE.
FREEPORT BLVD.
EXHIBIT A
EXXON
PROJECT
EXIS
STA
#7-
SITE
FLOOR
AN
ELEVA

NOTICE OF APPEAL OF THE DECISION OF THE
SACRAMENTO CITY PLANNING COMMISSION

25

DATE: 11/21/88

TO THE PLANNING DIRECTOR:

I do her by make application to appeal the decision of the City Planning Commission of 12/1/88 (Date) when:

___ Rezoning Application ___ Variance Application

✓ Special Permit Application ___ ___

was: ✓ Granted ___ Denied by the Commission

GROUNDS FOR APPEAL: (Explain in detail)

LETTER OF OBJECTION BY BEV WATERS NOT PRESENTED TO PLANNING COMMISSION THOUGH REC'D BY PLANNING DEPT 11/29/8 OTHER OBJECTIONS BY NEIGHBORS, BOTH RESIDENTIAL & COM'L, ATTACHED.

PROPERTY LOCATION: 4011 FREEPORT BLVD

PROPERTY DESCRIPTION: EXXON GAS STATION/CONVENIENC MARKET

ASSESSOR'S PARCEL NO. 018 - 0011 - 020

PROPERTY OWNER: EXXON

ADDRESS: P.O. 4415, HOUSTON, TEXAS 77210

APPLICANT: EXXON

ADDRESS:

APPELLANT: Bev Waters (SIGNATURE) (BEV WATERS, ETAL PRINT NAME)

ADDRESS: 4112 LOTUS AVE., SACRAMENTO, CA 95822

FILING FEE:
☐ by Applicant: $105.00 RECEIPT NO. ___
☑ by 3rd party: 60.00
FORWARDED TO CITY CLERK ON DATE OF: ___

P-88-443 CITY PLANNING DEPARTMENT

5/82

DEC 12 1988
RECEIVED

DISTRIBUTE TO -
(4 COPIES REQUIRED): MVD
AG
WW
RT
SG - Origin

12

Received 11/23/88
Rec'd by Planning 11/29/88 25

4112 Lotus Ave.
Sacramento, CA 95822

22 November 1988

City of Sacramento
Dept. of Planning & Development
1231 I Street, Room 200
Sacramento, CA 95814-2998

Planning Commission:

Re: Proposed:
P88-443 Special Permit
expanding hours of operation
to 24 hrs. at 4011 Freeport Blvd.

I am the owner of two R-3 lots within 300' of the above-described proposed project.

I am not in favor of expanding the hours of operation of this convenience market.

This is basically a residential area from ½ block east of Freeport Blvd., there being only quiet businesses facing Freeport Blvd. which all close at a reasonable time each evening. Eastward is entirely residential and is at present a target area for improvement by the city. I feel that the above request for special permit should be denied as such a 24-hour operation runs counter to the enhancement of the residential character which exists in this neighborhood and which we are all trying to improve.

Very truly yours,

Beverly Waters

Beverly Waters, Owner
APN's 018-0012-002 &
018-0012-003

25

Phone 452-6157

4041 Freeport Blvd.

HARRY A. NAUMAN & SON
funeral directors
Sacramento, California 95822

December 8, 1988

Mr. Joe Serna
Sacramento City Council
City Hall
915 I Street
Sacramento, CA 95814

Re: P88-443

Dear Mr. Serna:

It has come to our attention that the Department of Planning and Development has approved a Special Permit for the Exxon gas station/convenience market on the corner of 15th Avenue and Freeport Blvd. to expand its hours of operation to 24 hours.

Being neighbors, we have been annoyed by visitors to our parking lots, litter, loud noise, and vandalism, some of which is due merely to the presence of a gas station. In our opinion, a 24 hour operation will not improve this situation. It will, rather, tend to excuse increased all-night traffic in what is otherwise a basically residential area.

We join with our neighbors in protesting approval of this permit. Please let us know what can be done to reverse this decision.

Sincerely,

Guy G. Heilman,

William A. Revitt,

Owners, Harry A. Nauman & Son

GGH/WAR:co
cc:Dept Planning & Development

25

Sacramento, CA
22 February 1989

City Councilmembers
City of Sacramento
Sacramento, CA

Dear Councilmember:

With regard to the matter of:

Applc. No. P88-443 - Application by Exxon to expand hours of operation of an existing mini-mart to 24 hours, at 4011 Freeport Blvd.

We undersigned, as appellants, regarding approval by the Planning Commission on December 1, 1988, of the above-described special permit, wish council to be cognizant of our opposition to approval and opposition by signatories to petitions (attached).

We challenge the Planning Department's recommendation on the basis of incomplete and/or erroneous information regarding this neighborhood. We challenge the idea that this is a crime free area. We challenge the idea that 24-hour service will benefit the local community. The residents in this area, both commercial and residential, have experienced continuing problems regarding crime, noise, vandalism and littering. We think 24-hour operation will only exacerbate our situation and will have a very negative impact on our area, which also happens to be a target area for improvement by the city.

We solicit your consideration of our serious concerns. Thank you.

Bev Waters
Bev Waters

Wm. A. Revitt
Wm. A. Revitt

Mike Walker
Mike Walker

Guy G. Heilman
Guy G. Heilman

attachments

25

Sacramento, CA
22 February 1989

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City of Sacramento
Sacramento, CA

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We solicit your consideration of our serious concerns. Thank you.

Bev Waters

Wm. A. Revitt

Mike Walker

Guy G. Heilman

attachments

25

NOTICE OF APPEAL OF THE DECISION OF THE
SACRAMENTO CITY PLANNING COMMISSION

RECEIVED
CLERKS OFFICE
CITY OF SACRAMENTO
FEB 22 11 55 AM '89

DATE: 12/12/88

TO THE PLANNING DIRECTOR:

I do hereby make application to appeal the decision of the City Planning Commission of 12/1/88 (Date) when:

___ Rezoning Application ___ Variance Application

✓ Special Permit Application ___ ___

was: ✓ Granted ___ Denied by the Commission

GROUNDS FOR APPEAL: (Explain in detail)

LETTER OF OBJECTION BY BEV WATERS NOT PRESENTED TO PLANNING COMMISSION THOUGH REC'D BY PLANNING DEPT 11/29/88. OTHER OBJECTIONS BY NEIGHBORS, BOTH RESIDENTIAL & COM'L, ATTACHED.

PROPERTY LOCATION: 4011 FREEPORT BLVD

PROPERTY DESCRIPTION: EXXON GAS STATION/CONVENIENCE MARKET

ASSESSOR'S PARCEL NO. 018 - 0011 - 020

PROPERTY OWNER: EXXON

ADDRESS: P.O. 4415, HOUSTON, TEXAS 77210

APPLICANT: EXXON

ADDRESS:

APPELLANT: Bev Waters (SIGNATURE) (BEV WATERS, ETAL) PRINT NAME

ADDRESS: 4112 LOTUS AVE., SACRAMENTO, CA 95822

FILING FEE:
☐ by Applicant: $105.00 RECEIPT NO. ___
☐ by 3rd party: 60.00
FORWARDED TO CITY CLERK ON DATE OF: ___

P- ___

5/82

DISTRIBUTE TO -
(4 COPIES REQUIRED): MVD
AG
WW
RT
SG — (Original)

Postmarked 11/23/88
Rec'd by Planning 11/29/88

25

4112 Lotus Ave.
Sacramento, CA 95822

22 November 1988

City of Sacramento
Dept. of Planning & Development
1231 I Street, Room 200
Sacramento, CA 95814-2998

Planning Commission:

Re: Proposed:
P88-443 Special Permit
expanding hours of operation
to 24 hrs. at 4011 Freeport Blvd.

I am the owner of two R-3 lots within 300' of the above-described proposed project.

I am not in favor of expanding the hours of operation of this convenience market.

This is basically a residential area from ½ block east of Freeport Blvd., there being only quiet businesses facing Freeport Blvd. which all close at a reasonable time each evening. Eastward is entirely residential and is at present a target area for improvement by the city. I feel that the above request for special permit should be denied as such a 24-hour operation runs counter to the enhancement of the residential character which exists in this neighborhood and which we are all trying to improve.

Very truly yours,

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Beverly Waters, Owner
APN's 018-0012-002 &
018-0012-003

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OTHER OBJECTIONS BY NEIGHBORS, BOTH RESIDENTIAL & COM'L, ATTACHED.

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PROPERTY OWNER: EXXON

ADDRESS: P.O. 4415, HOUSTON, TEXAS 77210

APPLICANT: EXXON

ADDRESS:

APPELLANT: Bev Waters (SIGNATURE) (BEV WATERS, ETAL PRINT NAME)

ADDRESS: 4112 LOTUS AVE., SACRAMENTO, CA 95822

FILING FEE:
☐ by Applicant: $105.00 RECEIPT NO. ___
☑ by 3rd party: 60.00
FORWARDED TO CITY CLERK ON DATE OF: ___

P-88-442 CITY PLANNING DEPARTMENT

5/82

DEC 12 1988
RECEIVED

DISTRIBUTE TO -
(4 COPIES REQUIRED): MVD
AG
WW
RT
SG - (Origin

Postmarked 11/23/88
Rec'd by Planning 11/29/88

4112 Lotus Ave.
Sacramento, CA 95822

22 November 1988

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Very truly yours,

Beverly Waters

Beverly Waters, Owner
APN's 018-0012-002 &
018-0012-003

Phone 452-6157

4041 Freeport Blvd.

HARRY A. NAUMAN & SON
funeral directors
Sacramento, California 95822

December 8, 1988

Mr. Joe Serna
Sacramento City Council
City Hall
915 I Street
Sacramento, CA 95814

Re: P88-443

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Being neighbors, we have been annoyed by visitors to our parking lots, litter, loud noise, and vandalism, some of which is due merely to the presence of a gas station. In our opinion, a 24 hour operation will not improve this situation. It will, rather, tend to excuse increased all-night traffic in what is otherwise a basically residential area.

We join with our neighbors in protesting approval of this permit. Please let us know what can be done to reverse this decision.

Sincerely,

Guy G. Heilman,

William A. Revitt,

Owners, Harry A. Nauman & Son

GGH/WAR:co
cc:Dept Planning & Development

March 14, 1989

Bev Waters
4112 Lotus Avenue
Sacramento Ca 95822

On March 7, 1989, the City Council heard your appeal of the City Planning Commission's approval of a Special Permit to expand the hours of operation of an existing convenience market to 24 hours in a 975± square foot building on .32± developed acres in the General Commercial (C-2) zone located at 4011 Freeport Boulevard. (P-88443)

The Council granted your appeal based on Findings of Fact due March 21, 1989.

Sincerely,

Janice Beaman
Acting Assistant City Clerk

lmh/jb/#25

Enclosure

cc: Planning Division
Exxon 70121, 4011 Freeport Boulevard, Sacramento, Ca, 95822

April 4, 1989

Bev Waters
4112 Lotus Avenue
Sacramento Ca 95822

On March 28, 1989, the City Council adopted Findings of Fact for the following matter:

> Appeal of the Planning Commission's Approval of a Special Permit to expand the hours of operation of an existing convenience market to 24 hours in a 975± square foot building on .32± developed acres in the General Commercial (C-2) zone located at 4011 Freeport Boulevard. (P-88443)

Enclosed, for your records, is a certified copy of said Findings of Fact.

Sincerely,

Janice Beaman
Acting Assistant City Clerk

lmh/jb/#18

Enclosure

cc: Planning Division
Exxon 70121, 7011 Freeport Boulevard, Sacramento, Ca, 95822

26

DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 200
SACRAMENTO, CA
95814-2998

BUILDING INSPECTIONS
916-449-5716

PLANNING
916-449-5604

March 1, 1989

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Housing Trust Fund (HTF) Ordinance (M87-086)

SUMMARY

On February 7, 1989, the joint committee approved this item on a four-to one vote (one abstention) and forwarded it to the City Council for final action. This report responds to testimony received at the joint committee hearing on the following: 1) update on the fee impact analysis, 2) criticisms to the Nexus report, 3) legal issues raised by Christina Savage, representing the Building Industry Association, 4) comments by Gregory Thatch on North Natomas requirements, and 5) final amendments to the ordinance.

BACKGROUND INFORMATION

1. Update on Fee Impact Analysis

A. Development Fees

Staff was requested to update the commercial development fee analysis contained in the February 6, 1989 staff report to reflect all existing and proposed fees. In particular, staff was requested to include the proposed TSM fee and South Natomas FBA fee in the analysis.

Staff believes the fee analysis includes all currently adopted construction permit fees that would apply to the office and warehouse examples selected for the analysis. Building permit and plan check fee increases approved in January, 1989, by the City of Sacramento were included in the analysis. The traffic impact fee for West Sacramento was the only preliminary fee included in the analysis.

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The fee analysis did not include processing fees for the proposed Transportation System Management (TSM) ordinance because the Public Works Department has not completed its analysis of the administrative costs. A report on this issue will be presented to the City Council at a later date. Currently, the City does not charge a processing fee to review plans submitted pursuant to the Developer TSM Ordinance. The County of Sacramento currently charges approximately $1,200 to review and approve a Transportation Management Plan submitted pursuant to the County's TSM ordinance.

The proposed South Natomas FBA fee (currently, estimated at $4.26 per square foot) was not included in the fee comparison because the downtown and Point West locations were selected for the cost comparisons, and the FBA fee would not apply in these areas. These areas were considered to be more typical of office development costs in the City of Sacramento. Also, South Natomas was not selected because more than two million square feet of development in the area would be exempt from the proposed housing fee due to previously approved development agreements.

In short, the fee analysis focuses on construction fees that would be universally applied both in the City and other jurisdictions. Planning, environmental and special mitigation fees vary within the City and within each jurisdiction depending on the type of project, its location and its impacts; therefore, these type of costs cannot be reliably estimated or compared.

B. Development Cost Comparison

Councilmember Pope and others also raised concerns about higher total development costs in the City than in the County of Sacramento. Keyser Marston Associates prepared the following response to these concerns:

The impact analysis presented in the last staff report determined that the proposed Housing Trust Fund fee would have a 0.5% to 1.4% impact on total costs depending on land use and jurisdiction. In the context that the total fee package in the County is higher than that in the city, it was also noted that, as an offset, land costs and certain costs related to development tended to be higher in the City than in the County. It was clarified that building shell construction was assumed to be the same in both jurisdictions but that certain types of site costs, such as drainage, could vary, but these variations were very minor. As a result, the cost analysis does not show any variation in costs associated with construction. The only variable in those tables are land costs and public fees.

The only significant variation from one jurisdiction to another is in land costs. Land costs are market driven, a reflection of what the market will bear or is perceived will bear. The fact that land costs are higher in the City is a reflection of the perceived greater attraction of City located land. Downtowns are the clearest example of high land costs reflecting high desirability and shorter supply.

In theory, the added costs of developing in any given area should result in a drop in land costs in that area if added costs are not able to be passed on to tenants or end users. We do not believe this will occur, however, because the fee is of such a small amount in light of all other factors that determine land costs.

Land costs are market driven, a reflection of what the market will bear or is perceived will bear. The fact that land costs are higher in the City is a reflection of the perceived greater attraction of City located land. Downtowns are the clearest example of high land costs reflecting high desirability and shorter supply.

In theory, the added costs of developing in any given area should result in a decrease in land costs in that area if added costs are not able to be passed on to tenants or end users. Staff does not believe this will occur, however, because the fee is of such a small amount in light of all the other factors that determine land costs.

Staff recognizes that off-site costs vary substantially from one parcel of land to another regardless of whether the land is in the City or County, or in one of the adjacent counties for that matter. The impact evaluation, since it addressed prototypical projects, could not address off-site costs.

If there are situations within the City where off-site costs are extraordinary and that area is also a target infill area for commercial or industrial development, then the City should consider other incentives or means of assistance to promote development in that area. The City has in place programs and incentives to promote commercial and industrial development. For example, the Economic Development Division assists developers by working with City departments to expedite infrastructure improvements and permit approvals. In addition, the City funds marketing efforts to promote Sacramento and attract industry. In summary, the proposed housing fees should not be eliminated across the board for a total development category such as warehousing based on a particular set of circumstances that occur with a single parcel. The proposed HTF and economic development efforts are intended to promote a balanced development program that enhances the overall quality of life in Sacramento.

2. Responses to Nexus Criticisms

Keyser Marston Associates prepared the following responses to criticisms of the Nexus report by David Wade, representing the Building Industry Association:

A. Statement: There is no demonstrable Nexus established, only an intuitive relationship ... there is no statistically verifiable connection.

Response: The memorandum report dated November 25, 1987, contained in the Task Force's Housing Assistance Plan, Program and Financing Strategy very clearly demonstrated the Nexus between buildings and the number of employees from very low income households that work in them. The analysis was presented step by step to demonstrate how the conclusion on the number of very low income employees by land use category was determined, and why and how the conclusion differed by land use.

B. Statement: The target for housing has no connection with need. The program does not address the needs generated by new development, only the existing need.

Response: The HAPP clearly establishes the relationship between the affordable housing targets and documental housing needs. The fee structure as proposed is one component of an overall financing strategy and is based on an analysis of the needs associated with growth as reflected and facilitated by new construction. Thus, the fee structure and the program it funds addresses new housing needs. Existing housing needs must be addressed by other housing programs.

C. Statement: A number of factors affect the need for low income housing. A stagnant economy would generate more need.

Response: While we concur with the first statement, there is a strong association between economic growth and housing needs. As a dynamic growing area, Sacramento is attracting families of all income levels because there are jobs available. Paradoxically, an increase in the number of new jobs will be accompanied by an increase in the number of job holders who cannot afford housing at market rates. A recent study by the Joint Economic Committee of Congress documented that more than one half of new jobs created from 1979 to 1983 in the United States paid less than $7,000 a year, while the number of jobs paying $28,000 or more decreased. These national trends closely parallel local trends in Sacramento.

Concurrent with the decline in wages received by low income employees, there has been an increase in the cost of rental housing at a rate somewhat higher than the overall rate of inflation. Thus,

this combination of factors is expected to continue and cause a growing base of working low income families in need of housing assistance.

As to the second statement, a stagnant economy would have housing problems of a different nature.

D. Statement: The analysis is based on assumptions and on preliminary information. There is not a sufficiently good data base in Sacramento. The data is dated.

Response: The analysis is based on the best and most reliable data available, which, while imperfect, is more than sufficiently solid to demonstrate the nexus. Where appropriate, update adjustments were made.

We stated in the qualifier to the analysis that in some cases assumptions and judgments were necessary to complete the analysis. There was never a question about the presence of a link; however, identifying the precise number required a judgement. For example, we had information on the average wage level for a retail clerk, but we had to estimate what percent of all retail clerks earned under $17,000 per year. In other words, another firm doing the same analysis would likely produce a different set of numbers but we doubt there would be substantial variation in the conclusion. Given the fact that assumptions generally erred on the side of conservation or understatement of need, and given the fact that the proposed fee is under half the amount justified by the Nexus finding, we are confident that the proposed fee amounts are well within the safety zone of being fully justifiable.

E. Statement: The assumption that there is a uniform demand for housing is in error. Employers who relocate in the area recruit (or import) white male management from outside. Employers do not recruit janitors from outside. Low income jobs are filled by the existing workforce. Local growth in existing buildings is not addressed.

Response: The analysis addressed average demand for housing by net new employees per land use category. The average covered new employees in old buildings and old firms as well as employees in new buildings and new firms. Because employers do not import their janitors when they relocate to Sacramento, does not mean that workers do not migrate to Sacramento to fill janitorial jobs.

F. Statement: There is an equity concern since the analysis and fee structure does not cover construction workers, maintenance workers, and government employees. The BIA would prefer a fee based on personnel.

this combination of factors is expected to continue and cause a growing pool of workers who lacks skills in demand by employers.

As to the second statement, a stopgap strategy would be a temporary program of a different nature.

3. Statement: [illegible] is based on assumptions and on preliminary information. There is not a sufficiently good data base in Sacramento. The case is dated

Response: The analysis is based on the best and most reliable data available. Much, while important, is more than sufficiently strong to demonstrate the point. [illegible] were made.

We stated in the quarterly to the analysis that in some cases assumptions and judgments were necessary to complete the analysis. There was never a question about the economic or labor market. We had information on the average wage level for a certain category. We had to estimate what percent of all retail clerks earned under $17,000 per year. In other words, another firm doing the same analysis would likely produce a different set of numbers but we [illegible] there would be substantial variation in the conclusion. Given the fact that assumptions generally err on the side of conservatism or underestimatement of need, and given the fact that the process is under half the amount justified by the Nexus Study, we are confident that the proposed fee amounts are well within the safety zone of being fully justifiable.

4. Statement: The assumption that there is a uniform demand for nonexempt is in error. Employers who interview in the [illegible] for supervisory and middle management from outside. Employers do not recruit [illegible] from entry level jobs are filled [illegible] the existing workforce. Long growth in existing building is not adequate.

Response: The [illegible] coverage demand for nonexempt by new employees per law was mandatory. The average covered new employees in old buildings [illegible] as well as employees in new buildings and new firms. Because employers do not impact their factors when they relocate to Sacramento, does not mean that workers do not migrate to Sacramento to fill permanent jobs.

5. Statement: There is an equity concern since the analysis and fee [illegible] does not cover construction workers, [illegible] and government employees. The JIA would prefer a fee based on personnel.

Response: Considerations of practicality also limit the feasibility of a broader based fee. Government employees are not included to the extent that State owned property is exempt from local requirements). Construction and maintenance worker needs are dealt with indirectly by fees associated with their place of work. The Task Force very strongly urged the adoption of an employee based fee or tax which would require changes in legislation at the state level.

G. Statement: The definition of research and development and office, etc., are often blurred in today's world.

Response: This is true and poses a major challenge to land use regulation. Since government must provide reasonable definitions to regulate the impacts of various land uses, it is also reasonable to use these definitions for fee purposes as well.

H. Statement: The adjustments made at the end to adjust for impacts on costs diminish the Nexus argument.

Response: We disagree that the Nexus relationship is diminished by modification to the fees to address other concerns.

3. Legal Issues

Legal counsel believes the record of the previous joint committee hearings adequately responds to each of the legal issues raised in the February 17, 1989 letter by Christina Savage, representing the Building Industry Association, (Attachment A). Legal counsel believes that a legal Nexus has been established, the proposal is not a special tax, Article 34 of the California constitution does not apply and an EIR is not required for the proposed ordinance.

4. North Natomas Requirements

Gregory Thatch, representing North Natomas landowners Kern Schumaker, William Payne and Lewis Homes, submitted comments in a letter of February 7, 1989 (Attachment B). Mr. Thatch has requested that the proposed ordinance be revised to A) reflect that the primary basis of HTF is to mitigate the jobs/housing imbalance in North Natomas; B) exempt North Natomas projects that provide a balanced jobs/housing ratio; and C) credit housing previously constructed in North Sacramento since the North Natomas Community Plan (NNCP) was adopted.

Staff has the following responses to each of the comments raised in Mr. Thatch's letter:

A. Basis for North Natomas Housing Trust Fund:

Mr. Thatch asserts that the clear primary reason for the North

Response: [illegible] of a driver based fees. Government [illegible] are not interested to the extent that state [illegible] to [illegible] local [illegible]. Constitutional [illegible] motor modes are dealt with indirectly by fees associated with [illegible] place of work. The [illegible] very strongly urged the [illegible] of an employee based fee or [illegible] would require changes in legislation at the state level.

c. Stakeholders: [illegible] are also planned in [illegible] world.

Response: This is true and poses a major challenge to the [illegible]. State governments [illegible] economic [illegible] to [illegible] are [illegible] to use these definitions [illegible] progress [illegible].

d. Strategies: The adjustments [illegible] to [illegible] in [illegible] discussed [illegible].

Response: [illegible] assessment [illegible] social [illegible] to [illegible] motor [illegible].

3. Legal Issues

Legal [illegible] believes the [illegible] of the previous joint committee meetings adequately responds to each of the legal issues raised in the [illegible] 1983 letter by Christian Savoye, [illegible] the Trucking Industry Association. (Attachment A). [illegible] believes that a legal [illegible] [illegible] the proposal [illegible] a special fee, [illegible] California constitution does not apply and an RFP is not required for the proposed [illegible].

4. North American Requirements

[illegible] Industry [illegible] with [illegible] Canadian [illegible] Mexican [illegible] forwarded a letter of concern [illegible] 1988 [illegible] [illegible] the proposed [illegible] [illegible] to [illegible] [illegible] to investigate the [illegible] [illegible] [illegible] [illegible] [illegible] proposal [illegible] providing a business [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the Kansas Automobile [illegible] Fuel Tax was adopted.

Q: Has the [illegible] responses [illegible] of the comments raised in Mr. Savoye's letter?

5. Taxing for more [illegible] [illegible]

a. Tension [illegible] [illegible] [illegible] [illegible] [illegible]

Natomas Housing Trust Fund is to correct the jobs/housing imbalance in North Natomas and in particular, Phase I. A collateral benefit (but not the primary purpose) of the fund is to stimulate residential development in North Sacramento, according to Mr. Thatch's interpretation of the administrative record, NNCP and NNCP EIR.

Staff believes that the NNCP polices and objectives clearly establish two equally important purposes for the Housing Trust Fund: 1) to address the jobs/housing objectives and 2) to address the housing and revitalization goals for North Sacramento.

With regard to the jobs/housing balance objective, the NNCP requires the achievement of a 66% housed workers-to-jobs ratio for the incorporated area (City of Sacramento) portion of the planning area. The North Natomas Settlement Agreement provides that this ratio must be maintained through subsequent land use amendments. Figure 1 identifies the housing-to-jobs relationship for Phase I and Phase II of the North Natomas planning area. The Plan proposes to mitigate the cumulative dwelling unit shortfall in Phase I and Phase II by causing the construction of 4,340 additional dwelling units in North Sacramento. The 66% housing-to-jobs ratio can only be achieved through both maximum residential build out within each phase of North Natomas and the additional housing construction in North Sacramento.

The second purpose for the Trust Fund, is to mitigate the significant adverse environmental impacts resulting from the approval of the North Natomas Community Plan. The NNCP Draft EIR (pages D-36 to D-39) identified the following adverse significant adverse impacts on older communities, particularly North Sacramento:

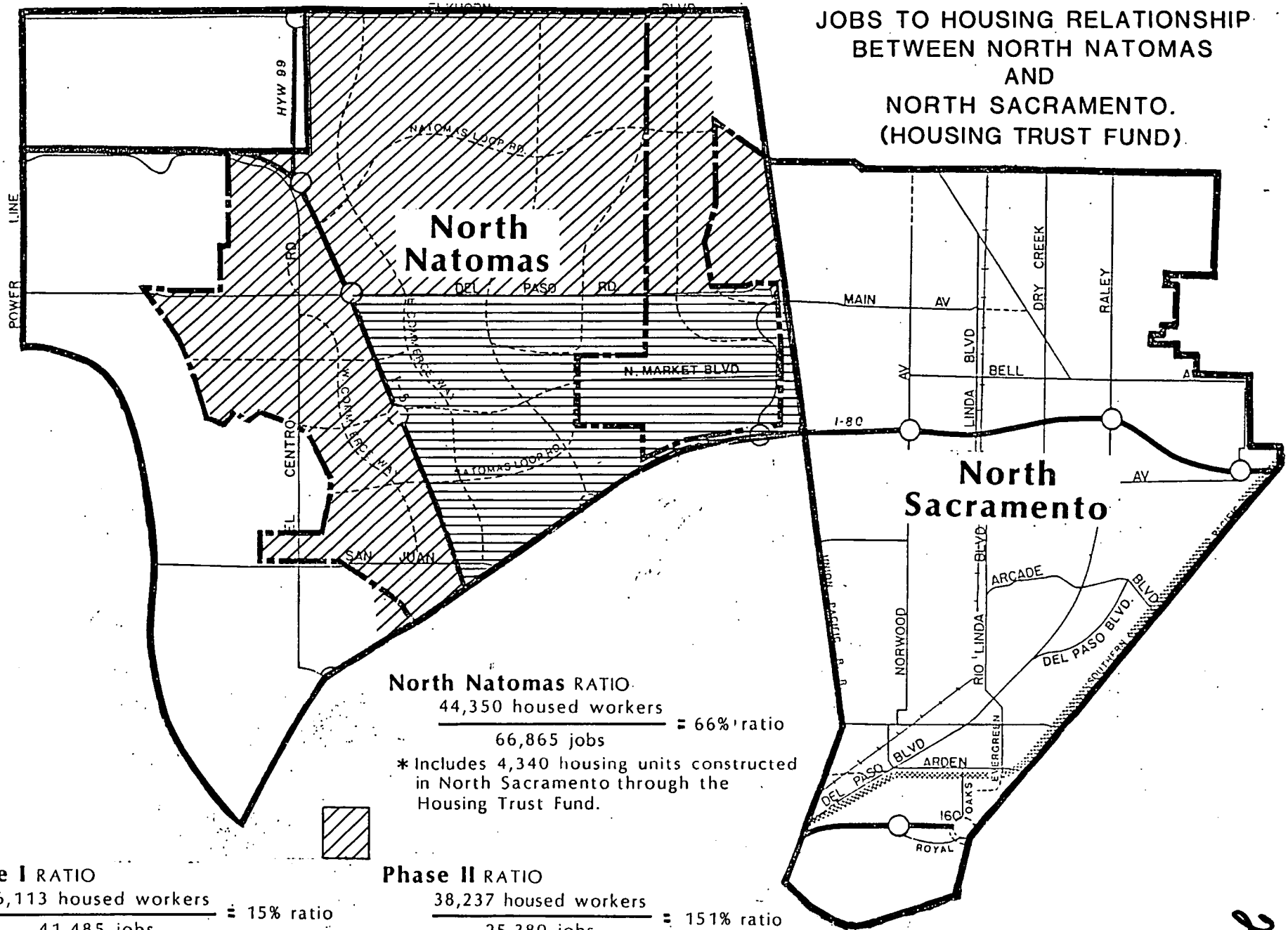
(i) "The desirability of the Project Area for development means that it will attract projects away from other communities, particularly from northern and southern Sacramento communities and older neighborhoods near the central city";

(ii) The availability of large tracts of land in the Project Area will mean that infill projects are less likely to be developed with a resulting reduction in the development opportunities in North Sacramento, Delta Shores and the Airport-Meadowview community;

(iii) The implementation of the Project would reduce the market for office and industrial land uses in North Sacramento and would accordingly prevent any significant expansion of job opportunities in the community."

To mitigate these potential adverse environmental impacts to North Sacramento, the NNCP (p.75) included the following goals and objectives for the Housing Trust Fund.

JOBS TO HOUSING RELATIONSHIP BETWEEN NORTH NATOMAS AND NORTH SACRAMENTO. (HOUSING TRUST FUND)



North Natomas RATIO

$$\frac{44{,}350 \text{ housed workers}}{66{,}865 \text{ jobs}} = 66\% \text{ ratio}$$

* Includes 4,340 housing units constructed in North Sacramento through the Housing Trust Fund.

Phase I RATIO

$$\frac{6{,}113 \text{ housed workers}}{41{,}485 \text{ jobs}} = 15\% \text{ ratio}$$

* Includes 2,734 housing units constructed in North Sacramento through the Housing Trust Fund.

Phase II RATIO

$$\frac{38{,}237 \text{ housed workers}}{25{,}380 \text{ jobs}} = 151\% \text{ ratio}$$

* Includes 1,606 housing units constructed in North Sacramento through the Housing Trust Fund.

FIGURE 1

"North Natomas shall develop as a mixed use community, providing locations for residential, commercial, office and industrial land uses with an adequate level of supporting public facilities and services. The development of North Natomas shall also support and complement planned residential and economic growth in adjacent communities within the City;

Jobs and housing development in North Natomas shall be directly related to achieving housing and revitalization goals in North Sacramento. The private sector shall participate in efforts, such as Housing Trust Fund and Infrastructure Trust Fund to meet this additional housing demand in North Sacramento."

These provisions support the North Sacramento revitalization goal as a primary basis for participation the North Natomas Housing Trust Fund. This goal is intended to compliment the jobs-housing balance objectives for the fund.

B. Applicability to North Natomas Projects.

Mr. Thatch contends that only those projects that create a jobs to housing imbalance should be required to participate in the Housing Trust Fund. He contends that if a developer built sufficient units within North Natomas in conjunction with the developers non-residential development, the developer would have met the jobs/housing requirements of the Community Plan and would have no obligations relative to the Trust Fund.

Staff recognizes that individual North Natomas projects (particularly those located in Phase II) may include a housing-to-jobs mix which in isolation exceeds the 66% housing-to-jobs ratio. However, in staff's opinion, the intent of the Plan is to maintain an overall cumulative balance between housing and jobs within the planning area. Figure 1 indicates that there will be a substantial dwelling unit deficiency (15% housing-to-jobs ratio) within Phase I of the North Natomas Community Plan area. North Sacramento housing development and the Phase II land use mix, which includes more housing units than employees (1.51% housing-to-jobs ratio), is designed to achieve an overall balance within the plan area.

The plan does not provide for exceptions based on a particular project's anticipated mix of jobs and housing units. The following excerpts from the NNCP (pages 75-78) support the uniform application of the HTF requirement:

"In order to meet the above goals, and housing and revitalization goals for North Sacramento, public policy measures are necessary in order to ensure that Sacramento's

existing communities are treated fairly and equitably in the urban growth process and fully share in the economic benefits of urban development. A "linkage" program, which links discretionary zoning actions that enhance the value of property to tangible land use benefits for moderate income residents and neighborhoods, should be pursued.

The fund and in-lieu construction program will be responsible for stimulating 4,340 moderately priced dwelling units in North Sacramento. The responsibility for the units will be spread on an employee per acre basis on all of the employment generating land uses in North Natomas." (emphasis added)

To assure compliance, each North Natomas Development Agreement includes an obligation (Exhibit C, Special Conditions, Section IIB) to participate in Housing Trust Fund and other implementation programs either established or to be established under the Community Plan. The findings required pursuant to the Conditions of Development (IV B.10 and B.11 cited in Mr. Thatch's letter), require periodic monitoring of the jobs-housing balance and are in addition to the HTF obligation.

C. Start Date for Monitoring Compliance.

Mr. Thatch believes that housing constructed in North Sacramento since May 13, 1986 (adoption date of the NNCP) should be credited against the 4340 housing unit objective.

Staff disagrees with this interpretation because there is no direct timing between housing construction and demand to meet the needs of future employees in North Natomas. This is the overriding goal of the entire monitoring and phasing program provisions for the North Natomas Community Plan. A poor balance or out-of-sync timing between job creation and housing construction could result in a tightening of the housing market. As a result, the NNCP Monitoring Program may find that the NNCP housing goals are not being met by the initially adopted policies and HTF program and stronger measures may be necessary.

Staff recommends that once the monitoring program is established, housing starts in North Sacramento after the effective date of the ordinance may be credited against the 4340 unit objective if it can be found that they address housing demand associated with North Natomas jobs creation.

5. Final Amendments

Staff has made the following final amendments that are underlined on the HTF Ordinance (revised 3/1/89) (Attachment E):

1. The criteria for location of citywide assisted housing units (Section B.5, page 10) establishes a commute distance of seven miles. This distance is less than the 7.54 average miles per commute trip standard that was adopted as part of the Air Quality Mitigation Element for the North Natomas Community Plan. Preference criteria was also added for locations within one quarter mile of either existing or proposed transit services. This amendment was requested by the Environmental Council of Sacramento (ECOS).

2. The annual report shall contain findings required by Government Code Section 66001(d) for new fees (Section B.6, page 11).

3. An additional variance provision for low density employment uses requiring specialized structures (Section F.4, page 18).

It is anticipated that ECOS will approve an amendment to the North Natomas Settlement Agreement to reflect the recommended increase in the minimum fee under the build option from 20 percent to 40 percent. This change will go in effect after the City obtains an amended agreement signed by all parties.

RECOMMENDATION

Staff recommends that the City Council receive public testimony and approve the following:

1. Negative Declaration on the HTF Ordinance (Attachment C);

2. Resolution requesting adoption by the County Board of Supervisors of a Housing Trust Fund Ordinance (Attachment D);

3. Housing Trust Fund Ordinance (revised 3/1/89) (Attachment E);

4. Resolution amending the Fee and Charge Report (Attachment F); and

5. Resolution amending the City Budget for FY 1988-89 (Attachment G).

Respectfully submitted,

William Edgar
SHRA Director

Michael M. Davis
Director of Planning and Development

RECOMMENDATION APPROVED:

Walter J. Slipe

Walter J. Slipe, City Manager

Contact Person: Steve Peterson

M87-086

ATTACHMENT A

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RECEIVED
FEB 28 1989
Planning and Development

RECEIVED
FEB 21 1989
CITY ATTORNEY'S OFFICE

HEFNER STARK & MAROIS
Law Offices

2710 Gateway Oaks Drive
Suite 300 South
Sacramento, CA 95833-3501
(916) 925-6620
Fax # 925-1127

Bay Area Office
(415) 837-2131

February 17, 1989

Jim Jackson
Sacramento City Attorney
812 - 10th Street, Suite 201
Sacramento, CA 95814

Re: Proposed Housing Trust Fund Fee Ordinance; March 7 City Council Agenda

Dear Jim:

This letter is submitted on behalf of our client, the Commercial Builders Council of the EIA.

The purpose of this letter is to summarize in written form the basis for our belief that the proposed fee is unconstitutional, requires prior voter approval, and must be preceded by an Environmental Impact Report. We have made these arguments orally on several occasions at Council Subcommittee hearings on the ordinance.

1. The City has not established a <u>Nollan</u> nexus to support the purported "fee".

Keyser Marsten prepared a lengthy study purporting to demonstrate a nexus between new non-residential construction and the need for new low income housing. The Pacific Legal Foundation, by a letter dated November 6, 1987 signed by Ron Zumbrun and submitted to the City Council, examined the Keyser Marsten study and explained why this study is legally deficient. We retained David Wade and Associates who has testified with respect to the inadequacy of the Keyser Marsten study. Wade will also submit into the administrative record a written summary of his February 7 testimony supplemented by back-up studies and data.

2. The alleged "fee" is in fact a special tax, requiring two-thirds voter approval prior to adoption.

This argument parallels the above Nollan argument. New development is being asked to fund a public need which is not directly related to or caused by new development. In part due to the scarcity of local funds caused by Proposition 13, the City is seeking "fees" from developers to garner local share funding needed to capture state and federal match funds for low income housing projects.

3. Article 34 of the California State Constitution as interpreted by Davis v. City of Berkeley requires voter approval prior to adoption of this ordinance.

The Davis v. City of Berkeley case specifically rejected the plaintiff's argument that an Article 34 ballot measure must be site specific. Instead, the Supreme Court held that an Article 34 ballot measure must occur prior to action such as an application for federal funding for low income housing site selection and feasibility studies. The proposed housing trust fund ordinance is analogous to an application for federal funding in that it will generate substantial seed money for site selection and initial feasibility analyses. Collection of the developer "fees" will commit the City to the expenditure of substantial funds for an unprecedented number of new low income housing units. Without a vote now, the voters will be deprived of a meaningful opportunity to decide whether the public costs of the aggressive new low income housing plan are well spent.

4. An EIR is required prior to adoption of the proposed new ordinance.

The City has prepared a very brief Negative Declaration and contends that there is no evidence that the ordinance will cause any significant adverse environmental impact.

Based on the City's own Keyser Marsten study, we have argued that the ordinance requires preparation of an EIR to assess the extent to which the proposed "fee" will cause sprawl by discouraging development in the City and therefore encouraging development in outlying areas. The Keyser Marsten study shows that land and development costs are significantly higher in the City than in outlying areas.

Accordingly, it is already more expensive to develop in the City. The addition of this substantial new fee will make it even more difficult to build in the City. The Keyser Marsten study states that City fees are low compared to fees in other jurisdictions. However, the Keyser Marsten study significantly under-reports City fees.

City Council adoption of the ordinance without mandatory "linkage" to County adoption of a parallel ordinance strengthens the need for an EIR assessment of whether the new fee will drive development to outlying areas and thus increase trip lengths and cause greater air quality deterioration.

An EIR is also required to assess whether the new availability of low income units in the City will be growth-inducing by causing a migration to the City of people not now living here who need low income housing. As an evidentiary basis for this prediction, we have cited the migration patterns of the poor which have occurred as a result of different welfare benefits in various areas in the United States. Recent Bee articles (front page February 12, 1989) and a series of stories this week on Channel 3 cite studies which conclude that the City of Sacramento is now experiencing a marked disproportionate growth in the number of poor families who are attracted to this area by the current availability of Sacramento housing considerably more affordable than housing in the Bay Area and Southern California. An EIR is required to assess the extent which the increased supply of low-cost housing funded by the proposed fee will precipitate greater migration. To the extent the fee is growth-inducing, an EIR is needed to suggest mitigation strategies (e.g., new funding sources) to insure that the City can maintain current levels of essential City services notwithstanding a greater number of citizens contributing less per capita to City revenue sources (sales tax, property tax, transfer tax, etc.).

* * * * * * * *

I am mailing this letter to all Councilmembers and to the City Clerk for inclusion into the administrative record.

Based on the intent-to-approve vote at the February 7 Subcommittee hearing, the Commercial Builders are now very actively exploring litigation with Pacific Legal Foundation

and with Howard Ellman's office. Both offices' preliminary assessments are that litigation is meritorious on all of the four grounds outlined above. The builders certainly do not want to litigate and are willing to work with the City to develop an equitable and legal incentive program similar to recent measures implemented in San Diego resulting in the construction of over 2000 new units for the homeless (see attached). The City of Roseville also recently adopted an incentive program for new low income housing construction. Implementation of this program is being accomplished through a cooperative effort of the Roseville Chamber of Commerce, City staff and several developers.

* * * * * * * *

Frankly, I am puzzled by the "rush" to adopt the fee. Prior to February 7, staff and the Housing Task Force acknowledged that joint City-County adoption of the fee was critical. Many Councilmembers have also stated publically that they do not favor a City-only fee for several of the reasons cited above in this letter. However, on February 7, staff shifted its position, recommending immediate City fee adoption without a sunset clause and with merely a resolution that the Council will reconsider the fee if the County rejects the fee.

There is another obvious alternative - not offered to the Council by staff but much more consistent with the clear need for City-County linkage if there is a fee. Staff should be recommending an Alternative "C": Council adoption of an intent to approve contingent upon County approval. This approach has several advantages:

(1) It motivates private sector interest in formulating an alternative "win-win" incentive approach instead of leaving the builders with the single unpleasant option of filing litigation against the City.

(2) If a San Diego-type approach can be implemented (which in San Diego has produced a significant number of new housing units in infill areas), this program can be substituted for the purely theoretically-effective developer fee approach to increase infill housing as a General Plan air quality mitigation measure. A "proven" incentive solution certainly should satisfy those who threaten to reinstitute litigation in North Natomas.

HEFNER STARK & MAROIS
Law Offices

(3) If the County adopts the fee, the builders may still elect to litigate. But litigation defense costs would then not be borne solely by the City.

* * * * * * * *

It is clearly in the best interest of the City to defer adoption of the ordinance until the County considers a parallel ordinance. For legal and practical reasons, I urge Alternative "C".

Thanks.

Very truly yours,

HEFNER, STARK & MAROIS

By Christina J. Savage

9.1CJS:sw

cc: Mayor and City Council
City Clerk
Tim Bittle, Pacific Legal Foundation
Ken Burns, Ellman, Burke & Cassidy

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THE CITY OF SAN DIEGO'S

SINGLE ROOM OCCUPANCY

Residential Hotel Program

October 1988

PLANNING DEPARTMENT
CITY OF SAN DIEGO, CALIFORNIA

THE SAN DIEGO SOLUTION

In response to the SRO dilemma, the City of San Diego established an SRO Task Force made up of public and private participants. Simply put, their solution to the SRO problem was to preserve and rehabilitate the older SRO's and build new ones.

Like other cities, San Diego adopted an SRO Preservation Ordinance to prohibit the continued loss of SRO hotel rooms. San Diego's ordinance, however, included a unique supply-threshold formula. That is, when the total number of habitable SRO units dropped below the threshold level, no demolition was permitted. When the supply was above the threshold limit, a limited number could be demolished. Attention was then directed towards rehabilitating old SRO's and more importantly, developing a strategy to build new ones.

Barriers to new construction included major impediments from fire codes, building codes, and planning regulations. In addition, the lending industry needed both encouragement and education to finance development of new private market new SRO's. The SRO Task effectively eliminated these barriers and the SRO program was adopted in July 1987.

Code changes included: the classification of an SRO as a commercial hotel, allowed in any zone where hotel/motel use is permitted; establishing a parking variance procedure to reduce 1:1 car park requirements; interpreting an SRO as commercial use for handicap access; permitting the mechanical ventilation of courts; allowing a fire sprinkler system to be substituted for a host of various code items, including the use of approved plastic pipe for cast iron. In addition, at the City's request, the Uniform Building Code was amended by the State to allow a living unit of a minimum of 150 square feet with partial kitchen and bathroom facilities.

Financial incentives that the City provided included: a reduction in water and sewer connection and capacity change rates that fairly reflect SRO usage; and low interest loans to developers to underwrite rents for very low income affordability.

In concrete figures, San Diego has built 465 new SRO units in the last year. An additional 1,855 are either under construction or have applied for building permits. In total, at the end of this construction phase, there will be 2,030 new SRO units -- a 60 percent increase over the present stock.

All of these units are low-income affordable without the need for any government subsidy. When subsidy is provided, the units become affordable to very-low income persons.

The program has been considered so innovative that the California Chapter of the American Planning Association accorded first prize honors to the City of San Diego's Planning Department for a planning program dedicated to the needs of society's have-nots.

This program has also won the much coveted "Innovations Award," sponsored by the Ford Foundation and Harvard University's JFK School of Government. This award is given to only the most innovative programs nationwide that demonstrate potential transferability to other cities.

CAN SAN DIEGO'S SOLUTION BE USED ELSEWHERE?

The City of San Diego has come up with an approach to low-income affordable housing that can be profitable to a private developer without requiring construction, rental, or operating subsidies. In short, affordable housing is feasible without public funds. More importantly, the new SRO's not only meet the requirements of profitability and marketability, it also meets the criterion of liveability in a sensitive and socially responsive way.

Today in San Diego, no longer does a displaced person need first and last month's rent, security, cleaning and utility deposits to find a place to live. Now, with very little money, anyone can get off the streets and find permanent, affordable housing. The San Diego experience shows how it can be done.

In order to replicate this SRO program, however, several conditions must first exist:

First: Someone must be willing to pull together an SRO program, both administratively and technically.

Second: There must be a political will to implement the SRO program.

Third: Private developers and lenders must be willing to pursue SRO's as a profitable housing venture.

Obstacles to implement an SRO program include the education of both neighborhood groups and local businesses. A critical component to keep the program going is decent, competent, management. The San Diego experience has proven that these obstacles and challenges can easily be overcome.

While each city's program will take on its own particular shape, the underlying principal will be the same. That is, the use of the 19th Century transient hotel as a 20th Century solution to homelessness in the form of new SRO's.

The program works. It's transferable and, it's very cost-effective.

"While you won't solve your homeless program just by building new SRO's, you cannot solve your homeless problem without them."

--Frank Landerville
Regional Task Force on the Homeless

CB-promoted concept for working poor catches on

San Diego's single room occupancy rents at $220-$390—partial kitchen/bath too

It's step below studios renting at $500

Two can live in; 40% of city low income

Low cost housing 'niche' spreads nationally

Private developers push ventures; young singles in state next likely target

When the *New York Times* devotes almost a whole page to a new low cost housing concept first promoted and publicized statewide by *California Builder*, it'd have to strike a rich vein of interest around the country because nothing else equals it anywhere. It makes for a cross between the studio apartment and the old single room occupancy (SRO) hotels, helping to fill the much decried housing gap of the working poor.

The Times also related it to homeless housing need with the subheadline—"This is Last Rung Housing; if you lose that you are on the street"—which is like talking up rock-bottom housing values. But the article stressed the sound construction, attractive design values and low rents that put the concept solidly on the road in San Diego whence it's spreading around the country and the state which has a new law paving the way for it. Already its caught on in Pittsburgh, Atlanta, Chicago and Los Angeles.

The concept was initiated by building or renovation of downtown SRO hotels under San Diego provisions that relaxed building codes and offered a low interest loan to initial builders. But it's now entirely in the hands of private developers, several of whom are taking it farther afield, with a nationwide chain of such ventures also in the offing.

Under the energetic stewardship of Judith Lenthall, senior city planner, both the city policies and the new state law have extended the concept to include so-called "Living Units" from 150 sf. on up with requisite live-in facilities for two persons.

Ms. Lenthall, who credits *California Builder* with giving the concept a big publicity send-off in 1987, says it nominally costs $20,000 to build an SRO room as against $50,000 for a studio apartment in San Diego. Rents for rooms in the San Diego hotels range from about $220 a month to $390 a month; that's well below the $500 a month rents charged for the cheapest studio apartments in the city.

In the year since San Diego revised its codes, developers have built four new hotels and rehabilitated 15 old ones for a total of 565 rooms. Ms. Lenthall says some 2,000 SROs are in the works or under construction.

Most of the hotels are in downtown San Diego although several are planned for middle class neighborhoods near the downtown. The city has not met with any opposition to the downtown SROs but has had to overcome resistance from neighborhood groups. A city policy calls for dispersing the hotels throughout San Diego, but city officials acknowledge that most of the hotels will probably be downtown.

What makes SROs so economical to build? San Diego, which started this housing type promotion, exempted SRO builders from growth controls and parking requirements and compromised with builders on standards for ventilation, fire safety and other construction matters to bring down costs.

For example, the new code reduced the requirement that doors on the stair shaft be able to withstand fire for one hour to 20 minutes if builders put in automated fire sprinklers. This was cheaper and, the city felt, just as effective in controlling a fire in such buildings. Another provision allows builders to use plastic pipe instead of the more costly cast iron for plumbing, reasoning that the old code was overly stringent.

What gives impetus to projects in California? The new state law, sponsored by San Diego and put into effect last Jan. 1, permits up to two persons to live permanently in a room as small as 150 sf. with a partial kitchen and bathroom. Actual design and construction requirements are left up to each community. Some other California cities have relaxed building codes for rehabilitation of SROs, but San Diego appears to be the only city in the country to do it for new construction. In private development, the biggest impetus now is the housing need of the working poor; the homeless need special subsidized arrangements.

BALTIC INN, San Diego SRO type hotel built by partnership of private builders, started rents for 207 units at $275 and gets high marks from NY Times for design and amenities. These include 209, 230 and 150 sf. units with built-in wall unit of water closet, lavatory, storage, closet refrigerator and TV. The builders are erecting another twice as large.

Prediction: The large singles and two-household population among California's young people comprises a natural market for SROs, or, special scaled down living units as a goodly number of them in our cities are already doubling or tripling up in existing flats and apartments. The next stop for their part would be some refinement of present-day prototypes to make for a true cross between conventional studios and both SROs and residence type hotels (minus meals and other live in services). The same goes for the growing elderly population.

Unexpected spinoffs. Some of the new SRO hotel buildings in San Diego are so attractive they're attracting European tourists who choose their $24-$34 a night rates over paying $100 and more for conventional hotel rooms. Partly it's

(Continued on Page 14)

California Builder of Year Award

Nominations should be made as soon as possible

Nominations for the 1988 California Builder of the Year Award must be received at the offices of *California Builder*, 693 Mission, San Francisco, CA 94105—as soon as possible.

The Award criteria bear mainly on the nominees' qualities of individual and professional excellence that do credit to the industry and merit special attention. This does not necessarily bear primarily on the builder's particular type or extent of operations, or sales volume, or previously publicized reputation.

Selection criteria include the builder's—• Originality and initiative • New trends started • Contributions to the art and business of building • Quality of work • Marketing acumen • Community relations.

The winner will be chosen from among leading entries by a panel of industry professionals assembled by *California Builder*.

The winner of the Award will receive a special commemorative plaque and a cover story write-up.

Nominations for the California Builder of the Year Award can be made by filling out and sending us a post card.

The nominee's name/company/address and phone number should be given in full, together with the nominator's ditto on that initial form (use extra sheets as needed).

Subsequently, a Special Form with more specific questions will be mailed to the nominees or parties in question. Please send in your nominations as soon as possible.

This Award will keynote builder qualifications and interests peculiar to California. The emphasis is on the individual more than the company unless the two are deemed wholly interchangeable. Innovation and initiative relative to California's special building and marketing conditions is of primary importance. Anyone active and successful in the industry should feel entitled to enter the Award contest; replies to the Special Form sent out to the nominees will determine their relevance to the judging criteria.

We're on the lookout for singular individuals—be they large or small builders—who've been able to rise and shine through dint of manifested effort and skills that worked to their and others' advantage. Any field of endeavor will be acknowledged and different types of building considered, although the emphasis is on residential building per se, with diversification into other fields a noteworthy consideration also.

Special articles and publicity on the winner and runners-up will be extensive enough in our coverage to warrant wide attention throughout the industry.

The goal is to trace the development of new ideas at work in special individuals—the way they function and what they achieve because of their own raised sights and goals. It's the creative incentives in individuals and the marketplace, not just the bottom-line driven ambitions of competitiveness alone, that interests and excites our industry.

This is the industry that reigns supreme in the nation because of the creative inspiration and esprit de corps of its diverse and talented practitioners. We keep singling them out but now's the time to let them come forth of their own good free will and show what they are and can do in keeping with the spirit that overcomes odds and hardships and the ability to make it on their own good terms no matter how much these differ from others.

SRO's—from Page 7

because they're not adverse to sharing bath and toilet facilities.

Now the hotels are emerging as likely solutions to housing shortages for hotel and other service workers in parts of the country where housing costs have skyrocketed, such as Hawaii and New England.

San Jose, CA developer James S. Morely plans to start construction next spring on four 200-room SROs to house hotel and resort employees on the Hawaiian islands of Maui, Oahu, Kauai and Hawaii.

Are SROs more than minor safety values?

Already most of the population is priced out of close-in homebuying and can't well afford going rents for better quality close-in apartments for two main reasons: 1) Apartment building is expensive and getting costlier forcing up most rents to levels only households with $25,000-$30,000 incomes above can manage; 2) Households with incomes under $20,000 must pay up to one-half to one-third of gross incomes to fit into $600-$800 average rent categories in urban areas. They're lucky even to get a $500 a month studio which would still take up about a third of their incomes. In San Diego, for instance, 40% of the population is defined as low-income—going far below the $20,000 level—and 1% are homeless.

SUMMING UP: In terms of housing costs, "the working poor" now include a large and growing share of Californians. The rising SRO phenomenon is but the tip of the iceberg that can eventually create a titantic disaster for the industry and the economy unless it's steered out of danger zones.

Swallow—from Page 6

unlikely that the result could be called 'affordable'.

The dream of home ownership, which once seemed almost a right to most California residents, is endangered. Unless a responsible statewide housing policy is implemented, the dream of affordable housing may become a nightmare for everyone.

George Swallow is the president of Danville-based George Swallow A.I.A. and Associates, Inc. He is a veteran architect with over 35 years of experience in a wide range of projects and is a member of the American Institute of Architects and the National Council of Architectural Registration Boards, as well as a member of the Building Industry Association and a number of civic groups.

ATTACHMENT B

LAW OFFICES OF
GREGORY D. THATCH
1730 I STREET, SUITE 220
SACRAMENTO, CALIFORNIA 95814

GREGORY D. THATCH
LARRY C. LARSEN
PATRICIA E. CURTIN

TELEPHONE
(916) 443-6956

FACSIMILE
(916) 443-4632

February 7, 1989

HAND DELIVERED

Mayor Anne Rudin
CITY OF SACRAMENTO
City Hall
915 "I" Street, Room 205
Sacramento, California 95814

RE: City of Sacramento Proposed Housing Trust Fund Ordinance

Dear Anne:

As you are aware, the Housing Trust Fund Ordinance will be considered at the Joint Budget and Finance/Transportation and Community Development Committee meeting today at 1:30 p.m. As counsel for North Natomas landowners, Kern Schumacher, William Payne and Lewis Homes, we have followed and commented on the North Natomas provisions of the proposed ordinance since its original promulgation. Copies of our previous written comments are enclosed with this letter.

Most of our concerns regarding the proposed Housing Trust Fund Ordinance have been adequately addressed by staff. However, two significant concerns remain.

The fundamental concern is the basic applicability of the proposed ordinance. The proposed ordinance is applicable to every nonresidential project. Our view, which is supported by the administrative record for the North Natomas Community Plan (NNCP), is that only those nonresidential projects that create an imbalance in the job/housing ratio should be required to contribute to the Housing Trust Fund.

In formulating the NNCP, the concept of a Housing Trust Fund emerged as a response to the imbalance in the jobs/housing ratio that would be created in North Natomas, especially with respect to Phase 1 of the development. In addressing this imbalance, the inclusion of a Housing Trust Fund in the Community Plan had the collateral benefit of stimulating residential development in North Sacramento. However, that was not the primary reason for the Housing Trust Fund. The clear primary reason for the Fund was to address the jobs/housing imbalance in North Natomas.

In the enclosed comments, we cite several specific references in the NNCP, the Environmental Impact Report (EIR) for the Community Plan and testimony presented in reference to the Community

Plan to support our view of the applicability of the North Natomas Housing Trust Fund. It is also important to realize that during oral argument of the CEQA lawsuit challenging, among other things, the validity of the NNCP, the Housing Trust Fund was presented as a measure to create a job/housing balance in North Natomas and explained in a manner consistent with our comments. As the attorney responsible for arguing this portion of the lawsuit, I am intimately familiar with the arguments and explanations presented.

In addition, our clients have entered into development agreements with the City which are designed to secure the Community Plan as it existed upon enactment. While the proposed ordinance may be indicative of the evolution of the original concept, it is the original concept that was secured by the Development Agreements. Paragraph B, Section 10 of the Special Conditions contained in the Development Agreements in part identifies this fact. A copy of that paragraph is enclosed for your convenience.

We are also concerned that such a requirement may well serve to discourage residential development in North Natomas. If a developer would not receive housing credit in developing residential land along with nonresidential land, but, to the contrary, be required to pay fees into the Housing Trust Fund, the stimulus to construct housing in North Natomas will likely be seriously diminished. This is an outcome which should not be risked.

Our second concern is that the proposed ordinance does not identify when the City will begin monitoring and counting the construction of the 4,340 dwelling units in Sacramento. Consistent with all prior understandings, we believe that this should begin from the date the NNCP was adopted.

If you have any questions regarding this matter, please feel free to call.

Very truly yours,

GREGORY D. THATCH

GDT:dg
Enclosures (2)
T1403.LTR

26

LAW OFFICES OF
GREGORY D. THATCH
1730 I STREET, SUITE 220
SACRAMENTO, CALIFORNIA 95814

GREGORY D. THATCH
LARRY C. LARSEN

AREA CODE 916
443-6956

September 1, 1988

Mr. Steve Peterson
Associate Planner
Department of Planning & Development
1231 "I" Street, Room 300
Sacramento, California 95814

RE: City of Sacramento's Proposed Housing Trust Fund Ordinance

Dear Mr. Peterson:

This firm represents Kern Schumacher and William Payne with respect to their North Natomas property. On behalf of our clients, we submit the following comments to the proposed Housing Trust Fund (HTF) Ordinance of the City of Sacramento.

I. NORTH NATOMAS PROVISIONS

A. BACKGROUND

The concept of the Housing Trust Fund was discussed and reviewed in the formulation of the North Natomas Community Plan. As a result, specific provisions were included in the Community Plan. In addition, the administrative record with regard to the Community Plan and Environmental Impact Report (EIR) for the Community Plan contain testimony, reports and other comments with respect to the North Natomas Housing Trust Fund. We have reviewed in detail these documents in analyzing the proposed ordinance.

Upon review, we submit that the proposed ordinance fails to fully distinguish the requirements for North Natomas development as opposed to those requirements applicable to other areas of the City. The areas of distinction are more specifically identified below.

Additionally, on August 10, 1987, this office commented on the issue of a housing trust fund as it relates to North Natomas development. A photocopy of our August 10, 1987 letter to David R. Martinez, Deputy City Manager, is attached to this letter and is incorporated by reference herein. The comments contained in our previous letter remain applicable to the proposed ordinance.

B. JOBS/HOUSING BALANCE

1. As set forth in our August 10, 1987 letter and as clearly set forth in the North Natomas Community Plan, the fundamental purpose for the establishment of a housing trust fund in North Natomas was to ensure a jobs/housing balance. The Community Plan, on pages 75 - 78, sets forth the rationale for the establishment of this housing trust fund and, further, delineates the basic ingredients of the fund. Central to this is the identification of the fact that, in order to achieve a jobs/housing balance, 4,340 additional dwelling units must be built within the North Sacramento Community Plan area. The North Natomas Community Plan further provides that 2,734 of these units are attributable to Phase 1 development and must be addressed in conjunction with that development. The remaining units are attributable to the remainder of the North Natomas development.

Based upon this identification of the number of housing units required to achieve a jobs/housing balance, it has consistently been understood throughout the development of the North Natomas Community Plan, the accompanying EIR and the CEQA litigation that once the additional 4,340 dwelling units were built in the designated areas of the North Sacramento Community Plan area, no matter who built these units, all requirements relative to the housing trust fund would be deemed to be fulfilled. It has been stated repeatedly that should these units be constructed prior to the complete build out of North Natomas, the requirements for a housing trust fund would cease.

The proposed ordinance contains no provisions for this. In order to conform to the North Natomas Community Plan and the accompanying EIR, such provisions must be included.

2. As addressed in some length in our August 10, 1987 letter, the housing trust fund contained in the North Natomas Community Plan was not intended to require a developer to participate if that developer developed in a manner so as to eliminate any jobs/housing imbalance. This view is supported by the administrative record. In other words, if a developer built sufficient dwelling units within North Natomas in conjunction with the developer's non-residential construction, the developer would not have created a jobs/housing imbalance. Thus, the developer would have met the jobs/housing requirements of the Community Plan and would have no obligations relative to the trust fund.

This position is consistent with the recent U.S. Supreme Court decision of Nollan vs. California Coastal Commission (1987) ____ U.S. ____, 107 S. Ct. 3141. In that case, the Supreme

In reviewing this issue we have undergone the rather laborious task of reviewing the entire administrative record of the North Natomas Community Plan as it was prepared for purposes of the CEQA lawsuit. This record constitutes literally thousands of pages of testimony, reports and other documents. In addition, we have reviewed the actual provisions of the Community Plan, the Environmental Impact Report, the transcript of the CEQA trial and our own internal notes and memoranda relative to this issue. As a result of this review, I must say that the record is, at best, confusing, vague and contradictory relative to the Housing Trust Fund. What appears is a series of general statements relative to the concept of a Housing Trust Fund with little detail (save and except the formula of $3,500.00 or one dwelling unit for each 15 employees) as to the actual implementation of the program. I can certainly appreciate the difficulty that the planning staff might have in attempting to prescribe a mechanism for the implementation of this program, particularly when these staff members have not had the benefit of being active participants in the discussions over the past years relative to this program.

In any event, the threshold and most significant question appears to be whether the Housing Trust Fund emerged as a response to the imbalance in the jobs-housing ratio and, therefore, whether it should be tied to such an imbalance. It is our view that the concept of the Housing Trust Fund grew out of this imbalance. It is true that, in addition to addressing this imbalance, the inclusion of a Housing Trust Fund in the Community Plan had the corresponding benefit of helping to stimulate residential development in North Sacramento. This stimulus was a very positive by-product of the Housing Trust Fund and certainly one that increased the Housing Trust Fund's attractiveness as a solution to the jobs-housing imbalance. We submit, however, that the North Sacramento development was not the primary reason for the Housing Trust Fund and should not now be looked at as the driving force behind this program. The Housing Trust Fund was always a response and solution to the jobs-housing imbalance created in North Natomas, particularly during Phase I of the development.

As I have stated, the underlying record relative to the Housing Trust Fund is not a clear one. However, in support of our interpretation, we offer the following:

1. In a presentation to the City Council on January 13, 1986, Gary Stonehouse, apparently for the first time, addressed the issue of the Housing Trust Fund with the City Council. In making his presentation, Mr. Stonehouse stated: "Our concept here is that because of the extreme lack of housing in the Phase

Court held that any condition imposed upon a developer must substantially further a legitimate governmental purpose. Should a North Natomas developer construct a balanced development and otherwise be in compliance with the Community Plan, we submit that requirements to participate in a housing trust fund would not serve any legitimate governmental purpose.

C. MODERATE INCOME HOUSING

In the proposed ordinance, reference is made solely to low income housing. There is no distinction made in this regard with respect to North Natomas. However, in reviewing the North Natomas Community Plan, it is abundantly clear that the North Natomas Housing Trust Fund was designed ". . .to develop moderate income housing units in North Sacramento, thus alleviating a jobs/housing imbalance and promoting growth and revitalization of North Sacramento". (emphasis added) (NNCP at p. 75). Accordingly, revisions should be made to the ordinance to reflect that, for North Natomas development, moderate income housing can be constructed to fulfill the developer's requirements.

D. SPORTS COMPLEX EXCLUSION

The proposed ordinance exempts the sports complex from the terms of the housing trust fund. We are aware of no provisions within the North Natomas Community Plan or the EIR which provide for such an exemption. Moreover, we note that the fundamental jobs/housing imbalance created in North Natomas occurs as a result of Phase 1 development, which development includes the sports complex.

II. GENERAL COMMENTS

The following comments relate to the general provisions of the proposed ordinance:

A. GROSS SQUARE FOOTAGE

The proposed ordinance requires all non-residential projects exceeding a threshold amount of gross square footage to participate in the housing trust fund. In addition, the amount of the fee to be paid is also based upon gross square footage. However, the proposed ordinance fails to provide a definition for gross square footage. We submit that a definition should be included in the ordinance. In the absence of a definition of gross square footage, numerous interpretations may be argued.

More important, however, is our view that it would be inappropriate to include square footage for such items as garage or covered parking areas, roof overhangs, entry ways, etc. It is clear that the purpose for the ordinance is to address the housing needs of employees who would be working within various structures. Quite clearly, such areas as garages, overhangs and other areas which do not house employees do not contribute to a need for housing. Thus, a definition of square footage, be it defined as gross, net, usable, etc., should only address those areas in which employees are housed.

In this regard, we suggest that the City be guided in part by the experience of school districts in this State in implementing developer fee requirements for school construction. Many of these issues have been faced in that forum and the legislature continues to remedy its prior error in failing to properly define the areas of a structure upon which a fee might be imposed. The City should not duplicate this error. Moreover, failure to address this issue may again render the ordinance invalid under the terms of the above cited Nollan case.

B. PROOF OF JOINT VENTURE PARTICIPATION

We question the need of the City to obtain the certifications relative to a developer's participation in a joint venture or other relationship which is responsible for the construction a residential development. While we appreciate the need to identify a developer's participation in a development, we question the rationale behind assuring that the developer has specifically contributed a certain sum to the development. Such a provision appears to be unduly intrusive and difficult, if not impossible, to enforce. Moreover, under a variety of circumstances, there may not be a business need for the developer to contribute such a sum, or any sum, in order to cause the residential development to occur. For instance, a developer may have a significant liability with respect to financing commitments for any project, which liability may create a significant risk but may not have an actual cash obligation. The purpose of the ordinance is to cause housing units to be developed. So long as that goal is achieved, the requirements should be deemed met.

C. PENALTY

Section (E)(9) of the proposed ordinance creates a penalty of 150%, plus accrued interest, should a developer fail to meet its construction requirements. We submit that this penalty is excessive and unnecessary. While some lesser penalty may be appropriate, it should be noted that the developer will, in the

face of such failure, be required to pay the full amount of the fee, plus all accrued interest. Accordingly, the developer's obligations to the City will have been met and the remaining sum can only be interpreted to be punitive.

We look forward to receiving your response to these comments and working with you toward the further refinement of this ordinance.

Very truly yours,

GREGORY D. THATCH

GDT:dg
Enclosure
cc: Kern Schumacher
William Payne
Ken Klug
bcc: Rosalie Payne
T1103.LTR

LAW OFFICES OF
GREGORY D. THATCH
1730 I STREET, SUITE 220
SACRAMENTO, CALIFORNIA 95814

GREGORY D. THATCH
LARRY C. LARSEN

AREA CODE 916
443-6956

August 10, 1987

David R. Martinez, Deputy
City Manager
City Hall Room 109
915 I Street
Sacramento, CA 95814

RE: NORTH NATOMAS HOUSING TRUST FUND

Dear David:

As you know, over the past several weeks we have had some discussions with city staff, most notably Diana Parker, relative to the North Natomas Housing Trust Fund. The purpose of our discussions has been to determine how the City will implement the basic outline of the Housing Trust Fund as set forth in the Community Plan.

The fundamental disagreement between the Planning Department's proposal for implementation and the view of my clients revolves around which non-residential projects will be subject to the Housing Trust Fund. The view of the Planning Department is that every non-residential project will be subject to the Housing Trust Fund. Our view is that only those non-residential projects which create an imbalance in the job housing balance should be subject to the Housing Trust Fund.

By way of example, under the Planning Department's proposed implementation, a developer who is developing 100 acres of residential land in North Natomas together with one acre of commercial land would be subject to the requirements of the Housing Trust Fund. That is to say that for every 15 employees generated on the one acre of commercial land, the developer would be required to either build a dwelling unit in North Sacramento or contribute $3,500.00 to the Housing Trust Fund. No credit or acknowledgement would be given to the fact that the developer had correspondingly generated hundreds of dwelling units within North Natomas thereby achieving or even over achieving the North Natomas jobs-housing balance within that total project. Under our interpretation, such a developer would not be subject to the Housing Trust Fund because of the fact that that developer had not contributed to a jobs-housing imbalance.

I area within this community - 6.8 percent jobs housing balance - and the already identified goal on the part of the City of stimulating housing development in North Sacramento, that it is appropriate and we think very important to generate the stimulation of those housing units as directly as possible from the development within the community." Thus, Mr. Stonehouse linked the issue of the jobs-housing balance to the Housing Trust Fund.

At the same meeting, I made the following remarks during my presentation: "With respect to the Housing and Infrastructure Trust Fund, we believe that this is one area where there is a considerable amount of vagueness. We are not clear what the price tag is for that program. Additionally, we are not clear whether residential or non-residential developers will all need to participate in that program. We are also not clear on when that assessment will be made; although Mr. Stonehouse, I believe, tonight did indicate that would be at the building permit stage."

2. In reviewing the Community Plan relative to the Housing Trust Fund, it is important to view the plan as a whole. It is somewhat deceiving to review only the Housing Trust Fund implementation portion of the Plan commencing on page 75 without reviewing the remainder of the Plan. I might say that this is a factor which became patently clear in the CEQA litigation when it was often necessary to alert the judge to various other provisions of the plan when addressing a particular issue. Simply put, any provision of the plan must be looked at within the context of the plan as a whole.

With respect to the Housing Trust Fund, it is important to review the Phasing portion of the Plan as well as the Land Use portion of the Plan. In the Phasing portion of the Plan, the Plan provides at page 88 that: "Housing demand generated by Phase I employers shall be met <u>initially through residential development in Phase I of the planning area</u>, as well as the development of residential land in North Sacramento. The North Natomas Housing Implementation Program, consisting of a Monitoring Program and a Housing and Infrastructure Trust Fund, shall be adopted as part of this plan." (emphasis added) In the Land Use portion of the plan, at page 18, the following quote is found: "Housing demand generated by Phase I employers shall be met initially through residential development in Phase I of the planning area, as well as development of residential land in North Sacramento prior to opening-up additional North Natomas lands. The North Natomas Housing Implementation Program, consisting of a Monitoring Program and a Housing and Infrastructure Trust Fund, are described in the implementation chapter of this plan."

Thus, in reviewing the Trust Fund in the context of the entire Plan, it is clear that the major emphasis for the Housing Trust Fund was to address the housing imbalance in the plan, particularly the imbalance found in Phase I. Accordingly, it is those projects which create a jobs-housing imbalance which should be subject to the Housing Trust Fund. The developer who develops a well balanced project achieving or exceeding the jobs-housing balance set forth for North Natomas should not be further levied upon to achieve a balance when that developer was not responsible for the creation of the imbalance.

3. The findings adopted by the City Counsel as a result of the Environmental Impact Report for North Natomas also tie the Housing Trust Fund to the jobs-housing imbalance. We direct your special attention to the findings commencing upon page 78 of that document through page 81. In each of these findings the City Counsel determined that the Housing Trust Fund was a mechanism whereby the job-housing balance would be mitigated, particularly with respect to Phase I of the development. The proposed mitigation, identified on page 80 and the finding found on page 81 are of particular relevance here. The proposed mitigation measure and the findings read as follows:

> "Proposed Mitigation. The EIR proposes the following mitigation measure:
>
> The Community Plan should better define how phasing of housing would keep pace with job creation. Development of 200 to 300 acres of residential use for every 100 acres of employment-generating use as now recommended would not assure a home for every employee unless the residential densities and employment densities were balanced. Consideration should be given, therefore, to establishing a mechanism to allow the City to tie approval of specific housing and employment-generating development programs together and to base permit granting on total housing unit yield versus job creation. One means for accomplishing this would be by tying the issuance of Building Permits for job creating uses to those for dwelling units. Means to encourage residential and employment-generating developers to coordinate their projects should be established so that projects could proceed in a timely manner rather than being stalled until the jobs-housing balance between development proposals can be achieved. The City must retain ultimate authority, however, to withhold approval of employment-generating development if housing would not be available in North Natomas for jobholders based on the findings of the periodic survey

suggested above." (DEIR, Page C-83).

Findings. The Preferred Community Plan includes a Phasing Program (pages 87 to 89), a Monitoring Program (pages 91 to 95), and a Housing and Infrastructure Trust Program (pages 75 to 78) which are designed to accomplish, in part, the objectives of the recommended mitigation measure. Employment-generating land uses in the Initial Phase of development will be met by a combination of residential dwelling units constructed in both the Initial Phase of Development and on vacant residential lands in the North Sacramento Community. The North Sacramento component of residential dwelling units for the project will be constructed through a private nonprofit corporation funded by developers in the Project Area. If sufficient residential construction to maintain the adopted jobs-housing ratio goal is not achieved by the private nonprofit corporation, as determined by the Monitoring Program, the housing will be constructed through the implementation of the Housing and Infrastructure Trust Fund. (City Council Hearing Transcript of January 27, 1986, Pages 46 to 48).

The three programs identified above are deemed by the City Council to provide a more efficient and achievable method of assuring attainment of the jobs-housing ratio incorporated within the Preferred Plan than an arbitrary "typing" of job-generating and residential building permits." Once again, the direct linkage between the jobs-housing balance and the Housing Trust Fund has been made and this time formally by the City Council in its adoption of the findings.

We stand ready to meet with you, other landowner representatives and staff regarding this matter. We know that it is of importance to finalize the Housing Trust Fund so that the development of North Natomas can continue on a proper course.

I look forward to hearing from you.

Very truly yours,

GREGORY D. THATCH

GDT:mlm
cc: Mr. Kern Schumacher
Mr. William Payne
Mr. Donald W. Ketscher
Mr. Milburn Reed
Marty Van Duyn
Diana Parker
Marcus Lo Duca
Dave Dowell
David McMurtry
T437.LTR

study as approved by the City Council in its adoption of an updated General Plan.

8. All dedications of property owned by the project applicant which are required to implement the Community Plan in connection with the project and not otherwise provided for in the Financing Plan (Item B.6 above) have been assured by the project applicant, which assurance may take the form of Irrevocable Offers of Dedication in form and manner approved by the City's Department of Public Works. (These dedications include, but are not limited to: dedications for parks, streets, utilities and, when possible, public transit.)

9. Provision to accommodate bus service, to the extent feasible and practicable as determined by the City, has been made in consultation with the Sacramento Regional Transit Agency.

10. [Not applicable to the commencement of the Sports Complex.] The cumulative effect of development previously approved pursuant to an approved special permit, subdivision map or other land use entitlement other than a rezoning, together with the proposed project if undertaken pursuant to an approved special permit, subdivision map or other land use entitlement other than a rezoning, will meet or exceed the jobs to housing ratio required by the Community Plan; provided, however, that with respect to the development of Phase One under the Community Plan, such finding may be based solely on the applicant's demonstrated participation in either the Housing Trust Fund or in assisting housing starts in North Sacramento, or a combination thereof, to a level determined by the City to be reasonable under the circumstances; and provided, further, that with respect to subsequent development, such

finding may be based on the foregoing or other actions by the applicant or others, determined by the City to be reasonable under the circumstances, which will further the achievement of the jobs to housing ratio required by the Community Plan.

11. An adequate supply of residential land, dwelling unit types and affordability of units is being provided in the North Sacramento Area or the North Natomas Area with respect to the phased development of the North Natomas Area as contemplated by the Community Plan.

12. [Not applicable to the commencement of the Sports Complex.] A Transportation Systems Management (TSM) Program has been adopted and is being implemented as contemplated by the Community Plan (including formation and implementation of the North Natomas Business Association), and the TSM Program is attaining its goal of reduction in peak hour traffic to achieve traffic operating conditions of at least Level of Service "C" on the internal circulation system and a level of service on the regional highways that is consistent with the efficient movement of people and goods.

13. Traffic levels on internal City streets and highways within the North Natomas Area and as a result of the development of the proposed project will be maintained at Level of Service "C" or better during both the peak hour and on a daily basis, and at a Level of Service on regional highways to allow the efficient movement of goods and people, as determined by the Director of the City's Department of Public Works.

ATTACHMENT C

26

CITY OF SACRAMENTO

NEGATIVE DECLARATION

The Environmental Coordinator of the City of Sacramento, California, a municipal corporation, does prepare, make, declare, and publish this Negative Declaration for the following described project:

> The City Planning Commission and the Sacramento Housing and Redvelopment Agency will hold a joint Public Hearing on the proposed Housing Trust Fund Ordinance. At this hearing, the Planning Commission and Sacramento Housing and Redevelopment Agency will receive and make a recommendation to the City Council regarding this ordinance. The ordinance will be presented by staff of the Planning and Development Department and the Sacramento Housing and Redevelopment Agency. This hearing will be held at 5:30 p.m., October 24, 1988 in the Planning Commission Hearing Room - 1231 I Street, First Floor.
>
> At this hearing, the Planning Commission will also ratify the negative declaration for this project. The Environmental Coordinator has determined that the project will not have a significant adverse impact on the environment and has prepared a negative declaration. A copy of the negative declaration(s) may be reviewed/obtained at the Sacramento City Planning Division, 1231 I Street, Room 300, Sacramento, California. Any appeal of the decision to prepare the negative declaration(s) must be filed with the Sacramento City Planning Division on/before 5:30 p.m. on October 20, 1988.

The City of Sacramento, Department of Planning and Development, Planning Division has reviewed the proposed project and has determined that the project as proposed will not have a significant effect on the environment. This conclusion is based on information contained in the attached Initial Study.

An Environmental Impact Report is not required pursuant to the Environmental Quality Act of 1970 (Division 13 of the Public Resources Code of the State of California).

This environmental review process and Negative Declaration filing is pursuant to Title 14, Division 6, Chapter 3, Article 6, Section 15070 of the California Administrative Code and pursuant to the Sacramento Local Environmental Regulations (Resolution 78-171) adopted by the City of Sacramento and pursuant to Sacramento City Code, Chapter 63.

A copy of this document may be reviewed/obtained at the City of Sacramento, Department of Planning and Development, Planning Division, Environmental Section, 1231 I Street, 3rd Floor, Sacramento, California 95814.

Marty Van Duyn
Environmental Coordinator of the
City of Sacramento, California,
a municipal corporation

By: Marty Van Duyn

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