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Correspondence

Meeting of January 29, 2008

1. Item # 13 Northgate 880 / Panhandle (M05-031 / P05-077)

Please note correspondence has been received from many sources and duplications may have occurred.

- a. Correspondence
 - 1. David McMurchie
 - 2. Brigit S. Barnes
 - 3. Richard Sanders

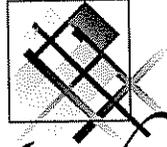
Previously submitted correspondence is available for review at the City of Sacramento Website at http://sacramento.granicus.com/ViewPublisher.php?view_id=7 October 16th Agenda Item # 28 or the City Clerk's office at Historic City Hall- 915 I Street.

2. Item # 14 Greenbriar (M05-046 / P05-069)

Please note correspondence has been received from many sources and duplications may have occurred.

- b. Correspondence
 - 1. Craig K. Powell
 - 2. James P. Pachl
 - 3. Eric J. Ross

Previously submitted correspondence is available for review at the City of Sacramento Website at http://sacramento.granicus.com/ViewPublisher.php?view_id=7 October 16th Agenda Item # 28 or the City Clerk's office at Historic City Hall- 915 I Street.



McMurchie Law

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DAVID W. McMURCHIE
dmcurchie@mcmurchie.com

VICKI E. HARTIGAN
vhartigan@mcmurchie.com

September 26, 2007

Via Federal Express

Sacramento City Council
c/o City Clerk
City of Sacramento
City Hall
915 I Street, Room 304
Sacramento, CA 95814-2671

Re: Proposed Panhandle Annexation

Dear Members of the City Council:

This firm represents Rio Linda-Elverta Recreation and Park District, (the "District"). Please consider this letter as the District's formal protest and objection to (1) City's proposed partition of its original proposal to annex the entire Panhandle area both north and south of Del Paso Road into a proposed annexation of the North Panhandle area which lies north of Del Paso Road and the creation of an unincorporated island comprising the property lying south of Del Paso Road; and (2) detachment of the North Panhandle from the Rio Linda-Elverta Recreation and Park District.

The District contends that this partition resulting in an unincorporated island which accounts for a significant portion of the District's property tax revenue should not be approved for the following reasons:

1. The creation of such an unincorporated island violates the provisions of Government Code sections 56744 and 56375. The restrictions against creation of such unincorporated islands should not be waived pursuant to section 56375(m)

because the creation of such an unincorporated island would be detrimental to the orderly development of the community;

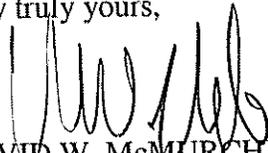
2. The creation of such an unincorporated island violates those provisions of the City's General Plan which provides at section 1-32 that development in the city's new growth area should only be approved if it promotes efficient growth patterns and efficient public service extensions, as well as being compatible with adjacent developments. The District contends that the creation of the unincorporated island in a more intensely developed area south of the North Panhandle Annexation does not promote efficient growth patterns and public service extensions to the North Panhandle area;
3. The creation of such an unincorporated island by this annexation proposal will deprive all registered voters and/or land owners residing within or owning property within the unincorporated island of voting or otherwise expressing their opinion at a hearing on the **future** incorporation of the unincorporated island, which is not dealt with in this proposal. Government Code section 56375(a) and subsection (a)(1) provide that LAFCO has no power to disapprove an annexation to a city of an unincorporated island surrounded by that city if that territory to be annexed is "substantially developed or developing", is designated for urban growth by the general plan of the annexing city, and is not prime agricultural land. The proposed unincorporated island meets all of these criteria. It is my client's contention that the current proposal to approve the North Panhandle Annexation and create an unincorporated island comprising the developing area south of Del Paso Road is an attempt to annex the unincorporated island in the future **without the necessity of any LAFCO proceedings** (which means that registered voters residing within or land owners owning property within the proposed unincorporated island will have **no power** to file written protests against or vote against the proposed annexation of the unincorporated island in the future.

Based on the foregoing, the District strongly protests the partition of the Panhandle annexation proposal, the creation of an unincorporated island in the south Panhandle, the approval of the North Panhandle Annexation, and the detachment of that area from the district. The partitioning of the Panhandle Annexation and the creation of an unincorporated island is simply a means to deprive the registered voters and property owners of the unincorporated island the power to participate in the decision as to whether the developing property within the unincorporated island should be annexed to the city and detached from the District. Any decision by the City Council which deprives the voters and land owners of the unincorporated island the power to participate in this process is fundamentally flawed.

Sacramento City Council
September 26, 2007
Page 3 of 3

It is respectfully requested that this letter be formally admitted into the record of the proceedings of the City Council on this issue, and that it be considered the formal written protest of the Rio Linda-Elverta Recreation and Park District to the proposed North Panhandle Annexation and related detachment from the district.

Very truly yours,



DAVID W. McMURCHIE

DWM:sjm

cc: Mr. Scott Mende, City of Sacramento
Mr. Don Schatzel, Rio Linda-Elverta Recreation and Park District
Supervisor Roger Dickinson
Supervisor Jimmie Yee
Supervisor Susan Peters
Supervisor Roberta MacGlashan
Supervisor Don Nottoli
Mr. Peter Brundage, LAFCO
Rio Linda-Elverta Incorporation Committee, Attn: Mr. Jerry Traugtman

From: Scot Mende
To: Dawn Bullwinkel
Date: Monday, October 08, 2007 3:47:09 PM
Subject: Re: Correspondence (Panhandle)

we will
thanks for the reminder

Scot Mende, New Growth & Infill Manager
Planning Department
Voice: 808-4756
Mobile: 879-4947
E-mail: smende@cityofsacramento.org
Address: 915 I Street, 3rd floor, Sac CA 95814

>>> Dawn Bullwinkel 10/8/2007 3.46 PM >>>
But are you referencing it in your staff report as an attachment?

Dawn Bullwinkel
Assistant City Clerk
City of Sacramento
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Sacramento, CA 95814-2671

"Passport Services Available at the Office of the City Clerk
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(916) 808-7672 FAX

>>> Scot Mende 3:44 PM 10/8/2007 >>>
Yes, that letter should be included in our packet

Scot Mende, New Growth & Infill Manager
Planning Department
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Mobile: 879-4947
E-mail: smende@cityofsacramento.org
Address: 915 I Street, 3rd floor, Sac CA 95814

>>> Dawn Bullwinkel 10/8/2007 3:30 PM >>>
Scot,
I notice that you have been cc'd on the correspondence from David McMurchie of McMurchie Law regarding the Proposed Panhandle Annexation.

Are you planning to include that correspondence in your staff report? If not, we will include it as part of our Council Correspondence packet for 10-16

Thanks so much

Dawn Bullwinkel
Assistant City Clerk
City of Sacramento
Historic City Hall-915 I Street
Sacramento, CA 95814-2671

**Brigit S.
Barnes &
Associates,
Inc.**

A Law Corporation

October 16, 2007

*Via Facsimile [letter only] and U.S. Mail
Fax: 916-264-7680*

City of Sacramento, City Council
Historic City Hall, 915 I Street
Office of the City Clerk, 1st Floor
Sacramento, CA 95814

Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.

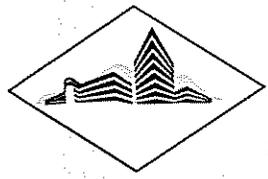
- Attn: Hon. Heather Fargo, Mayor
- Hon. Raymond L. Tretheway, District 1
- Hon. Sandy Sheedy, District 2
- Hon. Steve Cohn, District 3
- Hon. Robert King Fong, District 4
- Hon. Lauren Hammond, District 5
- Hon. Kevin McCarty, District 6
- Hon. Robbie Waters, District 7
- Hon. Bonnie Pannell, District 8

Re: Item 27. Northgate 880/Panhandle (M05-031 / P05-077) (Passed for publication on 6-12-07, published on 6-15-07, noticed on 7-19-07; continued from 6-26-07, 7-24-07, 7-31-07, 8-17-07, 9-4-07, 9-18-07, 10-2-07)

Dear Mayor Fargo and Councilmembers:

On behalf of our clients, Jim Gately, J.B. Management, L.P., J.B. Properties, and J.B. Company, who are property owners in the southern portion of the proposed annexation (south of Del Paso Road), we hereby submit the following comments on Northgate 880 / Panhandle (M05-031 / P05-077).

Although the Planning Department staff has requested another continuance of Item 27 to October 23, 2007, we wish to submit the following comments at this time. The proposed project description, according to Resolution No. 2000-734 (adopted by the Sacramento City Council on December 2000), the Final Environmental Impact Report (EIR) (adopted by the Planning Commission on June 28, 2007), the current Sphere of Influence, and the Panhandle Municipal Service Review dated February 2007, includes the annexation/reorganization of the area bounded by Northgate Boulevard, Sorento Road, and East Levee Road to the east, I-80 to the south, current City limits to the west, and Elkhorn Boulevard to the north — the entire northern and southern portions. None of these documents have been amended to show the revisions approved by the City Council on August 14, 2007.



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- Asset Preservation • Commercial Real Estate • Environmental
- General Business • Real Estate Financing • Litigation

Defects to the Final Environmental Impact Report

In addition, we set out in summary form our continuing concerns. In our letter to the Planning Commission dated May 24, 2007 (copy attached), we expressed concern regarding substantial inadequacies of the EIR, and that many items challenged in the Draft have not been responded to in the Final EIR. (Certain mitigations are proposed in the Staff Report, but have never been incorporated in a revised EIR.) We also expressed concern with inconsistency between the EIR and the City of Sacramento General Plan and North Natomas Community Plan regarding the need for 100-year flood protection prior to any new residential development.

In our letter to the City Council dated June 11, 2007 (copy attached), we again expressed concerns regarding environmental, financial, and policy considerations associated with the proposed reorganization and the supporting documentation, which never coordinated removal of the pan from the mitigation and financial study.

Upon decision of the City Planning Commission on June 28, 2007 to certify annexation/reorganization, we submitted an application to appeal the decision. (See Notice of Appeal of Planning Commission Decision dated July 6, 2007, copy attached). The appeal again addresses the issues raised in our May 24 and June 11, 2007 letters.

None of these previously raised concerns have been addressed by the City, including the fact that the northern portion of the Panhandle reorganization is currently undeveloped agricultural land, which is at risk for flooding.

New Developments Regarding Flooding

Now, we understand that the Federal Emergency Management Agency's (FEMA) September 27, 2007 letter to the City of Sacramento denied the City's request to continue allowing unrestricted growth in North Natomas while the levees are improved. FEMA will not allow new development on farmland in Sacramento until the levees are recertified to provide 100-year flood protection. Additionally, on October 10, 2007, the Secretary of State chaptered AB 70, which provides that the City may be required to contribute its fair and reasonable share of the property damage caused by a flood to the extent that the City has increased the state's exposure to liability for property damage by unreasonably approving new development in a previously undeveloped area that is protected by a state flood control project. We are aware of no revisions to the EIR to respond to this new information; or how the applicant will mitigate these impacts without a complete redesign of the project.

Project Description

In an effort by the City that appears to be an attempt to eliminate opposition to the annexation/reorganization, rather than to resolve these important issues, the City has agreed to seek to annex only the northern portion of the Panhandle, leaving the southern portion in the County. An EIR does not violate CEQA when the lead agency approves a *smaller* project than that described in the EIR, or when an agency approves part of the project that was initially analyzed in the EIR. See Dusek v. Redevelopment Agency (1985) 173 Cal.App.3d 1029, 1049. However, important changes to the project must be reflected in the project description and environmental analysis. These changes can affect the overall adequacy of the document. The project description in an EIR must state the precise location and boundaries of the proposed project. 14 Cal. Code Regs. §15124(a). The City cannot arbitrarily change the project description without correcting and recirculating the EIR document.

A project description must state the objectives sought by the proposed project. The rationale for exclusion from the possible project alternatives should be consistent with the statement of objectives in the project description. The EIR Project Objectives Section 3.7 states:

Based on Resolution No 2000-734, adopted by the Sacramento City Council on Dec 12, 2000, the City of Sacramento has identified the following specific project objectives for the overall panhandle Area annexation:

- Promote a logical and reasonable extension of the City boundaries since this area is already surrounded on three sides by existing City limits;
- Provide for a more efficient provision of municipal services for existing and future development in the Panhandle area;
- Promote greater compliance with uniform City planning and development standards under the NNCP; and,
- Adopt an annexation that would be fiscally beneficial to the City since the revenue generated by the non-residential land uses would likely off-set the costs of providing municipal services to this area.

Obviously, if the project description is changed to include only annexation of the northern portion, that portion is not surrounded on three sides by existing City limits, there is no existing development, and revenue generated by the non-residential land uses will not likely off-set the costs of providing municipal services to the area. As part of the project description, the objectives also must be corrected to reflect revised conditions and the EIR recirculated.

Corrections and Recirculation of the EIR

If any significant new information is added to the EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for comments and consultation. Pub. Res. Code §21092.1; 14 Cal. Code Regs. §15088.5; Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal. (1993) 6 Cal.4th 1112 (Laurel Heights II). Changing the project description (location and objectives) is "significant" enough to require recirculation of the document. There are other issues associated with the change in the project description, as discussed below

Sphere of Influence

"Sphere of Influence" [SOI] means a plan for the probable physical boundaries and service area of a local agency, as determined by the commission. Govt. Code §56076. The SOI adopted for the annexation is for the entire Panhandle area and, of course, all of the annexation documents include the southern portion as part of the annexation. The EIR states: "Under State law, LAFCo is charged with: Ensuring orderly growth by the *annexation of land within an adopted SOI*." [Emphasis added.] Therefore, the annexation should include the entire SOI, or the SOI and all subordinate documents should be amended. Additionally, it would be LAFCO's determination as to whether the City's SOI boundaries should be changed, regardless of any agreement between the City and the County [Govt. Code §56425(b)], thus requiring further proceedings.

Municipal Service Review

LAFCO is also required to prepare a Municipal Service Review for every SOI. The document prepared for the Panhandle Annexation [dated February 2007] includes the entire area -- northern *and* southern portions -- and has not been amended. Since things have not been worked out between the City and County, this document is neither accurate nor complete.

City/County Tax Exchange Agreement

The EIR and Municipal Service Review refer to the Tax Exchange Agreement as if it is determined. Although an agreement has been drafted, it is not complete and has not been executed. The draft Tax Exchange Agreement (copy attached) between the County of Sacramento and the City of Sacramento, Relating to the Panhandle Annexation, in addition to leaving blank the property taxes to be allocated to the Rio Linda-Elverta Recreation and Park District under Section 6, states under Section 7:

Services. Within that area generally depicted on Exhibit "A", which will remain in the unincorporated territory, the CITY agrees, subsequent to annexation to:

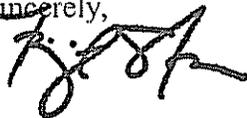
- (a) provide, at the request of the Sacramento County Sheriff, law enforcement services as may be required above the level of mutual aid;
- (b) operate and maintain, to the standards of the Sacramento County Water Agency, all drainage facilities; and
- (c) permit, at COUNTY or Water Agency costs, and at the option of COUNTY or Water Agency, access to CITY water facilities and water supplies to the extent necessary to provide domestic, commercial or industrial water service within such territory. Costs to COUNTY or Water Agency shall not exceed the costs to CITY of providing access or the costs of providing water to other persons or entities.

Section 7 appears to be an attempt to satisfy our client, but we understand it is completely unacceptable to the City. Since this agreement has not been worked out and approved, the conclusions in the EIR and Municipal Services Review documents are in question, and cannot be accurate or complete. Therefore, the City cannot logically proceed with approval of the EIR, Annexation/Reorganization, etc. without an executed tax exchange agreement.

Conclusion

In light of the unresolved issues associated with the Panhandle annexation/reorganization, we request that the City table the matter until all issues are resolved in a logical manner. Then the City can actually make a determination for a complete and internally consistent project.

Sincerely,



Brigit S. Barnes

See next page for list of attachments

Sacramento City Council
October 16, 2007
Page 6

Attachments:

May 24, 2007 letter to Planning Commission

June 11, 2007 letter to City Council

July 6, 2007 Notice of Appeal of Planning Commission Decision

*Draft Tax Exchange Agreement Between the County of Sacramento and the City of
Sacramento, Relating to the Panhandle annexation*

cc: Clients *[via fax, w/out attachments]*
Scot Mende *[via email, w/out attachments]*

Gately\CityCouncil L02

**Brigit S.
Barnes &
Associates,
Inc.**

A Law Corporation

July 6, 2007

Hand Delivered

City of Sacramento
c/o Planning Department
New City Hall
915 I Street, Third Floor
Sacramento, CA 95814

Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.

Attn: Arwen Wacht and Scot Mende

Re: **NOTICE OF APPEAL OF PLANNING COMMISSION DECISION**

Action Taken: Hearing of 6/28/07

Certification, Adoption and Approval of Item Nos.

A, B, U through Z, AA and BB

Natomas Panhandle Annexation Project (M05-031)

EIR for the Panhandle Annexation, etc. (P05-077)

SCH#2005092043

Our Clients: Jim Gately/J.B. Management, L.P./J.B. Properties/J.B. Company

Our File No: 2219

Clients' Parcel Nos:

225-0060-033, -034, -054 through -059, -061, -066 through -068

225-0941-001, -027 through -029, -032 through -034, -037

225-0942-**013, -014, -015**, -035, -038, -043 through -049, -051, -052, -053

225-0943-027 and -028

237-0011-047

237-0410-029, -030, -032

237-0420-001, -028 through -030

*[Note: The 3 **bolded** parcels owned by our clients do not show on the proposed resolution of annexation]*

Dear Sir/Madam:

On behalf of our clients, Jim Gately, J.B. Management, L.P. ("J.B. Management"), J.B. Properties, and J.B. Company, we hereby appeal the Planning Commission's June 28, 2007 decision to Certify the Environmental Impact Report (Item A), Adopt the Mitigation Monitoring Plan (Item B) and Approve the Tentative Subdivision Maps and Subdivision Modifications for the Krumenacher/Dunmore applicants (Items U through Z, AA and BB) for the Natomas Panhandle Annexation Project ("Annexation Project").

The Annexation Project, which involves 28 entitlement requests accompanied by a Staff Report of over 600 pages, attempts to rezone the proposed annexation property, provide for preliminary zoning & PUD formation for the Krumenacher/Dunmore subdivisions and

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resolve internal consistency issues between City/County properties. Appellants' property is located within the southern portion of the Annexation Projection area.

Appellants did not receive proper notice of the May 24, 2007 Planning Commission Public Hearing on the Annexation Project, despite repeated requests [dated February 23, 2001 and February 26, 2001, respectively] for notices in connection with any and all actions involving the Panhandle Annexation, and the City's Proposed Zoning and Regulatory Provisions for the J.B. Management property. Appellants became aware of the May 24th hearing when they received a copy of the May 3rd notice on May 9th. It is Appellants' understanding that several other commenters did not receive timely notice either. This failure to timely notice violates the requisite public review period under CEQA.

The May 24th hearing was continued to June 14 and again to June 28, at which time the Planning Commission took action upon the applicants' entitlements. Unfortunately, there are numerous deficiencies and inadequacies in the Environmental Impact Report certified by the Commission upon which the entitlements were based.

ENVIRONMENTAL DOCUMENT DEFICIENCIES

General Comments

In general, the Environmental Impact Report ("EIR") supports the conclusion that -- given the acknowledged number of "Significant and Unavoidable" and "Cumulatively Considerable and Significant and Unavoidable" determinations contained in the EIR requiring findings to override which the City Council will be faced with -- this annexation benefits no one except the developers of the northern portion of the proposed annexation, to the detriment of the environmental impacts for the region at large. Many items which were challenged in the DEIR were not responded to in the FEIR, but proposed resolutions were suggested in the Staff Report.

An agency may not approve or carry out a project for which an EIR has been completed if the EIR identifies one or more significant environmental effects of the project, unless the agency makes one or more of the following findings *required by Pub. Res. Code § 21081*:

- (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effects of the project as identified in the EIR;
- (2) These changes or alterations are within the responsibility and jurisdiction of another public agency, and the changes have been adopted by this other agency, or can and should be adopted by this other agency; and

(3) Specific economic, social, legal, technological, or other considerations, including consideration for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or project alternatives identified in the EIR.

The EIR fails to adequately address the concerns raised in the numerous substantive comment letters received from not only Appellants, but, among others, the Department of Water Resources, Caltrans, LAFCO, the County of Sacramento, SMAQMD, and local school, park and other facilities districts. Because so much of the mitigation, relied upon by the City's consultants, remains to be fleshed out, the EIR should be redrafted and recirculated when all mitigation plans are completed and the recent FEMA hazard issue is addressed. Otherwise, the EIR violates CEQA by segmenting this project into stages of approval. CEQA Guidelines Section 15003(h); Bozung v. LAFCO (1975) 13 Cal.3d 263, 283.

The proposed findings identified in Exhibit 1A themselves impermissibly permit the project applicant to arrange further mitigation to resolve the destruction of open space and farm land, traffic impacts, and develop a future finance plan for review. The statutory and case law violations are cited in explicit sections below.

HYDROLOGY AND WATER QUALITY

Flooding

As set forth in the Staff Report at pp. 175 and 194-196, the proposed project area is protected by a levee system that has been determined by the Sacramento Area Flood Control Agency (SAFCA) to be at risk of underseepage and erosion hazards during a 100-year storm event. FEMA is expected to soon issue revised Flood Insurance Rate Maps showing that the Natomas Basin is within a special flood hazard area. FEIR, at p. 3.0-29. These hazards would remain present until SAFCA implements necessary levee improvements, to be constructed within the next 2 to 5 years. Until these improvements are made, the project places housing and persons in an area subject to flooding hazards. See Impact 4.11.3. The proposed project, in combination with planned and proposed development in the region, would contribute to exposing additional residents and businesses to flood hazards. The EIR states that this contribution is considered cumulatively considerable. See Impact 4.11.6. The flood risk is compounded by the fact that Open Space has been reduced by 100-acres, or 50% of the PUD project area. This loss increases local flooding risk by removing 100 acres of natural drainage land capacity. Thus, these combined unmitigated risks raise broad policy issues regarding expanding City liability to the public, in addition to CEQA issues.

The proposed mitigation (MM 4.11.3), requiring development within the project site to comply with FEMA regulations and the City's Floodplain Management Ordinance in existence as of the date of the issuance of building permits, and to fund said improvements upon the completion of a nexus study, violates CEQA.

CEQA Guideline 15130(a)(3) states that an EIR may find that a project's contribution to cumulative impacts is less than significant if the project is required to implement or fund its "fair share" of mitigation measures designed to alleviate the cumulative impact. However, the lead agency "shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable." CEQA Guideline 15130(a)(3). Since the City has not completed a "nexus" or "rough proportionality" study pursuant to the constitutional principles established by Nollan/Dolan, any fair share contribution by the applicant cannot be determined to be less than cumulatively considerable.

"The commitment to pay fees without any evidence that the mitigation will actually occur is inadequate." Save our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 140, citing Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 728. In Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173, the Court of Appeal held that bare recitation that a project would pay "fair share" fees towards highway improvements was too speculative to be deemed an adequate mitigation measure. *Id.*, at pp. 1193-1194. The Court of Appeal ruled that to be sufficient under CEQA, a "fair share" mitigation fee measure must (1) specify the actual dollar amount based on current or projected construction costs; (2) specify the improvement projects for which the fair share will be used; (3) if the fair share contribution is a percentage of costs which are not yet known, then specify the percentage of costs; and (4) make the fees part of a reasonable enforceable plan or program which is sufficiently tied to actual mitigation of traffic impacts at issue.

There is no evidence of the amount of money represented by "fair share," no evidence as to how the "fair share" will be calculated, no evidence that the amount of "fair share" funding will be adequate to construct the infrastructure which comprises the mitigation measures, and no evidence that any other party or entity will contribute amounts towards their unspecified "fair shares" which are sufficient to construct the infrastructure which comprises the mitigation measures.

The failure to provide enough information to permit informed decision-making is fatal. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law. Save our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 118.

Finally, because the EIR did not adequately analyze the flood issue and, in response to comments, has added significant new information regarding the flood issue after the public review period had began, the EIR is required to be recirculated for further review and comment. Public Resources Code §21092.1; 14 Cal. Code Regs. 15088.5; Laurel Heights Improvement Association v. Regents of University of California (1993) 6 Cal.4th 1112. The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it. Save our Peninsula Comm. v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 131; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813, 822.

Stormwater Runoff

As acknowledged in the Panhandle DEIR, development of the project would introduce sediments and constituent pollutants typically associated with construction activities and urban development into stormwater runoff. These pollutants will have the potential of degrading downstream storm water quality. This impact is considered to be potentially significant. See Impact 4.11.2. Mitigation Measure 4.11.2b requires compliance with the State General Construction Activity Storm Water Permit (the CGP discussed in detail below). However, the FEIR does not incorporate the most recent conditions of the Storm Water Permit as Best Management Practices (BMPs). As stated in Mitigation Measures 4.11.2 a and b, an NPDES Permit will be required for the project. An NPDES Permit is required pursuant to the Clean Water Act, Section 402(p), the intent of which is to attain water quality standards and protection of beneficial uses through the effective implementation of BMPs. The State CGP is issued through the SWRCB, which is charged with implementing the NPDES program under Section 402(p) of the CWA.

On March 2, 2007, the SWRCB issued a Preliminary Construction General Permit (PCGP) that departs markedly from the existing California General Construction Stormwater Permit.¹ The PCGP includes unprecedented control strategies that have never been included in a stormwater construction general permit issued by EPA or any state administering the federally delegated program. These new provisions include: Action Levels (ALs) (extensive monitoring and analysis); Advanced Treatment Systems (ATs) (retention ponds, pumping, chemical treatment, extensive testing, and controlled effluent release); a 5-acre limitation on the total area under active construction (which actually limits construction to a much smaller size due to activities other than actual construction -- i.e. stockpiling, fire protection buffers, etc. -- to approximately 3 active acres); Numeric Effluent Limits (NELs) (for pH, turbidity

¹ The current permit was originally adopted in 1999, litigated in the Baykeeper cases, subsequently amended in 2001, and expired in 2004. A SWRCB-commissioned Blue Ribbon Panel examined feasibility of numeric effluent limits in June 2006 and found numeric limits were technically feasible in **very limited** circumstances, and the panel was generally critical of the current stormwater regulatory programs.

and toxicity with associated testing); and provisions for post-construction hydromodification control. The controls on post-construction hydromodification are required in order to prevent downstream erosion and sedimentation-channel instability. Runoff volume must approximate pre-development. Sites over 2 acres must preserve drainage divides and time of runoff concentration. Sites over 50 acres must preserve drainage patterns and place controls close to source.

As stated in the PCGP, modification of a site's runoff and sediment supply and transport characteristics (hydromodification) is a significant cause of degradation of the beneficial uses established for water bodies in California. Construction activities can cause hydromodification. This General Permit requires all discharges to maintain pre-development hydrologic characteristics, such as flow patterns and surface retention and recharge rates, in order to minimize post-development impacts to offsite water bodies. PCGP, Finding No. 9.

The formal draft of the Construction General Permit (CGP) is expected in June 2007. SWRCB Hearings on the CGP will be conducted in August 2007. The new CGP could be effective as early as Fall 2007. The new CGP governs all construction sites over 1 acre.

The Panhandle EIR does not discuss the state of the CGP. At the very least, the EIR should have acknowledged the spirit and intent of the proposed new GCP, and set forth mitigation requiring compliance with the newly adopted GCP. CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. CEQA Guidelines, Cal. Code Regs. Title 14 §15003(f); Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247.

PUBLIC SERVICES & UTILITIES

As set forth in the Staff Report at p. 179, the proposed project at buildout would require connection into the existing wastewater conveyance facilities that may not have adequate capacity. See Impact 4.13.4.1. Existing SRCSD facilities serving the North Natomas area are capacity constrained. Ultimate capacity will be provided by construction of the Lower Northwest and Upper Northwest Interceptors, currently scheduled for completion in 2010. The proposed mitigation (MM4.13.4.1a and b) requires connection to the sewer system and a future sewer study. Additional proposed mitigation (MM14.13.4.1c), acquiring land on behalf of SRCSD for the Upper Northwest Interceptor Project to install pipelines and facilities, is speculative and uncertain. In Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, the appellate court concluded that because the success of mitigation was uncertain, the county could not have reasonably determined that significant effects would not occur. This deferral of environmental assessment until after project approval violated CEQA's policy that impacts must be identified before project momentum reduces or

eliminates the agency's flexibility to subsequently change its course of action. The only way around Sundstrom is for the City to commit itself to making sure the mitigation actually occurs. As stated in the Staff Report at p. 208, the developer has been charged with responsibility for effectively implementing the mitigation measures contained in the Mitigation Monitoring Program.

As set forth in the Staff Report at p. 197, the proposed project would contribute to cumulative demands for wastewater treatment services within the SRCSD and CSD-1 service areas, and the associated need to expand wastewater facilities. See Impact 4.13.4.3. These impacts, in combination with the impacts from other development, would contribute to the cumulative impacts assessed in the EIR for the SRWTP 2020 Master Plan Expansion Project. As acknowledged in the Staff Report at p. 198, the SRWTP 2020 Master Plan Expansion Project EIR has been challenged in court pursuant to CEQA. As such, the mitigation requiring connection to these facilities is uncertain. An EIR need not identify and analyze all possible resources that might service the proposed project should the anticipated resources fail to materialize. However, because of the uncertainty surrounding the anticipated sources for wastewater treatment, the EIR cannot decline to address other possible resources. The decision-makers and the public should be informed if other sources exist and, at least in general terms, be informed of the environmental consequences of tapping such alternate resources. Without either such information or a guarantee that the resources identified in the EIR will be available, the decision-makers simply cannot make a meaningful assessment of the potentially significant environmental impacts of the proposed project. Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342; Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1237.

LAND USE AND OPEN SPACE

The project would result in the substantial loss of existing open space, by converting almost 530 acres from open space to urban uses. See Impacts 4.1.3 and 4.1.5. The proposed mitigation (MM 4.1.3), requiring coordination between the applicant, the City, and LAFCO to identify appropriate off-site lands to be set aside in a permanent conservation easement, violates CEQA in that no such appropriate site is identified, much less evaluated. Laurel Heights v. Regents of University of California (Laurel Heights) (1988) 47 Cal.3d 376, 400-403; Citizens of Goleta Valley v. Board of Supervisors (Goleta) (1988) 197 Cal.App.3d 1167, 1178-79.

The proposed project would result in the conversion of almost 100 acres of Prime Farmland and 1.2 acres of Farmland of Statewide Importance. See Impacts 4.2.1 and 4.2.3. The proposed mitigation (MM 4.2.1), requiring the establishment of farmland easements or other appropriate mechanism to protect like quality agricultural land within the County, violates CEQA in that no such location for these easements has been identified, no showing is made

that remaining farmland in the area is adequate to its purposes and/or equal to the quality of land to be taken out of production. CEQA requires local agencies to adopt feasible mitigation measures and alternatives identified in the EIR. San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 590-591. These essential mitigations are left to the future in violation of Laurel Heights and Goleta.

Annexation requires ultimate approval by LAFCO, which is charged with the duty of discouraging urban sprawl through the premature conversion of prime agricultural and open space lands to urban uses pursuant to the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000, et seq.); FEIR at p. 2.0-7-2.0-8. LAFCO has stated that the EIR does not adequately analyze the impacts regarding the loss of agricultural land, and it therefore is unable to evaluate the project for consistency with LAFCO policies. FEIR, at p. 3.0-68. The EIR response to LAFCO's concern in this regard referred LAFCO back to the inadequate DEIR analysis and stated that, since LAFCO had not identified any specific deficiencies in the analysis, it was not making any revision to the analysis. FEIR, at p. 3.0-73.

AIR QUALITY

The EIR relies on the future preparation of an Air Quality Mitigation Plan required by the SMAQMD.

As set forth in the Staff Report at p. 188, emissions of ozone-precursor pollutants (ROG and NOx) would exceed SMAQMD's significance thresholds and could result in a significant contribution to ambient concentrations that could potentially exceed applicable NAAQS and CAAQS for which the SVAB is currently designated non-attainment. See Impact Nos. 4.5.3 and 4.5.8. The proposed mitigation (MM 4.5.3), requiring coordination between the project applicant, the City, and SMAQMD to develop and approve a future Air Quality Management Plan (AQMP), and thus violates CEQA law prohibiting deferred mitigation. In San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670, the court held that simply requiring a project applicant to obtain a management plan and then comply with the recommendations in the management plan was an improper deferral of mitigation. See also Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793.

TRAFFIC AND CIRCULATION

As set forth in the Staff Report at pp. 184-186, the project would generate additional traffic for freeway facilities in the project area vicinity, project area roadways, and project area state highway systems already operating below acceptable levels of service. See Impact Nos. 4.4.3, 4.4.7 and 4.4.8. As acknowledged in the Staff Report at pp. 185-186, the proposed

mitigation (MM 4.4.3), requiring the payment of a fair share contribution to the Downtown - Natomas-Airport Light Rail Extension (DNA), will not ensure that the impacts will be fully mitigated. As discuss in the sections addressing flood control and loss of farmland, an EIR must describe the mitigation measure for each significant environmental impact. Pub. Res. Code §§21002.1(a), 21100(b)(3); 14 Cal. Code Regs. §15126.4. In San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670, the court held that simply requiring a project applicant to obtain a management plan and then comply with the recommendations in the management plan was an improper deferral of mitigation. See also Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793. Without adequate descriptions, neither the City nor LAFCO can evaluate the adequacy of the proposed mitigation or fee program.

Furthermore, as set forth in the Staff Report at p. 185, the City has not completed a "nexus" or "rough proportionality" study pursuant to the constitutional principles established by Nollan/Dolan, and thus any fair share contribution would be secured under the terms of a development agreement. The development agreement has yet to be negotiated and executed, therefore the mitigation is speculative and uncertain, which is not allowed under Sundstrom, supra.

In addition, Caltrans has stated that impacts to the mainline State Highway System can feasibly be mitigated by improving the SR-99/I-5 Interchange and I-80 auxiliary lanes, and by making a fair share contribution to the mainline State Highway System. FEIR, at p. 3.0-52. The EIR dismisses such mitigation and instead states that the fair share contribution to the DNA project will mitigate some of the project's impacts, but not all. FEIR, at p. 3.0-53. An adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. While the response need not be exhaustive, it should evince good faith and a reasoned analysis. Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1029.

On two occasions, the County of Sacramento Department of Transportation (DOT) requested that the EIR analyze traffic impacts to all roadway segments and major intersections along Elkhorn Boulevard (between SR-99 and Watt Avenue), Northgate Boulevard (between Del Paso Road and I-80) and National Drive (between Elkhorn Boulevard and I-80). FEIR, at p. 3.0-90. The EIR's response to DOT's request was that the additional roadway segment and intersection analysis was not necessary because project-generated traffic at those locations would be minimal. FEIR, at p. 3.0-92. Courts have held that an agency failed to proceed as required by law because the EIR's discussion and analysis of a mandatory EIR topic was so cursory it clearly did not comply with the requirements of CEQA. El Dorado Union High School District v. City of Placerville (1983) 144 Cal.App.3d 123, 132.

If staff meant to impose a fee program for the light rail system, it was required to set out in detail how the imposition of fees will assure the traffic mitigation will result. The EIR is silent on this issue, and therefore violates CEQA. Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 727; Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 140.

Adequate responses to comments on the draft EIR are of particular importance when significant environmental issues are raised in comments submitted by experts or by regulatory agencies, like Caltrans, with recognized specialized expertise. Santa Clarita Org. for Planning the Environment v. County of Los Angeles (2003) 106 Cal.App.4th 715, 131. The response must be detailed and must provide a reasoned good faith analysis. 14 Cal. Code Regs. §15088(c). The responses to comments must state reasons for rejecting suggestions and comments on major environmental issues. Conclusory statements unsupported by factual information are not an adequate response. Id.; Cleary v. County of Stanislaus (1981) 118 Cal.App.3d 348. The need for a reasoned, factual response is particularly acute when critical comments have been made by other agencies or experts. People v. County of Kern (1976) 62 Cal.App.3d 761, 722; Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1367.

CLIMATE CHANGE COMMENTS (FEIR, CHAPTER 3.0)

Contrary to the statements in the DEIR, 4.5-34 to 36, and Comment 7-58, only generic responses to the issue of project impacts to climate change were provided by the City. California's Attorney General has publicly challenged numerous general plan and development-related EIRs since 2006, precisely on the grounds that the impacts of increasing population in an area necessitating an admitted increase in traffic planning must be considered significant where the incremental effects of the annexation are viewed in connection with the effects of other current projects, and the effects of probably future projects. Pub. Res. Code §21083(b)(2). A draft EIR must consider the increase in carbon emissions anticipated to result from the proposed project in light of AB 32. [See for example, Communities for a Better Environment v. CA Resources Agency (2002) 103 Cal.App.4th 98, 119-120: the test for a significant cumulative impact is "not one additional molecule".]

The California Legislature has found that "Global Warming poses a serious threat to the economic well-being, public health, natural resources and the environment of California." Health and Safety Code §38501(a). Global Warming is obviously a serious environmental impact. CEQA requires that a public agency undertaking a project with the potential to harm the environment must prepare an EIR that uncovers, analyzes and fully discloses the reasonably foreseeable effects on the environment of the project, and adopts all feasible measures available to mitigate those effects. Neither the absence of a CEQA guideline that

requires consideration of global warming impacts, nor lack of a regulatory standard for Green House Gas (GHG) emissions for projects justifies the conclusion that it is not possible to determine whether GHG emissions of a project constitute a significant cumulative environmental impact. Such a determination is, in effect, a conclusion that the potential cumulative impacts are not significant – a determination that must be supported by evidence and analysis. CEQA Guidelines encourage but do not require agencies to publish thresholds of significance. §15064.7(a). CEQA Guidelines also recognize that “An ironclad definition of significant effect is not always possible on scientific and factual data.” §15064(b).

Under Assembly Bill [AB] 32, the California Global Warming Solutions Act, Health and Safety Code §38500, et seq., GHG emissions are required to be reduced by 25% by the year 2020. To the extent that a project’s direct and indirect GHG-related effects, considered in the context of the existing and projected cumulative effects, may interfere with California’s ability to achieve the 25% reduction goal, an agency must make the determination that the project’s global warming-related impacts should be considered cumulatively significant. This approach is similar to the question posed in the CEQA Guidelines, Appendix G – Environmental Checklist Form for Air Quality Impacts (with respect to criteria pollutants): could the project “Conflict with or obstruct implementation of the applicable air quality plan?” The agency could easily ask, “Could project emissions conflict with or obstruct implementation of AB32?”

The greater the environmental problem, the lower the threshold for significance of cumulative impacts should be. Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 120. Global Warming presents very significant, widespread threats to the environment and public health; every feasible opportunity to reduce GHG impacts must be pursued. The question is not how the effect of the project compares to the pre-existing cumulative effect, but whether any additional amount of effect should be considered significant in the context of the existing cumulative effect. Communities for a Better Environment, supra, at 119-120; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718; Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025-1026. For a project that emits air pollutants, the test for significant cumulative impact is not one additional molecule. Communities for a Better Environment, supra, at 119-120; Kings County Farm Bureau, supra, at 718. The City must apply this rule of reason: are GHG emissions of the project enough that, along with new emissions from other projects, the cumulative emissions could interfere with achieving the reductions of AB32? Approving projects without requiring feasible measures to reduce or avoid GHG emissions will make it more difficult to achieve the reductions required by AB32, place a greater burden on other sources of emissions, and result in greater cost to achieve the required reductions.

Cases interpreting NEPA are persuasive authority as to requirements of CEQA. No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 86 fn. 21. In Border Power Plant Working Group v. DOE (S.D. Cal. 2003) 260 F.Supp.2d 997, 1028-29, the court found that NEPA required consideration of potential environmental impacts from a proposed natural gas turbine's emission of carbon dioxide, a greenhouse gas, and rejected the argument that consideration of this impact is not required since EPA has not designated carbon dioxide as a criteria pollutant.

GHG emissions of the project must be quantified based on best available information (i.e., URBEMIS to estimate increased VMT; CARB's Proposed Methodology to Model Carbon Dioxide Emissions and Estimate Fuel Economy (2002); CARB's EMFAC model; Caltrans' California Motor Vehicle Stock Travel and Fuel Forecast (MVSTAFF) and CARB's OFFROAD Model). Feasible methods to avoid or reduce impacts must be identified and adopted. (Models to evaluate mitigation benefits include Center for Clean Air Policy, Transportation Emissions Guidebook, Emissions Calculator, California Energy Commission, The Energy Yardstick: Using PLACE3S to Create More Sustainable Communities and Clean Air and Climate Protection Software – a Joint Project of STAPPA/ALAPCO, ICLEI and the EPA.) Feasible mitigation measures are found from many sources, such as LEED Green Building standards, ICLEI, Climate Action Team Report, Climate Action Program at Caltrans (December 2006), Renewable Energy Sources, and California Energy Commission's New Solar Homes Partnership.

As set forth in the FEIR at pp. 3.0-10, 12 and 13, the City has determined that the impacts of global warming are too speculative for evaluation. However, this is not true. The City can estimate the amount of GHG emissions from the proposed project and make a determination whether that amount of emissions constitutes a potential significant cumulative impact under CEQA. For GHG emissions from the proposed project that cannot be avoided, mitigation could include reduction of other existing GHG emissions.

The Panhandle EIR proposes no measures to specifically reduce greenhouse gas emissions. After the City received comments on the DEIR pointing out its lack of analysis of global warming and lack of mitigation measures to address global warming, a generalized discussion of global warming was added to the FEIR. However, the FEIR contains no inventory of the current, baseline greenhouse gas emissions from the project, no estimate of the increase in greenhouse gas emissions that will result from the project, and no analysis of the effects of these increases on the reductions in greenhouse gas emissions mandated by AB32. The FEIR fails to respond adequately to comments on Global Warming by failing to adequately address the statutory mandate of AB32.

LONG-TERM WATER SUPPLY (DEIR, CHAPTER 4.13)

The FEIR is fatally flawed because it fails to identify clearly allocated sources of water to be used by the project, as required by the recent Vineyard decision. In Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, the California Supreme Court held that an EIR failed to adequately inform decision makers and the public regarding its plan for long-term water supply. The Court ruled that, although the EIR identified the intended water sources in general terms, it did not clearly and coherently explain, using material properly stated or incorporated in the EIR, how the long-term demand was likely to be met with those sources, **the environmental impacts of exploiting those sources, and how those impacts were to be mitigated**, as required by Public Resources Code §21100(b). While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can. Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal.3d 376, at 398-399 [an EIR must address the impacts of reasonably foreseeable future activities related to the proposed project]. Before approving a project, the decision makers must be informed of the intended source of water for the project, **and what the impact will be if supplied from a particular source or possible sources, and if that impact is adverse, how it will be addressed**. Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, at 206.

According to the Panhandle DEIR (at 4.13-18), one of the project's water sources includes the Fairbairn Water Treatment Plant, which is subject to the Water Forum Agreement (WFA). The WFA is the product of the Water Forum, a stakeholder group that undertook long-term planning to meet increased demand for American River water through 2030. According to the DEIR's cumulative analysis of water supply and demand projections, the WFA "was developed to address cumulative development of this area." DEIR, at p. 4.13-22. As in the Panhandle Annexation EIR, the EIR in Vineyard, supra, relied on the WFA, which includes plans for increased surface water diversions by several water purveyors, including new diversions by the year 2030 totaling as much as 78,000 acre-feet annually (afa). The EIR for the WFA extensively analyzed the environmental impacts of the planned increases in surface water diversion, as well as the cumulative impacts of the Agreement and other foreseeable changes in area water supply and demand. It found that, in spite of measures included in the proposal for water conservation, increased use of American River water under the WFA is likely to cause significant and potentially significant impacts within the Lower American River and Folsom Reservoir, including effects to certain fisheries, recreational opportunities and cultural resources. In addition, it found that impacts to water supply, water quality and power supply were likely to occur outside the American River system. As such, given the actual language of Vineyard, the FEIR must be

recirculated to reconsider its conclusions relating to Increased Water Demand (Impact 4.13.3.1) and Supply (4.13.3.2), that they have been determined to be **less than significant**. DEIR, at pp. 4.13-20, 21 and 22.

Because the EIR failed to explicitly incorporate the impacts and mitigation discussion in the WFA Final EIR, it lacks, contrary to CEQA's requirements, enforceable mitigation measures for the surface water diversions intended to serve the project. The County could have incorporated the WFA mitigation measures into the Panhandle Annexation EIR. But absent such incorporation, the EIR, and the findings based on it, are inadequate to support project approval under CEQA because they do not discuss the impacts of new surface water diversions, enforceable measures to mitigate those impacts, or the remaining unmitigated impacts. CEQA Guidelines, Cal. Code Regs. Title 14, §15126.4(a)(2); Vineyard, supra, at 444.

A second identified source is the City's reliance on "claimed" pre-1914 water rights, and a 1957 water rights settlement agreement with the U.S. Bureau of Reclamation, which provides that USBR will operate its facilities so as to provide a reliable supply of the City's water rights water to the City's diversion intakes, so long as the City doesn't exceed its agreed-upon diversion of 326,800 afa. The Water Supply Assessment identifies that the City has adequate water supplies secured by the 1957 USBR contract to meet the project's and cumulative demands through 2030. DEIR, at p. 4.13-22. In Santa Clarita Organization for Planning the Environment v. County of Los Angeles (2003) 106 Cal.App.4th 715, the EIR's cumulative impact analysis for a project, which was to be supplied water by the local water agency, relied on the water agency receiving its full entitlement of afa. The Court held that the EIR's water supply discussion was inadequate because it assumed that such water futures or "paper water" would be made available.

As the court stated in Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, at 430-431, while the applicable case law states no definitive standard of certainty for analysis of future water supplies, they do articulate certain principles for analytical adequacy under CEQA. First, CEQA's informational purposes are not satisfied by an EIR that simply assumes a solution to the problem of supplying water to a proposed project. Decision makers must, under the law, be presented with sufficient facts to "evaluate the pros and cons of supplying the amount of water that the [project] will need" [citing to Santiago County Water District v. County of Orange (1981) 118 Cal.App.3d 818]. Second, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA [citing Santa Clarita, supra, at pp. 720-723]. An EIR must also address the **impacts** of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability [citing California Oak Foundation v. City of Santa Clarita (2005) 133

Cal.App.4th 1219, 1238-1239, 1244]. The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project. Vineyard, supra, at p. 434. The Panhandle DEIR fails to adequately address the impacts associated with the paper water sources, which are, in-and-of-themselves, legally inadequate.

As further proof of water supply, the EIR states that the City has developed an Urban Water Management Plan to ensure the conservation and efficient use of available water supplies and to ensure an appropriate level of reliability in its water service sufficient to meet the needs of its customers. DEIR, at p. 4.13-18. When an individual land use project requires CEQA evaluation, the urban water management plan's information and analysis may be incorporated in the water supply and demand assessment in lieu of an independent analysis only "if the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan." Water Code §10910(c)(2). The Water Supply Assessment does provide any specific information regarding the UWMP and how it will address the project's impacts, nor does it indicate whether the UWMP includes the project's demands, or attach or incorporate the UWMP into the EIR.

The DEIR states (at 4.13-14) that the City currently operates 32 active municipal groundwater supply wells within the City limits. The impacts to the City's well system as a result of the proposed project have not been adequately set forth. As in San Joaquin Raptor Rescue Center v. Jaxon Enterprises, Inc. (2007) 149 Cal.App.4th 645, the EIR simply provides information on the amount of water needed to support the project. The court held that this information, without more, was inadequate to inform the public and decision makers regarding groundwater impacts. The court questioned what impact there would be on other groundwater users. Without such information, the true impact of the project on groundwater supplies cannot be adequately evaluated. As in Vineyard, the court held that the EIR must include "facts to evaluate the pros and cons of supplying the amount of water that the project will need." Id., at 663.

WETLAND/RIPARIAN ISSUES (DEIR, CHAPTER 4.8)

The EIR fails to take into account SWRCB's new Wetland and Riparian Area Protection Policy, in determining whether impacts to riparian areas should be treated as Significant. In 2001, the U.S. Supreme Court's SWANCC² decision disclaimed federal jurisdictional protection over certain isolated waters. On January 25, 2001, the California State Water Resources Control Board (SWRCB) prepared a Memorandum reacting to the SWANCC decision, clarifying that disclaimed waters were still subject to California jurisdictional protection. Governor Schwarzenegger's Action Plan for California's Environment directed

² Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC) (2001) 531 U.S. 159.

state agencies to fill any gaps in wetlands protection. [For example, the SWRCB has not yet adopted its own definitions of wetlands and riparian areas. It relies on the federal definition used to administer the CWA Section 401 and 404 programs. However, most riparian areas do not meet the federal wetland criteria, which makes identification and protection of these areas difficult.]

The SWRCB Report to the Legislature on Regulatory Steps Needed to Protect and Conserve Wetlands Not Subject to the Clean Water Act (State Water Board 2003) identified several such gaps in wetland and riparian area protections and outlined a series of steps needed to fill the gaps. In 2004, the SWRCB General Waste Discharge Requirements for Dredge and Fill to Wetlands (SWRCB Order No. 2004-004-DWQ) was issued. On June 25, 2004, the SWRCB issued Guidance for Regulation of Discharges to Isolated Waters. On September 24, 2004, the SWRCB's issued its 2004 Workplan: Filling the Gaps in Wetlands Protection (State Water Board 2004b), which further memorialized these steps by establishing tasks necessary to improve protection of wetlands and riparian areas in the state. In an effort to fulfill its obligations, SWRCB has developed a proposed Wetland and Riparian Area Protection Policy.

Most recently, on April 9, 2007, the SWRCB held a Scoping Meeting for the CEQA analysis on its Proposed Wetland and Riparian Area Protection Policy. The proposal contains alternative approaches in order to resolve what it describes as insufficient protections in the past which led to significant historic losses of California's wetlands and riparian areas. Among the alternatives being considered are: #3 (the adoption of new, broader definitions of wetlands and riparian areas (more protective and much broader than federal definitions of wetlands and waters); the adoption of state policy that better protects wetlands and riparian areas from dredge and fill than CWA §404(b)(1) guidelines); and #4 (same protections as #2, plus the adoption of state policy that protects wetlands and riparian areas from hydromodification (discussed *infra*), vegetation clearing and invasive species.

Most recently, on June 5, 2007, the Corps and EPA issued several memoranda and an instructional guidebook providing guidance to their field offices to ensure that jurisdictional determinations are consistent with recent case law interpreting the SWANCC decision. The guidance includes requiring a fact-specific analysis to determine whether certain types of waters (including swales, small washes and roadside ditches) have a significant nexus with a traditional navigable water, based on ecological and hydrological factors.

As a result of the SWRCB's new policy and the recent Guidance from the Corps and EPA, the project has the potential to significantly impact these resources, which have yet to be identified under the new definitions and significant nexus criteria. At the very least, the EIR should acknowledge the spirit and intent of the proposed new policies and set forth mitigation requiring compliance with the newly adopted policy. CEQA was intended to be

interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. CEQA Guidelines, Cal. Code Regs. Title 14 §15003(f); Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247.

INCONSISTENCY WITH OTHER PLANS

Inconsistency with the City of Sacramento General Plan

Development of the proposed project prior to upgrade of the levees to 100-year level of flood protection (current FEMA and Corps of Engineers standards) would be inconsistent with Sacramento City General Plan Section 8, Goal A, Policy One, Flood Hazards, which states:

“Prohibit development of areas subject to unreasonable risk of flooding unless measures can be implemented to eliminate or reduce the risk of flooding.”

The general plan has been aptly described as the “constitution for all future developments” within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan. The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.” Families Unafraid to Uphold Rural etc. County v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336; Corona-Norco Unified School District v. City of Corona (1993) 17 Cal.App.4th 985, 994. The proposed project, therefore, is valid only to the extent that it is consistent with the City’s General Plan. A project is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment. It must be compatible with the objectives, policies, and general land uses and programs specified in the general plan. Future, supra, at 1336; Corona-Norco, supra, at 994.

The DEIR indicated that the General Plan designations for the Southern Portion would be changed from Rural Estates, Low Density Residential, and Mixed Use to Heavy Commercial or Warehouse, Water, and Roadways. The NNCP designations would be changed from Rural Estates, Low Density Residential, Medium Density Residential, and Employment Center to Light Industrial, Parks/Open Space, and Roadways. The pre-zoning designations would be changed from Flood, Light Industrial (M1), Light Industrial—Flood Combining, Industrial Office Park—Flood Combining, and EC30 SPD Employment Center to M1 SPD Light Industrial.

The Staff Report states that the General Plan is removing the former land use designations and replacing them with Special Planning District, Water, and Roadways (instead of

Commercial or Warehouse, etc.). (SR p. 12) However, Figure 3.0-7 shows the Proposed City General Plan Designations for Southern Portion as Heavy Commercial or Warehouse, etc. The Proposed Community Plan designations remove the former land use and replace it with Northgate 880 Special Planning district (SPD), etc. However, Figure 3.0-9 still shows Proposed North Natomas Community Plan Designations for Southern Portion as Light Industrial, etc. Obviously, for consistency all documents need to indicate that the GP, CP, and pre-zoning in the Southern Portion will be Northgate 880 Special Planning District M1 (light industrial).

Inconsistency with the North Natomas Community Plan

As set forth in the Staff Report at p. 22, the proposed project is not consistent with NNCP land use policies regarding Agricultural Buffers, Open Space and Greenbelt Boundaries, Widths, and Purposes. Although NNCP Text Amendments are proposed to rectify said inconsistencies, there is no guarantee that those text amendments will be approved.

As set forth in the Staff Report at p. 183, the proposed project would result in 316 more residents than what would be allowed under the current NNCP land use designations, which would induce substantial population growth. See Impact Nos. 4.3.1 and 4.3.4. There is no proposed mitigation to reduce these impacts.

The EIR conflicts with the land use vision and policy provision of the North Natomas Community Plan. See Responses 2-2 and 2-3, pp. 3.0-113 and 114 of the FEIR.

The location of National Drive is different than that envisioned in the NNCP.

Development of the proposed project prior to upgrade of the levees to 100-year level of flood protection (current FEMA and Corps of Engineers standards) would be inconsistent with the NNCP Flood Control Guiding Policy A., which states:

“One hundred year flood protection must be obtained prior to any new residential development in the North Natomas Community.”

The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.” Families Unafraid to Uphold Rural etc. County v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336; Corona-Norco Unified School District v. City of Corona (1993) 17 Cal.App.4th 985, 994. The proposed project, therefore, is valid only to the extent that it is consistent with the applicable community plan. A project is consistent with the community plan if it will further the objectives and policies of the plan and not obstruct their attainment. It must be compatible with the objectives, policies, and general land uses and

programs specified in the plan. Future, supra, at 1336; Corona-Norco, supra, at 994.

FINDINGS NOT SUPPORTED BY THE EVIDENCE

The EIR does not fully acknowledge all adverse environmental harms the project will do, and therefore the Planning Commission was unable to perform a legally adequate balancing of the benefits of the project against its adverse environmental effects. The FEIR identifies 17 significant environmental impacts; and commenters, including this Appellants, have identified at least three impacts which have been improperly neglected. The Commission was precluded from certifying the EIR unless it could make findings in support of overriding considerations; and the convenience of annexing an island, thus wiping out open space and prime farm land, is not supported by economic or social considerations which make mitigation measures infeasible. 14 Cal.Code Reg. § 1509(b); see Citizens for Quality Growth v. City of Mt. Shasta (1988) 198 Cal.App.3d 433, 442, 243 Cal.Rptr. 727 (findings must be express and in writing; "implicit" findings are not acceptable).

NEW INFORMATION PRESENTED AFTER CIRCULATION OF EIR

As set forth in the proposed Findings (p. 191 of the previous Staff Report), the loss of open space caused by the project is considered a **significant and unavoidable impact**. On 6/14, the Commission requested that the applicant provide additional information regarding this issue. The applicant provided this information the night of the 6/28 hearing. As of the morning of 6/28, this information has not been made available to the public via the City's website or any other means -- it was presented for the first time the night of the hearing. Providing this new information the night of the hearing deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project (the open space issue).

As such, the new information must be included in the EIR, and the EIR recirculated in accordance with CEQA Guideline §15088.5(a), which requires that a lead agency recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under CEQA Guideline §15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting, **as well as additional data or other information**. See also Public Resources Code §21092.1; Laurel Heights Improvement Association v. Regents of University of California (1993) 6 Cal.4th 1112. The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it. Save our Peninsula Comm. v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 131; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813, 822.

URBAN DESIGN GROUP COMMENTS

In response to the issues raised in the Commission's 6/14 motion, Staff solicited comments on the EIR from the Urban Design Group (UDG) (a reviewing agency), which were presented for the first time at the 6/28 hearing. The CEQA Guidelines require that the lead agency provide a written proposed response to a public agency on comments made by that public agency **at least 10 days prior to certifying an environmental impact report.** CEQA Guideline §15088(b). Furthermore, responses to the UDG's comments were required to be included as a revision to the DEIR or included in the FEIR. CEQA Guideline §15088(d).

INTERNAL INCONSISTENCIES WITHIN THE DOCUMENT WHICH DIRECTLY AFFECT APPELLANTS

The City Council should be aware that this office and Mr. Gately met with and corresponded numerous times, beginning in 1998, with the City Attorney's office, the Planning Department, and the City Manager, attempting to reach consensus on a pre-annexation agreement, reimbursement agreement, and development guidelines applicable to the JB/Benvenuti properties, so that our clients' objections to annexation could be addressed. As part of the draft pre-annexation agreement, we proposed to convey previously constructed improvements, or to construct infrastructure improvements on Gateway Park Boulevard, National Drive, and Del Paso Boulevard in exchange for specific reimbursements for previously constructed improvements. No recognition for previously constructed improvements or proposed reimbursements is made in the Draft Panhandle Public Facilities Financing Strategy.

The following statement contained in the FEIR, at p. 3.0-117 is contradicted in other sections of the document (discussed below in detail):

"The mitigation measures identified in the DEIR apply to lands that will be developed under the proposed Panhandle PUD. None of the mitigation measures identify assessments or fee programs that apply to existing development in the Southern portion of the Panhandle Area."

However, many discrepancies in implementation of this goal are reflected in the detailed mitigation table. Therefore, the imposition of mitigation for new construction upon completed projects within the Panhandle should have been further clarified. We cite to some of the references in the FEIR which conflict with the general statement above.

- The DEIR 2.0-5 states: "Evaluation of Existing Infrastructure Deficiencies of the Southern Portion – as identified in Section 3.0 (Project Description), there are existing infrastructure deficiencies in the Southern Portion of the Panhandle Area that do not meet existing City standards. **This will have to be addressed when additional development occurs in the Southern Portion. Consideration of these conditions and acceptable improvements needed in the future will need to be made by City and LAFCo decision-makers.**" [Emphasis added.]
- While there is no development proposed at this time in the southern portion, the City anticipates the need to upgrade existing deficient infrastructure facilities in the future. No specific infrastructure upgrades are proposed at this time, but the facilities identified are: water supply and distribution facilities, drainage facilities, and roads.
- Mitigation Measure 4.11.1: the Southern Portion is nearly built out and has its drainage infrastructure in place to accommodate development of the area. However, some of this drainage infrastructure may be deficient and require upgrades to meet full built out conditions consistent with City standards. **So for future development of the Southern Portion, the project applicant shall demonstrate that it adequately attenuates increased drainage flows consistent with City standards.** [Emphasis added.]
- The same applies for future development of remaining parcels as far as construction-related and operational water quality impacts, flood hazards from levee failure, groundwater quality impacts, etc.
- The traffic section of the EIR only evaluated the PUD area and states the "Panhandle PUD would contribute to traffic impact to the transportation system in the vicinity of the project area", etc. ("the Southern Portion is nearly built out and the annexation of the proposed project does not include specific entitlement requests for the remaining development. Thus, the southern Portion's impact would be less than significant.")

Financing Plan

The Draft Panhandle Planned Unit Development Public Facilities Financing Plan (PFFP), May 4, 2007, addresses the project located north of Del Paso Road and south of Elkhorn Boulevard, and includes all backbone infrastructure improvements, public facilities, and associated administrative costs to serve the defined PUD project area. The PFFP includes improvements to roadways, sewer, water, drainage, parks, landscaping, schools, fire, police, library and transit, and describes the costs and financing mechanisms that will be used to create these improvements in the PUD project area. Therefore, the PFFP does not address

any costs or financing in the Southern Portion. It needed to be clearly stated that there will be no financial impact of the Annexation and PUD on the nearly built out Southern Portion and, therefore, it is not addressed in the PFFP.

Mitigation Requirements in the Southern Portion

The Executive Summary to the FEIR provided the modifications to the Panhandle PUD since the release of the DEIR, and in the section on Project Alternatives Summary it states:

The alternatives focus on the Northern Portion and the PUD only since the Southern Portion of the project area is nearly built out. Development opportunities in the Southern Portion are limited to the existing 13 vacant parcels (52-acres of vacant land), and all future development would be consistent with the existing development pattern for the Southern Portion.

Therefore, it appears that the concerns previously addressed as to the impacts of the annexation on the Southern Portion have attempted to be addressed by the statement, throughout the documents, that the Southern Portion of the project is nearly built out. This implies that the FEIR and mitigation requirements do not apply to the Southern Portion. However, in the Staff Report it states:

With respect to the entitlements over which the Planning Commission has final approval authority and in support of its approval of the Project, the Planning makes the following findings ... with Respect to Impacts from the Southern Portion of the Project. (SR p. 198)

- c. The following impacts of the Southern Portion of the Project, including cumulative impacts, are identified as significant and potentially significant environmental impacts of the Project, and are unavoidable and cannot be mitigated in a manner that would substantially lessen the significant impact. Notwithstanding disclosure of these impacts, the Planning Commission elects to approve the Project due to overriding considerations as set forth in Section 8, the statement of overriding considerations.

As long as the Southern Portion is included in impacts and mitigation (to less than significant and overriding considerations) for the project, it needs to be clearly stated how the Southern Portion already built out may be impacted, now and in the future, by those environmental concerns.

Additionally, the mitigation impacts and measures refer to "project applicant", "developer", "applicant", etc. and may refer to Panhandle PUD, Dunmore, Krumenacher, etc., but are not consistent. It needs to be clearly and consistently stated whether the mitigation measures apply solely to the PUD area, or if they include development in the Southern Portion, as well.

North Natomas Development Guidelines (NNDG)

Concerns have been raised in the past as to the applicability of the NNDG design criteria to development in the Southern Portion. It appears that they have been addressed by the changes to the General Plan and Community Plan, and that "All development proposed in the North Natomas Community Plan area is required to be designated a Planned Unit Development (PUD)". (NNDG p. 18.) In fact, the City website under "Panhandle Annexation Project" states: "Part of the annexation process will include the consideration of amendment to the North Natomas Community Plan for the area of undeveloped land located north of Del Paso Road. The proposed NNCP amendment needed to clearly state that there is no intent to apply conditions to the nearly built out Southern Portion."

IMPACT TO OTHERS

Economic Impact

The Rio Linda & Elverta Recreation and Park District opposes this project because it will detach the Northern Panhandle area from its service area. As such, the District will lose over \$200,000 annually, which is 15% of its operating budget. This loss of revenue will affect the District's ability to provide Park and Recreation services to the Panhandle and Rio Linda-Elverta Community. FEIR, at pp. 3.0-59 and 3.0-62. The EIR states that a revenue sharing agreement will address such fiscal effects. FEIR, at p. 3.0-61. As set forth in the Staff Report at p. 11, the Tax Sharing Agreement has not yet been negotiated or executed by the affected parties, and must ultimately be approved by LAFCO. There is no guarantee that this will be successful. In Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, the appellate court concluded that because the success of mitigation was uncertain, the county could not have reasonably determined that significant effects would not occur. This deferral of environmental assessment until after project approval violated CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action.

The County of Sacramento opposes this project because it will lose \$3 to \$4 million annually due to its loss of jurisdiction over the annexation area. FEIR, at p. 3.0-62. The EIR states that a revenue sharing agreement will address such fiscal effects. FEIR, at p. 3.0-64. As set forth in the Staff Report at p. 11, the Tax Sharing Agreement has not yet been negotiated or

City of Sacramento Planning Department
July 6, 2007
Page 24

*Notice of Appeal for the
Panhandle Annexation*

executed by the affected parties, and must ultimately be approved by LAFCO. There is no guarantee that this will be successful. See discussion of the application of Sundstrom, above.

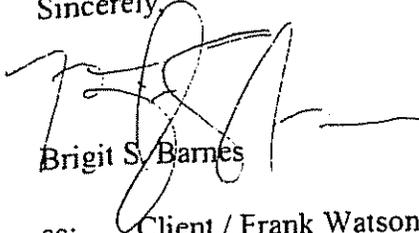
Failure to Employ Transit-Oriented Development Design Practices

The design shows more density located to the Northeast corner of the project, which is not placed close to the public transit and transportation features of the project, located in the southern portion. In addition, the affordable housing product, residents of which would most likely utilize the transit services, are not located along the southern portion. This concern was expressed by the Planning Commission, and in response, the project applicant provided information about "future" service running North and South along the Panhandle. However, the environmental document does not contain this information and there is no timeline and/or guarantee of future service.

CONCLUSION

Based on the foregoing, the Commission clearly erred in certifying the Environmental Impact Report, adopting the Mitigation Monitoring Program and approving the Tentative Subdivision Maps based on the EIR for this project. The City Council must overturn the Commission's decision and order the re-drafting and re-circulation of the EIR and compliance with the applicable public notice and agency review requirements.

Sincerely,



Brigit S. Barnes

cc: Client / Frank Watson, Esq.
Sacramento LAFCO, Attn: Don Lockhart

Gately\Notice of Appeal

RECEIPT

**CITY OF SACRAMENTO
DEVELOPMENT SERVICES
915 I STREET, 3RD FLOOR
(916) 808-5656
(866) EZ-PERMIT**

**PAID
CITY OF SACRAMENTO
JUL 06 2007
NEW CITY HALL**

Application: P05-077
Application Name: PANHANDLE
Application Type: Planning / Planning / P Files / Up to 10 Entitlements
Address:

| Receipt No.: | Ref Number | Amount Paid | Payment Date | Cashier ID | Comments |
|--------------|------------|-------------|------------------------|------------|----------|
| 286318 | | \$298.00 | 07/06/2007 12:52:49 PM | KMCCOLLUM | |

Owner Info.: DUNMORE HOMES
C/O SID DUNMORE, BILL WEST

Work Description: Entitlements to allow the annexation and future development of 1,429.7+/- acres into the City of Sacramento. A. Environmental Determination: Environmental Impact Report (EIR); B. Mitgation Monitoring Plan; C. Development Agreement between the City of Sacramento and Dunmore Land Company, LLC; D. Development Agreement between the City of Sacramento and Vaquero Land Holdings, LLC; E. Finance Plan; F. Inclusionary Housing Plan (Vaquero); G. Inclusionary Housing Plan (Dunmore); H. General Plan Map Amendment (South); I. General Plan Map Amendment (North); J. North Natomas Community Plan Text Amendment to amend sections specific to Open Space; K. North Natomas Community Plan Map Amendment (South); L. North Natomas Community Plan Map Amendment (North); M. Zoning Code Text Amendment to add a new chapter to Title 17 of the City Code relating to the establishment of the Northgate/I-880 Business Park Special Planning District (NIBP-SPD); N. Prezone (South) O. Prezone (North) P. Planned Unit Development (PUD) Establishment to create PUD Guidelines and a Schematic Plan for the Panhandle Planned Unit Development (PUD); Q. Tentative Master Parcel Map (North); R. Tentative Subdivision Map (North); S. Subdivision Modifications (North); T. Tentative Master Parcel Map (Central and South); U. Tentative Subdivision Map (Central); V. Subdivision Modifications (Central); W. Tentative Subdivision Map (South); X. Subdivision Modifications (South); Y. Reorganization - Annexation to the City of Sacramento and detachment from Rio Linda-Elverta Parks and Recreation District, Natomas Fire Protection District, County Service Area #1, and Sacramento County Water Maintenance District Zone #40; Z. Tax Exchange Agreement between the City of Sacramento and the County of Sacramento.

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Version 4 0

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**TAX EXCHANGE AGREEMENT
BETWEEN
THE COUNTY OF SACRAMENTO AND THE CITY OF SACRAMENTO,
RELATING TO THE PANHANDLE ANNEXATION**

This TAX EXCHANGE AGREEMENT (hereinafter "Agreement") is made and executed in duplicate this ____ day of _____ 2007 by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and the CITY OF SACRAMENTO, a charter city (hereinafter referred to as "CITY").

RECITALS

A. On June 6, 1978, the voters of the State of California amended the California Constitution by adding Article XIII A thereto which limited the total amount of property taxes which could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent (1%) of full cash value; and

B. Following such constitutional amendment, the California Legislature added Section 99 to the California Revenue and Taxation Code which requires a city seeking to annex property to its incorporated territory and a county affected by such annexation to agree upon an exchange of property taxes which are derived from such property and available to the county and city following annexation of the property to the incorporated territory of the city; and

C. CITY has filed an application with the Sacramento Local Agency Formation Commission requesting its approval of the annexation of real property to CITY ("the Panhandle Annexation"); and

D. COUNTY and CITY wish to work together to develop a fair and equitable approach to the sharing of real property ad valorem taxes imposed and collected as authorized by the Revenue and Taxation Code in order to encourage sound urban development and economic growth; and

E. COUNTY and CITY are parties to the Natomas Vision Memorandum of Understanding ("the MOU"); and

F. One of the purposes of the MOU is to provide for the fair distribution between the COUNTY and the CITY of revenue generated within areas annexed to the CITY; and

G. The MOU specifies how property tax and other revenue generated within the area subject to the MOU is to be shared; and

H. The purpose of this Agreement is to implement the revenue sharing provisions of the MOU as they pertain to the Panhandle Annexation; and

I. It is a further purpose of this Agreement to serve as a Property Tax Transfer Agreement pursuant to Section 99 of the California Revenue and Taxation Code.

COUNTY and CITY hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "Annexation Area" shall mean that portion of the unincorporated area of COUNTY known as the Panhandle Annexation, more generally depicted on Exhibit "A" to this Agreement.

(b) "Annexation Date" shall mean the date specified by the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code § 56000 et seq.) as the effective date of the Panhandle Annexation.

(c) "Panhandle Annexation" shall mean the annexation to the CITY as delineated in Sacramento Local Agency Formation Commission Application Control Number "_____", the annexation of which to CITY is subsequently approved and completed by the Sacramento Local Agency Formation Commission as provided in the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code § 56000 et seq.).

(d) "Property Tax Revenue" shall mean revenue from "ad valorem real property taxes on real property", as said term is used in Section 1 of Article 13A of the California Constitution and more particularly defined in subsection (c) of Section 95 of the California Revenue and Taxation Code, that is collected from within the Annexation Area, is available for allocation to the City and the County, and is currently allocated to the County General Fund and County Road fund.

(e) "Sales Tax Revenue" shall mean the revenue from the sales and use tax levied and received by the CITY pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law", or any successor statutory provision, that is collected within the Annexation Area.

(f) "Single-Purpose/Regional Tax Generating Land Use" shall mean that the property to be annexed is totally or largely zoned for commercial or industrial land uses.

(g) "Transient Occupancy Tax Revenue" shall mean the CITY general fund share of revenue from any transient occupancy tax levied and received by the CITY pursuant to Revenue and Taxation Code Section 7280, or any successor statutory provision, that is collected within the Annexation Area.

Section 2. General Purpose of Agreement. The general purpose of this Agreement is (a) to devise an equitable exchange of Property Tax Revenue between CITY and COUNTY as required by Section 99 and the Natomas Vision MOU; (b) to fairly allocate Sales Tax and Transient Occupancy Tax Revenue collected within the Annexation Area; (c) to delineate service agreements for that territory also depicted on Exhibit "A" which will remain in the unincorporated territory.

Section 3. Exchange of Property Tax Revenues. On and after the Annexation Date, the COUNTY and CITY shall exchange Property Tax Revenue as follows:

(a) CITY and COUNTY shall receive the Property Tax Revenue to be allocated to their respective General Funds in the percentage by Tax Rate Area as shown on Exhibit "B" to this Agreement.

(b) The COUNTY and CITY shall share equally in all sales, utility and transient occupancy taxes generated in the territory to be annexed, including such revenue derived from property which, subsequent to the annexation date, the CITY rezones from a residential land use to a commercial or industrial land use.

(c) If any property within the Annexation Area is rezoned by the CITY from a residential land use to a commercial or industrial land use, the CITY shall provide written notice of such rezoning to the COUNTY within thirty (30) days of the effective date of any such rezoning.

Section 4. Adjustment of Property Tax Shares. In the event that the COUNTY is entitled to share in any Sales Tax and Transient Occupancy Tax or Utility Tax Revenue pursuant to Section 3 of this Agreement, the COUNTY's share of such revenue shall be allocated to the COUNTY by increasing the COUNTY's percentage share of Property Tax Revenue established pursuant to Section 3 of this Agreement in an amount equal to the COUNTY's share of Sales Tax, Transient Occupancy Tax and Utility Tax Revenue. If the COUNTY's share of Sales Tax, Transient Occupancy Tax and Utility Tax Revenue is greater than the amount of the CITY's share of Property Tax Revenue, the difference shall be paid by the CITY to the COUNTY within sixty (60) days after the end of the fiscal year in which the Sales Tax and Transient Occupancy Tax Utility Tax Revenue was collected.

Section 5. Exchange by County Auditor. COUNTY and CITY further agree that all of the exchanges of Property Tax Revenue required by this Agreement shall be made by the County Auditor.

Section 6. Park District. The CITY agrees that property taxes shall continue to be allocated to the Rio Linda-Elverta Recreation and Park District in the amount _____.

Section 7. Services. Within that area generally depicted on Exhibit "A", which will remain in the unincorporated territory, the CITY agrees, subsequent to annexation, to:

(a) provide, at the request of the Sacramento County Sheriff, law enforcement services as may be required above the level of mutual aid;

(b) operate and maintain, to the standards of the Sacramento County Water Agency, all drainage facilities; and

(c) permit, at COUNTY or Water Agency costs, and at the option of COUNTY or Water Agency, access to CITY water facilities and water supplies to the extent necessary to provide domestic, commercial or industrial water service within such territory. Costs to COUNTY or Water Agency shall not exceed the costs to CITY of providing access or the costs of providing water to other persons or entities.

Section 8. Transfer Station. CITY further agrees that it shall not, directly or indirectly, construct, cause construction or permit construction of a solid waste transfer or similar facility on that property generally depicted on Exhibit "B".

Section 9. Dispute Resolution.

(a) Inadmissibility. Should any disputes arise as to the performance of this Agreement, COUNTY and CITY agree to the dispute resolution process as set forth below. All conduct, testimony, statements or other evidence made or presented during the meeting described in subsection (b) below shall be confidential and inadmissible in any subsequent arbitration proceedings brought to prove liability for any claimed breach or damages which are the subject of the dispute resolution process.

(b) Initiation of Process. COUNTY or CITY may initiate the dispute resolution process by submitting written notification to the other of a potential dispute concerning the performance of this Agreement. This written notification shall include all supporting documentation, shall state what is in dispute, and shall request a meeting between the County Executive and the City Manager or their respective designees. The purpose of this meeting shall be to ascertain whether a resolution of the disagreement is possible without third party intervention. This meeting shall be scheduled to take place within thirty (30) working days of receipt of the written notification of the dispute. At the meeting, the respective representatives of the COUNTY and the CITY shall attempt to reach an equitable settlement of the disputed issue(s).

(c) Binding Arbitration. If the meeting provided for in subsection (b) of this Section fails to fully resolve the disagreement, the matter shall then be submitted by either party to the American Arbitration Association ("Arbitrator") to appoint a single, neutral arbitrator for a decision. The arbitration shall be conducted pursuant to the procedures set forth in Chapter 3 (commencing with Section 1282) of Title 9 of the California Code of Civil Procedure. The decision of the Arbitrator shall be controlling between the CITY and the COUNTY and shall be final. Except as provided in Code of Civil Procedure Sections 1286.2 and 1286.4, neither party shall be entitled to judicial review of the Arbitrator's decision. The party against whom the award is rendered shall pay any monetary award and/or comply with any other order of the Arbitrator within sixty (60) days of the entry of judgment on the award.

(d) Costs. The parties shall share equally in the costs and fees associated with the Arbitrator's fees and expenses. At the conclusion of the arbitration, the prevailing party, as determined by the Arbitrator, shall be entitled to reimbursement by the other party for the Arbitrator's fees and the Arbitrator's expenses incurred in connection with the arbitration. The awarded arbitrator's fees and expenses shall be remitted to the party whose position is upheld within thirty (30) days of the Arbitrator's decision. Each party shall bear its own costs, expenses and attorney's fees and no party shall be awarded its costs, expenses, or attorney's fees incurred in the dispute resolution process.

Section 10. Mutual Defense of Agreement. If the validity of this Agreement is challenged in any legal action by a party other than COUNTY or CITY, then COUNTY and CITY agree to defend jointly against the legal challenge and to share equally any award of costs, including attorneys fees, against COUNTY, CITY, or both.

Section 11. Waiver of Retroactive Recovery. If the validity of this Agreement is challenged in any legal action brought by either CITY or any third party, CITY hereby waives any right to the retroactive recovery of any City Property Tax Revenues exchanged pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction. The remedy available in any such legal action shall be limited to a prospective invalidation of the Agreement.

Section 12. Modification. The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both the COUNTY and CITY.

Section 13. Reformation. COUNTY and CITY understand and agree that this Agreement is based upon existing law, and that such law may be substantially amended in the future. In the event of an amendment of state law which renders this Agreement invalid or inoperable or which denies any party thereto the full benefit of this Agreement as set forth herein, in whole or in part, then COUNTY and CITY agree to renegotiate the Agreement in good faith.

Section 14. Effect of Tax Exchange Agreement. This Agreement shall be applicable solely to the Annexation specifically addressed herein and does not constitute either a master tax sharing agreement or an agreement on property tax exchanges which may be required for any other annexation to the CITY.

Section 15. Entire Agreement. With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between COUNTY and CITY except as otherwise provided herein.

Section 16. Notices. All notices, requests, certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

| <u>COUNTY</u> | <u>CITY</u> |
|-------------------------|---------------------------|
| County Executive | City Manager |
| County of Sacramento | City of Sacramento |
| 700 H Street, Room 7650 | 915 "I" Street, 5th Floor |
| Sacramento, CA 95814 | Sacramento, CA 95814 |

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

Section 17. Approval, Consent, and Agreement. Wherever this Agreement requires a party's approval, consent, or agreement, the party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

DRAFT

Section 18. Construction of Captions. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the county of Sacramento, State of California, on the dates set forth above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By _____
Chairperson of the Board of Supervisors

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors

Approved as to Form:

County Counsel

CITY OF SACRAMENTO, a charter city

By: _____
Mayor

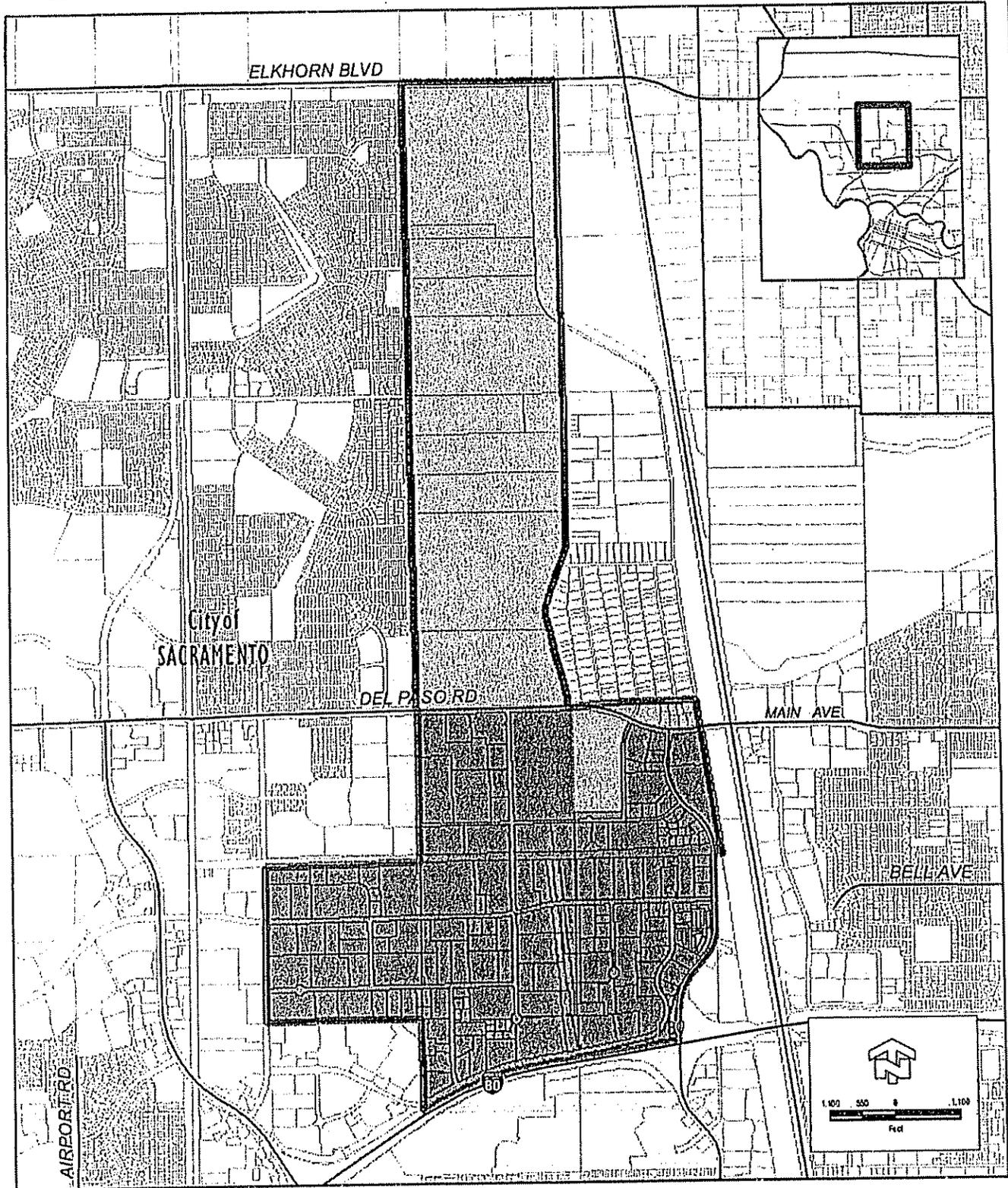
(SEAL)

ATTEST: _____
City Clerk

Approved as to Form:

City Attorney

DRAFT



-  Panhandle Project Area
-  City of Sacramento
-  Unincorporated Sacramento County
-  Portion to remain in Unincorporated Sacramento County
-  Proposed Annexation to City of Sacramento

Panhandle Annexation Proposed Boundaries

EXHIBIT A

COUNTY OF SACRAMENTO
DEPARTMENT OF FINANCE
AUDITOR-CONTROLLER DIVISION

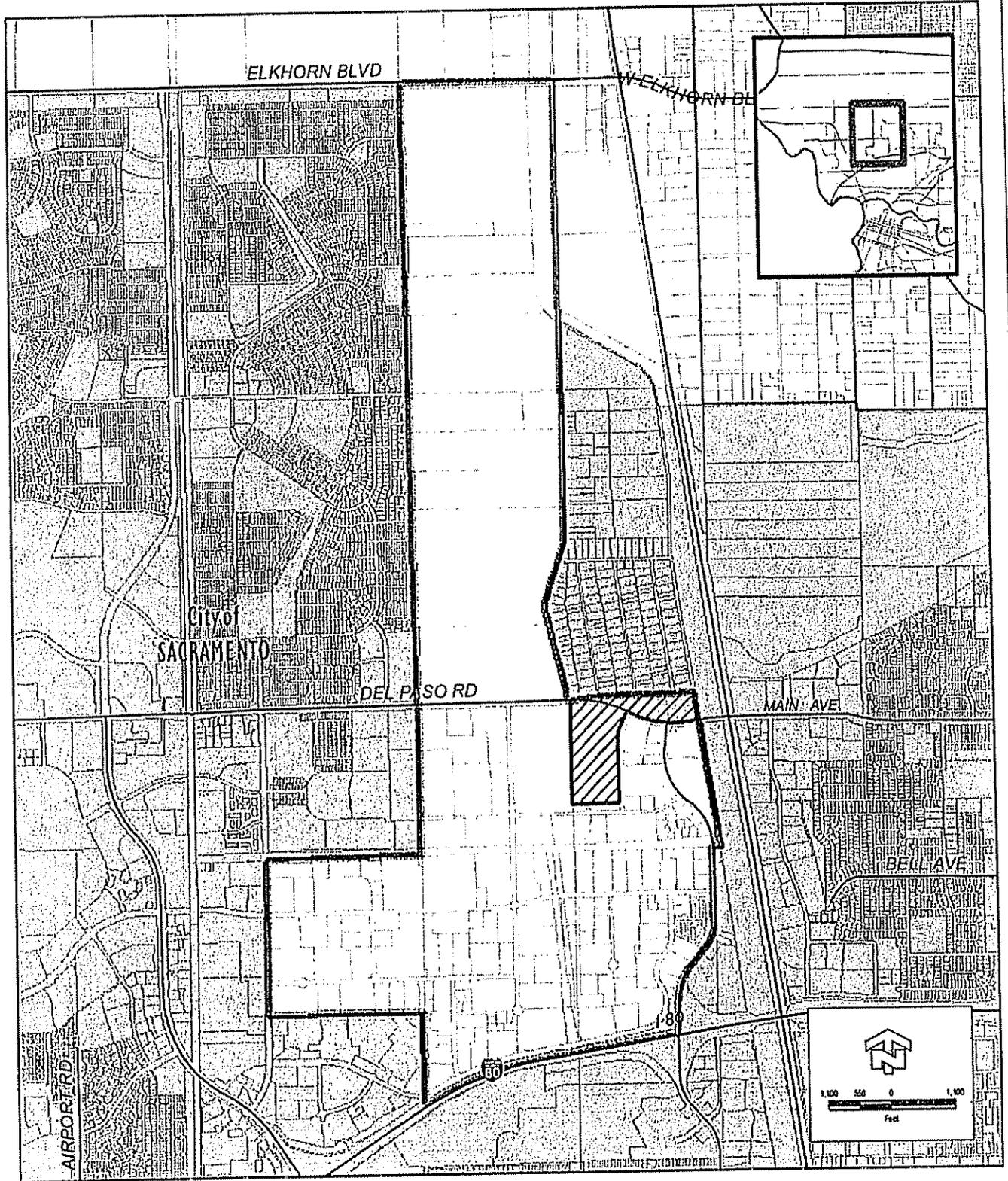
PANHANDLE ANNEXATION

ANNEXATION NAME:

| CITY - annexation | | Tax Rate Areas | | | | | | | | | | | | | |
|---------------------------|----------|----------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|--|
| ASSUMPTION: 50/50 sharing | | 64-001 | 64-003 | 64-006 | 64-007 | 79-149 | 83-001 | 83-006 | 83-009 | 83-012 | 83-016 | 83-018 | 83-019 | 95-004 | |
| COUNTY GENERAL - 50% | 14,92945 | 15,80438 | 14,92945 | 14,92945 | 14,92945 | 17,32863 | 16,70059 | 16,70059 | 16,70059 | 17,62371 | 16,70059 | 16,70059 | 16,70059 | 17,62380 | |
| CITY OF SACRAMENTO - 50% | 14,92945 | 15,80438 | 14,92945 | 14,92945 | 17,32863 | 16,70059 | 16,70059 | 16,70059 | 16,70059 | 17,62371 | 16,70059 | 16,70059 | 16,70059 | 17,62380 | |
| | 29,85891 | 31,60876 | 29,85891 | 29,85891 | 34,65726 | 33,40117 | 33,40117 | 33,40117 | 33,40117 | 35,24741 | 33,40117 | 33,40117 | 33,40117 | 35,24759 | |

EXHIBIT B

DRAFT



Panhandle Annexation Proposed Boundaries

-  Property prohibited for use as a Transfer Station
-  Panhandle Project Area

August 22, 2007

Mayor Heather Fargo
Council Member Ray Tretheway
915 I Street
Sacramento, California 95814

Natomas Girls Softball Assn.
c/o Richard Sanders
15 Bethesda Court
Sacramento, Calif. 95838

Dear Mayor Fargo and Council Member Tretheway:

We are the Board of the Natomas Girls Softball Association and represent the players and parents of the Natomas Girls Softball League. We understand that the City of Sacramento has agreed to lease land, for a nominal sum, to the Natomas Little League Association for the construction of a "state of the art" ten baseball field complex for the almost exclusive use of boys' baseball. Currently, the girls in our League play on leased fields at Smythe Elementary School on Northgate Boulevard. Though we certainly appreciate use of the fields, they are among the worst fields in the NorCal softball area. Without going into details, they are barely usable and far from "state of the art." Indeed, it may be that we will be unable to host any home games for the fall softball league because of construction work in the outfield of one of the fields. Though we are uncertain whether the provisions of Title IX apply to the City or to the Little League, we understand that the California Government Code requires gender equity in recreational facilities. We would certainly appreciate that some consideration be given to the girls who currently play in our league and those who will play in the future. We do not think it would be too difficult to allow the fields to be used for both baseball and softball or, in the alternative, to dedicate a few of the fields exclusively for softball. Thank you for your consideration of this matter.

Richard Sanders
President, Natomas Girls Softball Assn.



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LAW OFFICES
OF
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January 22, 2008

VIA HAND-DELIVERY & E-MAIL

The Honorable Mayor Fargo and
Members of the Sacramento City Council
City Hall
915 I Street
Sacramento, CA 95814

**Re: Encirclement of Villas Encantadoras with "No Parking At Any Time"
Signs; 21st Street/ Freeport Blvd. Conversion Project**

Dear Mayor Fargo and Council Members:

I am the general partner of Powell Properties, L.P., the owner of the Villas Encantadoras apartments, a 23-unit apartment community located at 2709, 2715 and 2725 21st Street, Sacramento, CA 95818.

On Wednesday morning last week, the City, without notice to any resident or property owner in the affected area, installed two "No Parking At Any Time" signs on 21st Street, one of them directly in front of our Villas Encantadoras apartments. A second such sign was placed directly across the street from the Villas Encantadoras on 21st Street, in front of individual homes on 21st Street. Concurrently, the City installed a "No Parking From Here to Corner" sign on the north side of Castro Way, directly adjoining the Villas to the south. These three signs are currently shrouded and will, presumably, be unveiled and activated upon the completion of the 21st conversion project on January 31, 2008, as currently scheduled.

By the City's placement of these three signs, the *City has completely encircled the Villas Encantadoras with no "parking" signs*, prohibiting its residents and their guests from parking in front of their homes, across the street from their homes or immediately south of their homes. The Villas has one off-street parking space for each of its 23 apartments. Since a large number of the apartments at the Villas are rented by couples and families, many of them and all of their guests must, by necessity, park their vehicles on the street. If the two "No Parking At Any Time" signs on 21st Street are permitted to stand, starting on February 1st the residents and guests of the Villas, as well as the residents and guests of the several homes across the street from the Villas on 21st

Street, will be forced to migrate to nearby small residential streets to find parking, namely Florence Place (the street behind the Villas) and further up Castro Way. In their search for places to park, they will compete with the residents of those streets and their guests for ever scarcer street parking, congesting those streets with cars which normally park on 21st Street

This is wrong-headed and unfairly burdens the Villas, our residents and the other residents of our neighborhood.

It will also make our apartments virtually unrentable to couples and families, which comprise a large percentage of our residents. Renters of premium, luxury apartments like the Villas are *not* willing to park their cars around the block and then walk long distances to their apartments, often times in inclement weather, frequently carrying groceries and other items. Our residents who are part of a couple or family - which are most of them - will move out in droves. *Essentially, the City will be driving our business, an institution in Curtis Park since 1937, into the ground, driving down rents and jacking up vacancies.* It will strip us of the cash flow necessary to maintain the Villas Encantadoras at its current excellent condition. It will significantly reduce the value of our property and will necessarily reduce the City's property tax collections from our property - at a time when the City can ill afford it.

Is this really the way the City wants to treat its businesses?

My family has invested \$300,000 in the past two years restoring the Villas Encantadoras to the condition it was in when Frank "Squeaky" Williams built this neighborhood gem in 1937. We have been responsible custodians of it for the past 35 years. For the City to now trash its economic viability for the sake of a few "No Parking At Any Time" signs where none have existed at any time in the past is unconscionable and utterly unacceptable.

Residents of the Villas have been parking on 21st Street and Castro Way **for over 70 years**, including the 37 years in which 21st street was a two-way street, up until 1974. As that 37-year track record proves, the City does *not* need to install "No Parking At Any Time" signs all around our property in order to safely and successfully convert 21st Street back from a one-way street to a two-way street, its pre-1974 state.

Nor does the City need to install such signs to have striped Class II bike lanes on both the north and south-bound sides of the street. There are numerous Class II striped bike lanes throughout the City that co-exist with street parking, particularly on a street as

wide as 21st Street. The bike lines are a quantum leap forward in terms of providing greater safety to cyclists who now frequently ride on the sidewalks. Bicycles, however, must co-exist with the automobile, not replace them.

We also draw your attention to the following facts:

(1) The Villas has apparently been singled out for the placement of “no parking” signs, as these two signs are the *only* “no parking” signs installed on 21st Street between just north of the railroad crossing and Broadway – a distance of two-thirds of a mile (with the exception of signs placed in front of bus stops).

(2) The Villas, with the highest density of housing of any property on 21st Street and, therefore, generating the greatest demand and need for on-street parking, is the *very last place* that “no parking” signs should be installed on 21st Street.

(3) The installation of the signs by City crews is in *direct violation* of the direction and policy adopted by the City Council on October 19, 2004 when it approved the conversion of 21st Street from a one-way street to a two-way street. The Council approved a design option (designated “Alternative 3”) that included no reduction in on-street parking on 21st Street. Consequently, the signs were installed without lawful authority, in contravention of Council orders and are illegal.

(4) The City’s installation of the signs is in *direct conflict* with the final environmental impact report (“EIR”) on the 21st Street conversion project, certified by the City Council on October 19, 2004, which states on page 4-5 (copy attached) that the option selected by the City would involve *no reduction* in parking on 21st Street.

(5) The sign installations are at odds with the design diagrams included in the final EIR certified by the City Council. The diagram set forth as Figure 5.2-15 of the final EIR (copy attached) depicts one north and one south-bound lane, north and south-bound Class II (dedicated) bike lanes and *parked cars on both sides of 21st Street*.

(6) Since the time the City Council approved the conversion plan in October 2004, the Department of Transportation has sent out two mailings to residents updating them on the status of the project and informing them of “New Additions” to the project. While the second mailing noted the possibility of reducing on-street parking on Castro Way to accommodate the “pork chop” island approved by Council, as well as a new “parking zone” at the 21st St./2nd Ave. intersection, these mailings made *no mention whatsoever* of any parking reductions on 21st Street. The “No Parking At Any Time”

Mayor Fargo and Council Members
January 22, 2008
Page 4

sign the City installed directly in front of the Villas is **222 feet** from 2nd Avenue and, consequently, is certainly not needed to accommodate intersection traffic at the 21st St /2nd Ave. intersection.

(7) The City has ***failed to notify us or any of the residents and property owners*** on 21st Street, Castro Way and Florence Place before it installed the two "No Parking" signs.

For the City to now, more than five years into the planning for this conversion, suddenly drop such signs in front of people's property, a scant two weeks before the conversion is set to be completed, represents a complete breakdown in the planning process and a failure of open government.

Is this the way the City treats its property and business owners or are we being singled out for special treatment? Does the City make it a practice to drop "No Parking" signs in front of commercial properties that are largely dependent upon street parking to accommodate their customers without giving them prior notice or discussing the matter with them in advance?

There has been ***no opportunity for us to address the major negative consequences of these signs for the folks who live on 21st Street, Castro and Florence Place***.

There has been ***no assessment of the major negative economic impact of these signs on my family's property***.

I would normally not bring a matter such as this to the Council for action. However, our attempts to resolve this matter through Ms. Hammond's office and the Department of Transportation have been singularly unsuccessful. Our phone calls to the project manager, the project spokesman and the transportation specialist assigned to the project have gone unanswered. Time is running short, with the signs due to be unveiled in a scant nine days.

Since last night, we have been out circulating petitions and gathering signatures from the residents of 21st Street, Castro Way, Florence Place and 2nd Avenue to oppose these signs. We will submit those petitions to the Council at its next hearing. However, we want you to know that, so far, ***we have yet to encounter a single resident who thinks that these signs are anything but a very, very bad idea*** that will do nothing but harm his or her neighborhood if they are not removed before January 31st.

Mayor Fargo and Council Members
January 22, 2008
Page 5

I very much appreciate your help and assistance in protecting and defending our neighborhood and our property by seeing to it that these signs are removed. Please feel free to contact me at any time to discuss this issue.

Very truly yours,

Powell Properties, L. P.

By _____
Craig K. Powell, General Partner

Enclosures

cc: City Manager Ray Kerridge
City Attorney Eileen Teichert
Mr. Jerry Way, Director
Department of Transportation
Mr. Nader Kamal, Special Projects Engineer
Department of Transportation

Enclosures

CKP/lm
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MAYOR/COUNCIL OFFICE
CITY OF SACRAMENTO

2008 JAN 15 A 11:52

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Tel: (916) 446-3978
Fax: (916) 244-0507

jpachl@sbcglobal.net

January 15, 2008

Mayor Heather Fargo
City Council
City of Sacramento

cc: City Manager Ray Kerridge

RE **Council Workshop on Greenbriar project. January 15, 2008 agenda. 6 p.m.**
Supplement to Comment Letter dated January 8, 2008

Dear Mayor Fargo and City Councilmembers,

My letter to Council dated January 8, 2008, on behalf of Sierra Club, Friends of Swainson's Hawk, and ECOS, described how the proposed Greenbriar is unlikely to provide sufficient funding to pay costs of project infrastructure and facilities.

At the January 8, 2008, Council meeting, Staff stated that the total average fee burden for the project would be \$60,300, and that this was 14.7% of the average sales price of new homes in Greenbriar. See Staff's power point presentation to Council, page 63, attached **EXHIBIT A**. This was a serious misrepresentation of the information contained in the Infrastructure Financing Plan, dated August 14, 2007, attached to the FEIR and presented to Planning Commission.

In fact the Greenbriar Public Facilities Finance Plan. (8/14/07) Table 9 page 33, "Infrastructure Burden," attached **EXHIBIT B**, shows Greenbriar's cost burden as 19.5% of the sale price of a medium-density home (shown as having a cost burden of \$60,300), 16.4% of the sale price of low-density homes, and 14.7% of the sale price of high density residences. The Finance Plan, Table 9, **EXHIBIT B**, projects the sale prices as follows: low-density residential, \$440,000; medium density, \$310,000, and high density, \$250,000, based on 2005 Natomas prices (which have since declined).

Financing Plan Table 9 (EXHIBIT B) states that development having a public infrastructure burden between 15 -20% of market sale price may be feasible, but that development having an infrastructure burden above 20% is infeasible.

As stated in more detail my letter of January 8, 2008, Table 9 cost projections are highly speculative, and the actual infrastructure burden as a percentage of sale price will likely be higher, A few factors likely to increase the cost burden as percentage of sales prices are:

- Financing Plan Table 9 sales prices are based on 2005 Natomas price levels, (Table 10, p. 34. footnote 1, **EXHIBIT C**.) Home prices have since declined. Future prices are unpredictable, but "creative loans" and loans requiring minimal down payments, which made escalating prices "affordable" for many buyers, are no longer unavailable; and "investors" who bought houses in anticipation of re-selling for profit in a rising market will likely comprise a much smaller part of the buyer market and be much more cautious.
- Projected habitat mitigation costs apparently assume a .5 to 1 mitigation ratio. In fact, the wildlife agencies will require a much higher mitigation ratio.
- The Financing Plan, p. 33, Table 9, footnote 2, (**EXHIBIT B**) excluded the cost of acquiring habitat mitigation land because it is dedicated, and apparently assumes, unrealistically, that the developer will not include its cost of acquiring mitigation land in developer's calculation of cost burden as a percentage of sale price in considering project feasibility.
- Projected levee fees are apparently based on SAFCA's estimated cost of upgrading the levees to 200-year level. Previous levee projects, much smaller than the pending project, often incurred major cost overruns. Thus, it seems highly possible that the cost of the project, and thus levees fees demanded of developers, will be substantially higher than projected now.

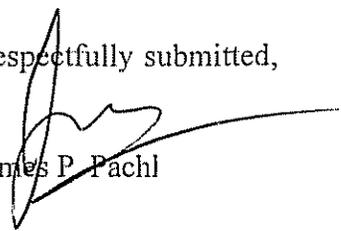
The Finance Plan, p. 23, states that the developer "may be required to advance funds and construct additional off-site roadway improvements". There is no documentation available to public which supports Staff's claim that the amount presently allocated for mainline freeway will satisfy the concerns of the California Department of Transportation.

The Financing Plan, Table 9, page 33, includes no funding to implement the Joint Vision requirement that development provide 1 acre of open space mitigation in the Sacramento County area of the Basin for every acre developed. The FEIR's assertion that detention basins, bicycle paths, and freeway buffers within the project area are "open space" under Joint Vision are contrary to the Joint Vision MOU and Government Code §§56060 and 65560

If approved, the most likely scenario is that as Greenbriar nears construction, the developer will demand that City substantially reduce or defer some of the infrastructure and funding requirements so that the project is deemed feasible by the developer. This happened repeatedly with the NNCP, resulting in a huge deficit of promised and necessary infrastructure. Greenbriar is only more of the same.

City should not repeat the mistakes of the NNCP financing. There is plenty of time for an independent audit of all aspects of the performance of the NNCP Financing Plan to determine what went wrong and how to avoid the mistakes of the NNCP, and to thoroughly review all elements of the financial implications of the proposed Greenbriar project, before considering project approval. Rushing the project to approval on January 22 would be fiscally irresponsible.

Respectfully submitted,



James P. Pacht

Greenbriar Finance Plan

- Total Avg Fee Burden: \$60,300

- ◆ 14.7% of sales price (15% target, 20% max.)
- ◆ \$36,500 for all City Fees
- ◆ \$23,800 for Other Agency Fees

- Total Avg *Annual Tax* Burden: \$5,165

- ◆ 1.7% of Assessed Value (1.8% typical for new growth)
- ◆ \$44 annually for new Park Maintenance Assessment
- ◆ \$1,200 annually for Mello-Roos bonds for infrastructure

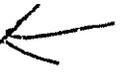


EXHIBIT A

63

DRAFT

Table 9
Greenbriar Public Facilities Financing Plan
Infrastructure Burden - Residential Market Rate Units

| Item | Low-Density Residential | Medium-Density Residential | High-Density Residential |
|--|-------------------------|----------------------------|--------------------------|
| Assumptions | | | |
| Unit Size (sq ft) | 2,700 | 1,600 | 1,000 |
| Lot Square Feet | 5,000 | 3,000 | n/a |
| Building Valuation | \$162,918 | \$96,544 | \$65,100 |
| → Finished Unit Selling Price [1] | \$440,000 | \$310,000 | \$250,000 |
| City Fees | | | |
| Building Permit | \$1,505 | \$1,055 | \$841 |
| Plan Check | \$499 | \$348 | \$276 |
| Technology Surcharge | \$80 | \$56 | \$45 |
| Business Operation's Tax | \$65 | \$39 | \$26 |
| Strong Motion Instrumentation Fee | \$16 | \$10 | \$7 |
| Major Street Construction Tax | \$1,303 | \$772 | \$521 |
| Residential Development Tax | \$385 | \$385 | \$250 |
| Housing Trust Fund | \$0 | \$0 | \$0 |
| Water Service Fees | \$4,920 | \$4,920 | \$1,375 |
| Citywide Park Fee | \$4,493 | \$4,493 | \$2,647 |
| Fire Review Fee | \$0 | \$0 | \$38 |
| CFD No. 97-01 Bond Debt | \$967 | \$516 | \$309 |
| Air Quality Mitigation [1] | \$450 | \$240 | \$144 |
| Habitat Mitigation [2] | \$7,000 | \$4,400 | \$1,700 |
| Subtotal City Fees (rounded) | \$21,700 | \$17,200 | \$8,200 |
| Other Agency Fees | | | |
| SAFCA CIE Fee | \$222 | \$222 | \$119 |
| SAFCA Assessment District Bond Debt | \$2,224 | \$2,224 | \$1,192 |
| Supplemental Levee Fee (PRELIM ESTIMATE) [3] | \$3,500 | \$2,500 | \$2,000 |
| School Mitigation | \$11,835 | \$11,835 | \$4,734 |
| SRCSO Sewer Fee | \$7,000 | \$7,000 | \$7,000 |
| Subtotal Other Agency Fees (rounded) | \$24,800 | \$23,800 | \$15,000 |
| Greenbriar Public Facilities Fee (rounded) [4] | \$4,200 | \$3,600 | \$2,500 |
| Greenbriar Developer/CFD (rounded) [4] | \$21,300 | \$15,700 | \$11,100 |
| TOTAL COST BURDEN | \$72,000 | \$60,300 | \$36,800 |
| → Cost Burden as % of Unit Sales Price | 16.4% | 19.5% | 14.7% |

Note: Feasibility Range, based on numerous feasibility analyses conducted by EPS over the last two decades, is described as follows:
 Below 15%: Feasible
 15% - 20%: May be feasible
 Above 20%: Infeasible

Source: Greenbriar Developers; City of Sacramento; and EPS

- [1] Air Quality Mitigation cost is a preliminary estimate based on input from project applicant
- [2] Based on total estimated habitat mitigation costs excluding land acquisition (since land is dedicated) for the Greenbriar project. Refer to EPS# 17400 for details
- [3] Ballpark estimate provided by developer as a placeholder
- [4] It is assumed here that a CFD is used to fund roadway, sewer, water, landscape corridors, and drainage facilities and that a Greenbriar Public Facilities Fee is established to fund other public facilities. See Table A-12

EXHIBIT

B

Financing Plan

8/14/07

DRAFT

Table 10
Greenbriar Public Facilities Financing Plan
Two-Percent Test of Total Tax Burden

| Item | Assumption | Low-Density Residential | Medium-Density Residential | High-Density Residential |
|--|------------|-------------------------|----------------------------|--------------------------|
| Home Price Estimate [1] | | \$440,000 | \$310,000 | \$250,000 |
| Homeowner's Exemption [2] | | (\$7,000) | (\$7,000) | (\$7,000) |
| Assessed Value [3] | | \$433,000 | \$303,000 | \$243,000 |
| Property Tax | 1.00% | \$4,330 | \$3,030 | \$2,430 |
| Other Ad Valorem Taxes [4] | 0.15% | \$650 | \$455 | \$365 |
| Total Ad Valorem Taxes | | \$4,980 | \$3,485 | \$2,795 |
| Special Taxes and Assessments (Proposed) | | | | |
| Reclamation Dist. No. 1000 - O & M Assess | | \$51 | \$34 | \$17 |
| SAFCA A.D. No. 1 - O & M Assessment | | \$74 | \$50 | \$25 |
| SAFCA Consolidated Capital Assessment District | | \$80 | \$80 | \$53 |
| TMA CFD [5] | | \$21 | \$21 | \$16 |
| Parks Maintenance [6] | | \$52 | \$52 | \$30 |
| City of Sacramento A.D. No. 96-02 - Library | | \$27 | \$27 | \$27 |
| City of Sacramento A.D. No. 89-02 Lighting Dist. CFD No. 97-01 [7] | | \$66 | \$66 | \$45 |
| | | \$108 | \$108 | \$75 |
| Total Special Taxes and Assessments | | \$478 | \$436 | \$288 |
| Proposed Infrastructure CFD (Preliminary Estimate) | | \$1,500 | \$1,200 | N/A |
| Parks Maintenance Cost (Preliminary Estimate) | | \$44 | \$44 | \$26 |
| Total Tax Burden | | \$7,002 | \$5,165 | \$3,108 |
| Tax Burden as % of Home Price | | 1.59% | 1.67% | 1.24% |

Source: Gregory Group, City of Sacramento, Greenbriar landowners, and EPS.

"two_percent"

- [1] Home prices are based on 2005 price levels in North Natomas from the Gregory Group. "Low density" assumes 2,700-square-foot homes, "medium density" assumes 1,600-square-foot homes, and "high density" assumes 1,000-square-foot attached units.
- [2] An owner-occupied single-family residence is allowed a \$7,000 reduction of the assessed value of the property for the purposes of calculating the annual property tax.
- [3] The adjusted assessed value is the value upon which the 1% property tax rate, as allowed under Proposition 13, is calculated.
- [4] Other Ad Valorem taxes include regional sanitation bonds and school general obligation bonds.
- [5] Greenbriar may elect to create a separate TMA; the costs, however, are not known at this time. As a proxy, the rates for the North Natomas TMA are shown. Please note that costs to provide transit service to Greenbriar may be significantly higher than those shown here.
- [6] Assumes same rate as CFD 2002-2 Parks Maintenance.
- [7] Assumes that Greenbriar pays the same rate as development east of I-5.

EXHIBIT
C

Financing Plan

8/14/07

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CITY OF SACRAMENTO

2008 JAN 22 A 11: 31

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ketejr@sbcglobal.net

**AGENDA
MATERIAL**

Honorable Mayor Heather Fargo
Members of the City Council
City of Sacramento
915 I Street
Sacramento, CA 95814-2604

Re: **Greenbriar** (M05-046 / P05-069) Public Hearing
Agenda Item No. 16 (January 22, 2008)

Dear Mayor Fargo and City Council Members:

I am sending you this letter to expand upon the statement I made to you this past Tuesday, January 15, 2008 at the continuing Workshop on the Greenbriar Application. I am a twenty-five year resident of the City of Sacramento and currently own a home in the McKinley Park area where I have lived since 1990. In addition, I am writing on behalf of ECOS on whose Board I currently serve. There are many reasons why you should not approve the Greenbriar project, but I will focus on just one: the inconsistency of Greenbriar with the Sacramento International Airport Comprehensive Land Use Plan (CLUP) and related state land use law.

As you know, over 70% of the proposed project's 577 acres (the western portion) are in the "overflight" zone of the Airport. Also, as you know, the Sacramento Area Council of Governments (SACOG) which sits as the Airport Land Use Commission (ALUC) adopted the current CLUP.

On December 7, 2005, the ALUC staff prepared a written review letter [ALUC letter] of Greenbriar for the City Planning Department for conformance with the CLUP and found the project incompatible with one of the CLUP's land use compatibility guidelines regarding safety. (See Attachment 11-ALUC Letter of Consistency Determination attached to draft ALUC Override Resolution No. _____ (January 22, 2008).)

On Tuesday, January 8, 2008, I attended the City Council workshop on Greenbriar on the agenda. I watched as Mr. Mende of your staff and Mr. Jacobs of EDAW, the consultant firm which prepared the Environmental Impact Report on the project, made PowerPoint presentations which stressed how Greenbriar is compatible with the CLUP and land use guidelines. In my opinion, both presentations failed to address state law and downplayed problems with the CLUP.

The CLUP land use guidelines are based on California Public Utilities Code § 21670 which declares two priorities in the public interest for land use decision making within areas around public airports to the extent that these areas are not already devoted to incompatible uses:

1. To protect public health, safety and welfare through the adoption of land use standards that minimize the public's exposure to safety hazards and excessive level of noise; [and]
 2. To provide for the orderly development of each public use airport in California without the encroachment of incompatible land uses.
- (See, also, page 1 of the current Sacramento International Airport CLUP, amended January 1994)

Simply stated, public safety and the promotion of future airport growth without encroachment as the dual overriding concerns that SACOG relied upon to adopt the CLUP and its land use guidelines.

Measured by § 21670, Greenbriar is incompatible with the CLUP:

First, SACOG's acting as the ALUC found the CLUP safety policy *prohibited* the placement of the proposed light rail station within the Greenbriar project area because it is in an overflight zone. SACOG's December 7, 2005 letter to Ms. Arwen Wacht of the City Planning Department (mentioned above) made such a finding ["Finding #4"] in its written review of the project. The January 22, 2008 City Staff Report Attachment 11-the ALUC Override Resolution No. ____ relying on that letter, acknowledges the finding (see **Background**, ¶ G of the Resolution). At the January 8, 2008 Workshop, both Mr. Mende and Mr. Jacobs also acknowledged the finding-see page 38 of Mr. Mende's January 8, 2008 PowerPoint [Consistency with NJV MOU: Airport Protection] and page 19 of Mr. Jacobs's January 8, 2008 PowerPoint [ALUC Determination].

In short, it is undisputed that the planned light rail transit station in the overflight zone is incompatible and inconsistent with the CLUP.

Secondly, SACOG's December 7th letter in describing its ALUC review authority informed City Staff that

"[t]he CLUP has three policy areas that each development application must pass (1) height; (2) noise; and (3) safety. ... *For safety, the proposed land uses must restrict high concentrations of people in potential flight safety hazard areas.*" (Page 1, italics added for emphasis.)

On pages 2 and 3, SACOG described the CLUP's safety policy which allows compatible residential, commercial and office development land uses in the overflight zone so long as "they do not result in a large concentration of people, which is defined as an average density of greater than 25 persons per acre per hour during any 24 hour period [criterion #1], and not to exceed 50 persons per acre at any time for all land use types [criterion #2]."

On page 4, SACOG informed City Staff that "[t]he CLUP does not prescribe the methodology for determining whether a maximum density has been exceeded or not. However, the applicant has worked extensively with ALUC staff to establish a methodology." SACOG went on to say that "the evaluation method [was] agreed upon by both parties...[and that] "[t]he applicant and the ALUC collaborated on the development of [the] spreadsheet" which "provides a breakdown of the calculations used to determine estimated densities at any given time."

In short, SACOG acting as the ALUC used an evaluation methodology to determine whether a maximum density in violation of the CLUP's safety policy had been exceeded which they collaboratively developed with the applicant/developers!

In 1994, the State Legislature added Public Utilities Code § 21674.7 to require that ALUCs throughout the state shall be guided by the Airport Land Use Planning Handbook [Handbook] published by the Division of Aeronautics of the Department of Transportation. As the 2002 version of this Handbook (currently in use) states: [t]he addition of this statute changed the role of the *Handbook* from a useful reference document to one that must be used as guidance in the development of ALUC policies."

That last statement has particular significance when addressing the "Calculation and Findings of Average and Maximum Densities" section wherein ALUC staff represented that both safety policy Criterion #1 and safety policy Criterion #2 were met (see above and page 5 of the December 7, 2005 letter). At first blush, one might think that Greenbriar met the densities required to be consistent with the CLUP.

However, upon closer reading, there is a followup "note" on page 5 which states:

"[t]hese findings for the maximum persons allowed were completed in the spirit in which the current CLUP for Sacramento International was written in 1994. This proposal meets both criteria using that document. Please note the current version of the California Airport

Land Use Planning Handbook (2002) does not recommend concentrations of people within sub-areas of the greater development area. The Handbook provides the State of California's guidance to ALUC's throughout the state on standards. The Greenbriar proposal will have high concentrations of people above 25 person [an] acre on an average hourly basis and above 50 persons per acre at times. The most notable place is surrounding the proposed light rail station (which is outright prohibited in the CLUP). In the spirit in which the current CLUP was written in 1994, the ALUC will consider this proposal compatible with the two density criteria." (Italics and underline added for emphasis.)

In plain English, that means that SACOG in 2005 acting as the ALUC decided to use 1994 standards for evaluating the Greenbriar application instead of the 2002 comprehensive guidance criteria for evaluating density to evaluate whether CLUP safety policy was met. (See Chapter 9 and Appendix C of the 2002 Handbook)

In sum, Greenbriar, in reality, exceeded the maximum thresholds for both density criteria and thus failed a second, separate safety hazard and is, therefore, inconsistent and incompatible with the CLUP safety policy [contrary to the representations in both Mr. Mende's PowerPoint and Mr. Jacobs' PowerPoint].

Thirdly, as mentioned above, one of the CLUP's policy areas that each development application must pass is noise. For noise, a determination is made whether the proposed land use is compatible with the noise impacts of the flight operations. (See ALUC letter, page 1.) The ALUC staff concluded in that same letter that the Greenbriar project was not "subject to the CLUP's noise policies because the project lies outside of the 60 Community Noise Equivalent Level (CNEL) which serves as the demarcation line for restricted development." (See ALUC letter, page 2.) P

That position appears to be highly disingenuous when one considers that the Draft Environmental Impact Report (DEIR) prepared for the project concluded that the project has a significant impact on, among many other significant impacts, noise. Further, the DEIR found that mitigation measures could reduce numerous project impacts, but that a significant and unavoidable impact remains for noise. (January

22, 2008 Staff Report, page 3). Specifically, the Staff Report includes Attachment 2 with the CEQA Findings of Fact and Statement of Overriding Considerations which addresses Noise at pp. 39-45. That section addresses a number of the noise concerns about the project, proposes numerous ways to mitigate the noise to acceptable levels, but also says the following at pp. 43-44:

"[t]he applicant is proposing to dedicate an overflight easement over the entire project site. ... The overflight easement will also grant a right to subject the property to noise and vibration associated with normal airport activity." (DEIR, p.6.3-41)

[¶] "...recorded deed notices are proposed to be required to ensure that initial and subsequent prospective buyers, lessees, and renters of property on the project site, particularly residential property, are informed that the project site is subject to *routine* overflights and associated noise by aircraft from Sacramento International Airport, that the frequency of aircraft overflights is *routine* and *expected to increase through the year 2020 and beyond in accordance with the Sacramento International Airport Master Plan, and that such overflights could cause occasional speech interference, sleep disruption that could affect more than 10 percent of all residents at any one time, and other annoyances associated with exposure to aircraft noise*. The wording of the easement will also be agreed upon by the applicant and the SCAS. Furthermore, the applicant is proposing to require the posting of signs on all on-site real estate sales office and/or at key locations on the project site that alert the initial purchases about the overflight easement and the required deed notices. (DEIR, p.6.3-41, 42)

[¶] *"The overflight easement and recorded deed notices would not change the noise environment; however, they would notify people with above-average sensitivity to aircraft overflights (as well as all other prospective residents) – people who are highly annoyed by overflights – that they are choosing to live in a location where frequent overflights occur."* (Italics added for emphasis.)

In short, the City staff report, on the one hand, finds no inconsistency with the CLUP's noise policy in the overflight zone, but as to the EIR acknowledges the significant impact of noise on potential residents and proposes what amounts to be a "coming to the nuisance" waiver by notice in required deed notices and posting at real estate sales offices.

There is a terrible disconnect here. In trying to find compliance with the CLUP, City staff acts as if there will be no increased footprint for the airport, no increase in the amount and frequency of flights and no accompanying increase in noise contours projecting out over the Greenbriar project area.

Five years ago, the 2002 Sacramento County Grand Jury issued a report which examined noise level contours around the airport and projected increasing areas where the noise would be at levels the City finds unacceptable (60 decibels CNEL) to be extending out within hundreds of feet of Greenbriar by 2010 (when FEMA may allow housing starts). Further, the Grand Jury report found noise levels of 55 decibels CNEL (where speech and sleep disturbance affect significant numbers of people) would cover half of Greenbriar by 2020. As an aside, this does not even begin to address unanswered Single Event Noise Level questions raised by the City Planning Commission which recently voted against the Greenbriar Project.

CALTRANS tells us on their website as part of their oversight function with the FAA that "the basic strategy for achieving noise compatibility within an airport's vicinity is to limit development of land uses that are particularly sensitive to noise. The most acceptable land uses for areas exposed to significant levels of aircraft noise are ones that either involve few people or generate significant noise levels themselves (such as industrial uses)."

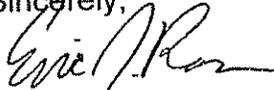
City staff have prepared Attachment 11- the ALUC Override Resolution – wherein the City Council may adopt findings of fact supporting its overriding the ALUC decision that provisions in the proposed Greenbriar project are inconsistent with the CLUP. The issue is whether substantial evidence would support the City Council's specific findings that the disputed portion of the proposed Greenbriar Project is consistent with the public interest purpose as stated in Public Utilities Code § 21670. A review of the background facts contained in the draft resolution in paragraphs A through K along with sections 1 through 5 of the draft resolution shows that there is a lack of substantial evidence to support the council's specific findings that the proposed action is consistent with the purposes of Article 3.5, Chapter 4, Part 1, Division 9 of the Public Utilities Code as stated in Section 21670.

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January 22, 2008
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In conclusion, for the above stated reasons, Greenbriar should be rejected because of its many problems, but specifically for both public safety and noise problems which are contrary to standards which act to assist the orderly growth without encroachment of our vital airport.

Ask yourself, if you yourself would live in Greenbriar or you would encourage any friend or family member of yours to live there given the problems, including the failure to comply with the CLUP? The reasonable answer, I believe, is "no." Please reject Greenbriar and do not adopt the Override Resolution.

Sincerely,



Eric J. Ross

cc: City Manager Ray Kerridge
CalTrans Division of Aeronautics