

Item No. 14

“To Be Delivered” Material **For** **City of Sacramento** **City Council** **Agenda Packet**

Submitted: March 6, 2008

For the Meeting of: March 11, 2008

The attached materials were not available at the time the Agenda Packet was prepared.

Subject: Greenbriar (M05-046/P05-069) Tax Exchange & Open Space Agreements

Contact Information: Scot Mende, New Growth Manger, 808-4756

Please include this “To Be Delivered” material in your agenda packet. This material will also be published to the City’s Intranet.

For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604– (916) 808-7200.



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
March 11, 2008

Honorable Mayor and
Members of the City Council

Title: Greenbriar (M05-046 / P05-069) Tax Exchange & Open Space Agreements

Location/Council District: South of Elkhorn Boulevard, north of Interstate 5, west of Highway 99, and east of Metro Airpark (County) / Adjacent to Council District 1

Recommendation: Adopt the attached resolution that approves a tax exchange agreement and an open space agreement between the City and the County:

Contact: Scot Mende, New Growth Manager, 808-4756; Russell Fehr, Director of Finance, 808-5832

Presenters: Scot Mende and Russell Fehr

Department: Planning and Finance

Division: New Growth

Organization No: 4913 and 1111

Description/Analysis

Summary: The Greenbriar proposal is a request to allow the annexation and the future development of a 577± acre master planned community. The project site consists of farmland located within Sacramento County, located north of Interstate 5, west of Highway 70/99, south of Elkhorn Boulevard, and east of the Metro Air Park site (County). On January 29, 2008, the City Council approved a slate of entitlements – not including a tax exchange agreement. The tax exchange agreement is now ready for Council and Board of Supervisors approval. In addition, the County requested that the City enter into an open space agreement that ensures that any project related development agreements insure compliance by the Project proponent of the open space commitments.

Issues: The City will be responsible for the provision of municipal services after the annexation is approved and effective. The provision of services requires funding. An operating budgetary analysis of the costs of services and the area's generation of City revenue indicated that the projected costs of services and revenue are approximately equal assuming the property tax distribution contained within this agreement.

Policy Considerations: The Mayor and City Council's sustainable budget polices would argue against taking on a fiscal liability in an annexation. The proposed tax sharing agreement results in a fiscally neutral outcome for the City.

Committee/Commission Action: None

Environmental Considerations: The City Council certified the Greenbriar EIR on January 29, 2008. The tax exchange and open space agreements are consistent with the analysis in the EIR. The open space agreement recognizes that the applicant must obtain an Incidental Take Permit from USFWS & CDFG prior to any development of the project site.

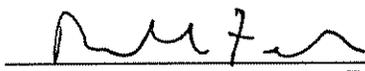
Rationale for Recommendation: Overall, the proposal is consistent with General Plan policies on annexation, development, and land use and the SACOG Blueprint. The tax agreement should provide sufficient revenue to support municipal services when, in the future, the area may be developed.

Financial Considerations: The City and County must adopt a Property Tax Exchange Agreement at least 21 days prior to LAFCo public hearings on the annexation proposal [Section 99(b)(1)(B)(6) of the Revenue & Taxation Code]. The proposed agreement calls for an equal sharing of the municipal property tax revenue generated within Greenbriar. The tax exchange agreement is consistent with the assumptions in the fiscal analysis prepared for the Greenbriar project.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: 
Scot Mende
New Growth Manager

Approved by: 
Carol Shearley
Director of Planning

Approved by: 
Russell Fehr
Director of Finance

Recommendation Approved:



Ray Kerridge
City Manager



Table of Contents:

Report	Pg	1
Attachments		
1 Background	Pg	4
2 Instructions for Locating Previous Reports	Pg	6
3 Property Tax Exchange Agreement Resolution	Pg	7
Exhibit A –Property Tax Exchange Agreement	Pg	8
4 Open Space Agreement Resolution	Page	14
Exhibit A – Open Space Agreement	Page	15

ATTACHMENT 1

BACKGROUND

Property Tax Exchange Agreements

Property tax exchange agreements between an annexing city and the county are a required part of the annexation approval process. An agreement between the city and county must be in place before the local agency formation commission will consider the annexation proposal. The agreements may take the form of project specific (applying to a single annexation) or master (applying to all annexations). A master tax exchange agreement between the City and County of Sacramento was terminated by the County several years ago. This requirement gives counties *de facto* veto power over city annexations. Should the county in question not enter into a tax exchange agreement, then the annexation will not be considered by the local agency formation commission.

These agreements specify the redistribution of property taxes among the city, the county, and other agencies such as special districts. Typically, tax revenues accruing to the county, some special county funds, and special districts are redistributed to the annexing city and the county. The county is responsible for representing the interests of special districts, and there is a meet and confer requirement if the tax exchange will impact a special district.

Greenbriar Fiscal Analysis and Tax Sharing

In order to determine whether the proposed annexation is fiscally viable, from the perspective of the City General fund, and to have the basic information necessary to negotiate a tax exchange agreement, the City commissioned MuniFinancial to prepare a fiscal impact study of the Greenbriar annexation area and its development plan.

The costs of services were projected on a per capita basis. The base budget year for the analysis was FY2005/06. The revenue projections were based on the development plan and took into account unit property values, commercial square footage, and assumed utility use. The analysis indicated that Greenbriar would support current service levels if the municipal share of property taxes were shared equally between the City and Sacramento County, and if all sales tax and utility user tax generated within the project area were allocated to the City.

Equal sharing of the property tax available for local government is consistent with the revenue sharing principles contained in the Natomas Joint Vision Memorandum of Understanding approved by both the Sacramento City Council and the Sacramento County Board of Supervisors.

Approval of the tax sharing agreement and the annexation would result in the City receiving approximately 17 percent (17%) of the property taxes generated within Greenbriar. This is less than the citywide average of 24 percent (24%) outside of redevelopment areas. The reason for this lower share is that a lower proportion of property taxes is available from unincorporated Natomas than in other portions of the

County. The shares of property tax revenue accruing to the County and the contributing special districts and county funds are based on tax rates imposed in the area at the time of Proposition 13. At that time, the area was unserved by a park district and the Natomas Fire Protection District was primarily volunteer-based and had a low tax rate. Only thirty-four percent (34%) of property taxes are currently allocated to local government in Greenbriar, and the rest is allocated to schools districts and agencies. In other portions of the County, including within the City, the overall share of property taxes to local government, as opposed to schools, is higher. For example, within the City the current average combined City and County share of property taxes is approximately 42 percent (42%). In portions of Arden-Arcade or the Fruitridge pocket of the Unincorporated Area, the combined shares of the County and various special districts is close to fifty percent (50%).

Open Space Agreement

The City and County entered into a Memorandum of Understanding (MOU) on December 10, 2002, agreeing to proposed principles of urbanization, open space preservation and revenue sharing for the unincorporated Natomas Joint Vision Area. The MOU envisions that the City will be the agent of development and the County will be the agent of open space.

On November 27, 2007, the County Board of Supervisors approved an open space plan that, if and when implemented, will meet Greenbriar's obligations for 1:1 mitigation pursuant to the Natomas Joint Vision Memorandum of Understanding. The Open Space Plan required:

- The preservation of 491.9 acres of open space (hereinafter "Total Open Space").
- A portion of the Total Open Space, specifically 96.1 acres, will be credited as on-site open space (hereinafter "On-Site Open Space"). For a proposed detention basin to qualify as creditable On-Site Open Space, the detention basin must have a publicly accessible trail consistent with the representations in the Greenbriar PUD Guidelines approved on the date of January 29, 2008 by City Council Resolution 2008-059.
- A portion of the Total Open Space, specifically 395.8 acres of open space, shall be located outside the Greenbriar project (hereinafter "Off-Site Open Space"). All Off-Site Open Space shall have the additional requirement of being located within the unincorporated area of the County of Sacramento and the Natomas Basin.
- The off-site open space may be utilized for dual purposes: 1) meeting the terms of the Natomas Joint Vision MOU, and 2) meeting the mitigation requirements of a Habitat Conservation Plan.

ATTACHMENT 2

INSTRUCTIONS ON LOCATING THE PREVIOUS REPORTS

To review the **City Council report** presented on **January 29, 2008**, Item 14 on the City Council agenda, please go to:

www.cityofsacramento.org

Click on View City Council Meetings, Agendas, etc.

Click on Future & Archived Meetings

Under Archives, Go to 01/29/08 City Council Meetings, Click on View Agenda

Go to Item 14 [Greenbriar (M05-046 / P05-069) – Hearing]

[instructions on reviewing previous reports are included as an attachment to the January 29th report]

ATTACHMENT 3

PROPERTY TAX EXCHANGE AGREEMENT RESOLUTION

RESOLUTION NO.

Adopted by the Sacramento City Council

**ADOPTING THE PROPERTY TAX EXCHANGE AGREEMENT
FOR THE GREENBRIAR ANNEXATION (M05-046 / P05-069)**

BACKGROUND

- A. Whereas, before a Local Agency Formation Commission may act upon a proposed annexation to a city; the City and County must adopt a tax sharing agreement; and
- B. Whereas, landowners and the City of Sacramento have proposed the Greenbriar Annexation to the City of Sacramento; and
- C. Whereas, the County and City have negotiated a property tax exchange agreement specifying how property tax revenues will be allocated should the annexation be approved;

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1. The City Manager is hereby authorized to execute the Property Tax Exchange Agreement on behalf of the City of Sacramento with the County of Sacramento and to do and perform everything necessary to carry out the purpose of this Resolution.

Table of Contents:

- Exhibit A –Property Tax Exchange Agreement
- Exhibit 1 – Illustrative Subdivision Map

EXHIBIT A

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

This TAX EXCHANGE AGREEMENT (hereinafter "Agreement") is made and executed in duplicate this 11th day of March, 2008 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 approximately 577 acres of real property to CITY ("the Greenbriar 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 Greenbriar 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 Greenbriar Annexation,

(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 Greenbriar Annexation.

(c) "Greenbriar Annexation" shall mean the annexation to the CITY as delineated in Sacramento Local Agency Formation Commission Application Control Number "LAFC 10-05", 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) "Natomas Vision MOU" shall mean the Memorandum of Understanding entered into December 10, 2002, by and between the COUNTY and the CITY which is attached hereto as Exhibit "A".

(e) "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, County Library Fund, Natomas Fire Protection District, and County Road Fund.

(f) "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.

(g) "Single-Purpose/Regional Tax Generating Land Use" shall mean non-residential land uses which generate Sales Tax Revenue or Transient Occupancy Tax Revenue from businesses attracting customers beyond the residents of the North Natomas community such as hotels, motels, auto dealers, shopping malls, and "big box" retail establishments

(h) "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 of the California Revenue and Taxation Code and the Natomas Vision MOU and (b) to fairly allocate Sales Tax and Transient Occupancy Tax Revenue collected within the Annexation Area as provided for in the Natomas Vision MOU.

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

NAME	Available Tax Increment		Annexation Shares
	BEFORE ERAF	ERAF	
COUNTY LIBRARY	2.223420		2.223420
COUNTY ROADS	0.107840		0.107840
COUNTY GENERAL	47.874900	(26.885783)	20.989117
NATOMAS FIRE	11.285210	(0.010338)	11.274872
Net	61.491370	(26.896121)	34.595249

County Share (50%)

17.297625

City Share (50%)

17.297625

(a) CITY shall receive 17.2976245% of the Property Tax Revenue to be allocated to its General Fund.

(b) COUNTY shall receive 17.2976245% of the Property Tax Revenue to be allocated to its General Fund.

Section 4. Sharing of Sales Tax and Transient-Occupancy Tax Revenues.

(a) If subsequent to the annexation date the CITY rezones any property within the Annexation Area from a residential land use to a Single Purpose/Regional Tax Generating and Use (including any land use generating Transient Occupancy Tax Revenue, the COUNTY and the CITY shall share Sales Tax and Transient Occupancy Tax Revenue as follows:

(i) The COUNTY and the CITY share equally in the Sales Tax and Transient Occupancy Tax Revenue collected with the area of such rezone.

(b) If any property within the Annexation Area is rezoned by the CITY from a residential land use to a Single Purpose/Regional Tax Generating 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

(c) This Sales Tax sharing shall not apply to commercial rezones for land uses directly servicing the North Natomas community such as gas stations, restaurants, grocery stores, department stores, and other community or local commercial establishments.

Section 5. Adjustment of Property Tax Shares. In the event that the COUNTY is entitled to share in any Sales Tax and Transient Occupancy Tax Revenue pursuant to Section 4 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 and Transient Occupancy Tax Revenue. If the COUNTY's share of Sales Tax and Transient Occupancy 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 Revenue was collected.

Section 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. Effect of Tax Exchange Agreement. This Agreement shall be applicable solely to the Greenbriar Annexation 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, nor does it alter or enlarge any revenue sharing obligations of the City by way of incorporation on July 1, 2000.

Section 13. 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 14. 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 14. 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.

Section 15. 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: _____
City Manager

(SEAL)

ATTEST: _____
City Clerk

Approved As to Form:

City Attorney

ATTACHMENT 4

OPEN SPACE AGREEMENT RESOLUTION

RESOLUTION NO.

Adopted by the Sacramento City Council

**ADOPTING THE OPEN SPACE AGREEMENT
FOR THE GREENBRIAR ANNEXATION (M05-046 / P05-069)**

BACKGROUND

- A. Whereas, before a Local Agency Formation Commission may act upon a proposed annexation to a city; the City and County must adopt a tax sharing agreement; and
- B. Whereas, the County of Sacramento has requested an open space agreement as a companion document to the tax exchange agreement; and
- C. Whereas, the County and City have negotiated an open space agreement specifying how open space will be provided should the annexation be approved;

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1. The City Manager is hereby authorized to execute the Open Space Agreement on behalf of the City of Sacramento with the County of Sacramento and to do and perform everything necessary to carry out the purpose of this Resolution.

Table of Contents:

- Exhibit A – Open Space Agreement
- Exhibit 1 – Illustrative Subdivision Map

EXHIBIT A

**OPEN SPACE AGREEMENT
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SACRAMENTO,
THE COUNTY OF SACRAMENTO AND NORTH NATOMAS 575 INVESTORS
REGARDING THE DELIVERY OF OPEN SPACE FROM THE GREENBRIAR
DEVELOPMENT**

This Memorandum of Understanding Regarding the Delivery of Open Space From the Greenbriar Development (hereinafter "Agreement") dated as of March 11, 2008 for reference purposes, is made and entered into by the County of Sacramento, a political subdivision of the State of California, (hereinafter referred to as "County"), the City of Sacramento, a charter municipal corporation, (hereinafter referred to as "City") and North Natomas 575 Investors, LLC, a California limited liability company ("Developer").

RECITALS

Whereas, City and County entered into a Memorandum of Understanding, hereinafter referred to as Joint Vision MOU, on December 10, 2002 agreeing to principles of urbanization, open space preservation and revenue sharing for unincorporated Natomas; and

Whereas, on November 27, 2007 the County Board of Supervisors approved an open space plan (hereinafter "Open Space Plan") that, when implemented, will meet the Greenbriar Developer's obligations for 1:1 open space mitigation for the Greenbriar Development Project (hereinafter the "Project") pursuant to the Joint Vision MOU. The Project's Open Space Plan requires:

- The preservation of 491.9 acres of open space (hereinafter "Total Open Space").
- A portion of the Total Open Space, specifically 96.1 acres, will be credited as on-site open space (hereinafter "On-Site Open Space"). In order for a proposed detention basin to qualify as creditable On-Site Open Space, the detention basin must have a publicly accessible trail consistent with the representations in the Greenbriar PUD Guidelines approved on the date of January 29, 2008 by City Council Resolution 2008-059.
- A portion of the Total Open Space, specifically 395.8 acres of open space, shall be located outside the Project boundary (hereinafter "Off-Site Open Space"). All Off-Site Open Space shall have the additional requirement of being located within the unincorporated area (as of the date of dedication thereof) of the County of Sacramento within the Natomas Basin.
- The Off-Site Open Space acreage may be utilized for dual Project purposes: 1) meeting the terms of the Natomas Joint Vision MOU, and 2) meeting the mitigation requirements of a Habitat Conservation Plan and/or incidental take and/or habitat mitigation permit(s) for the Project.

Whereas, on January 29, 2008, the City Council adopted Resolution 2008-053 "Certifying the Environmental Impact Report and Adopting the Mitigation Monitoring And Reporting Program for the [Greenbriar Development] Project (M05-046/P05-069)".

Whereas, City offers its assurance to County, and County accepts City's offer of assurance, that prior to impacting open space resources by the issuance of a grading permit, the Project shall secure dedication of the requisite Off-Site Open Space;

Whereas, County offers its assurance to City, and City accepts County's offer of assurance, that the Project in its current form as of January 29, 2008 and for entitlement purposes and implementation thereof, is consistent with the 1:1 open space mitigation ratio set forth in the Natomas Joint Vision MOU.

Whereas, County, City and Developer agree that it is in the best interest of the parties, both individually and collectively, to work in a collaborative fashion and to implement the goals stated herein.

AGREEMENT

Now, therefore, City, County and Developer agree as follows:

1. Incorporation of Recitals.

The above Recitals are hereby incorporated into this Agreement as if set forth in full herein.

2. Conditions Precedent to the City's Granting of Subsequent Project Entitlements.

The City shall ensure that any Project related Development Agreements insure compliance by the Project proponent of the open space commitments as defined herein.

3. Satisfaction of Open Space Requirements.

The City shall ensure that, prior to impacting open space resources within the Project by the issuance of a grading permit, any and all Project related subdivision maps satisfy the On-Site Open Space and Off-Site Open Space requirements as defined herein consistent with the Natomas Joint Vision mitigation requirement. The County acknowledges that the following proposed mitigation acreage shown on the map attached hereto as Exhibit A would qualify to satisfy such open space mitigation requirement. The City may approve substitution of other properties and/or acreage for any of the properties listed below to satisfy such requirement, subject to the County's determination that such other properties and/or acreage meet the Natomas Joint Vision qualifications for open space. Except as otherwise provided herein, all open space dedications satisfying this Natomas Joint Vision mitigation requirement shall be made to the City, and may be made by easement or in fee (by deed or by irrevocable offer of dedication):

- a. **On-Site Open Space Requirements:** The following on-site open space properties are consistent with the Natomas Joint Vision mitigation requirements:

- 37.9 acre detention basin / lake, with a public access trail designed and installed consistent with the Greenbriar project mitigation measures, to the satisfaction of the City.
 - 27.5 acre freeway buffer with a pedestrian/bicycle trail and tree plantings designed and installed consistent with the Greenbriar project mitigation measures, to the satisfaction of the City.
 - 30.7 acre Lone Tree Canal buffer, improved consistent with the Greenbriar project mitigation measures, to the satisfaction of the City.
- b. **Off-site Open Space Requirements:** The following Off-Site Open Space properties are consistent with the Natomas Joint Vision mitigation requirements
- 235.4 acre Spangler property.
 - 65.0 acre Tsakopoulos property
 - 15.9 acre West Lakeside Buffer property.
 - An additional 49.0 acres of currently unidentified habitat mitigation property as referenced in the project Environmental Impact Report.
 - An additional 30.5 acres of unidentified property, pursuant to County Board of Supervisors action on November 27, 2007, shall be dedicated to the County.
- c. **Habitat Conservation Plan (HCP)/Dual Habitat Mitigation:** Development of Greenbriar will require the Developer to apply for, and obtain, incidental take permit(s) under CESA and federal ESA. At this time, it is anticipated and expected that the agencies will require the preparation of a habitat conservation plan (HCP). Based on the City's prior experience, it is anticipated that a third party, such as The Natomas Basin Conservancy ("NBC"), may be asked to assist in the implementation of the HCP established for the Project. The NBC is currently responsible for implementing the Natomas Basin Habitat Conservation Plan ("NBHCP", or the "Plan"). Pursuant to the Plan, developers are required to dedicate acreage, as well as to provide funding for development of that acreage into suitable habitat, as a prerequisite to issuance of urban development permits. Under the NBHCP, the NBC is given a certain amount of discretion to forego development of the dedicated acreage as habitat, and instead, to sell, transfer or otherwise to replace the dedicated acreage with other lands which, when given consideration to the habitat being maintained and managed by the NBC, provide enhanced value from the standpoint of endangered species protection, and from the standpoint of endangered species habitat preservation and enhancement. To the extent that the HCP (or incidental take and/or other habitat mitigation permit(s)) approved by DFG and/or USFW under CESA or the federal ESA for the Project authorizes the NBC or other third party to substitute or accept different properties from those specified in Paragraphs 2.a. and 2.b. above, the parties agree that the replacement of one or more of the aforementioned open space properties specified above with other

properties shall satisfy the aforementioned open space requirements of this MOU, provided that any open space property designated as a replacement or substitution for those specified in Paragraph 2.b. shall be located within the unincorporated area of Sacramento County.

As noted above, the open space dedications required hereunder to satisfy the Natomas Joint Vision mitigation requirements may also serve the dual purpose, either before or after these dedications are made to the City or County, to allow the Project to receive, as part of the HCP or incidental take and/or other habitat mitigation permit(s) for the Project, habitat mitigation credits with respect to these open space areas. City and County acknowledge that the conditions of any such HCP or incidental take and/or other habitat mitigation permit(s) may require the installation of additional habitat improvements or imposition of additional restrictions against the open space properties. Subject to satisfaction of any such additional conditions or requirements imposed by the state and/or federal agencies for such HCP or incidental take and/or other habitat mitigation permit(s), an open space area that would otherwise be dedicated to the City or County hereunder may be dedicated consistent with the permit(s) to a habitat conservation entity, such as NBC, or another governmental entity. Similarly, with respect to any open space property dedicated hereunder to the City or County prior to approval of the HCP or issuance of an incidental take and/or other applicable habitat mitigation permit(s), City and County will cooperate with any efforts to incorporate such dedicated open space areas into the HCP or incidental take permit(s) and/or other applicable habitat mitigation permit(s), so long as such habitat mitigation efforts or requirements do not conflict with the Natomas Joint Vision mitigation requirements.

d. City shall notice County in writing 45 days prior to the granting by City of any subsequent Project entitlements

e. If Greenbriar is developed in phases, the amount of On-Site and Off-Site Open Space to be provided hereunder shall be in proportion to the amount of Greenbriar acreage proposed to be impacted by such development by the issuance of a grading permit therefor.

4. Determination of Vision Consistency by County of all Unidentified or Substitute Open Space Locations.

a. With respect to each unidentified open space property listed above, and any proposed substitution of an open space property listed above, the County must determine, in writing, that the proposed open space property and/or acreage satisfies the qualifications and requirements for Open Space as defined in the Natomas Joint Vision Memorandum of Understanding to be counted towards the requisite Off-Site Open Space acreage total.

b. Any determination of consistency of a proposed property and/or acreage as open space with the Natomas Joint Vision open space requirements and qualifications by County as required herein shall be made by the County Executive,

which determination may be appealed to the County Board of Supervisors.

5. Additional Approvals Required for Improvements to Open Space.

County and City acknowledge and agree that all required improvements within the Total Open Space acreage, in whole or part, shall satisfy all state, federal and local regulatory agency requirements in addition to the aforementioned Section 2 approvals by County. Nothing in this agreement is intended to limit or restrict U.S. Fish and Wildlife and the California Department of Fish and Game in their consideration of Developer's applications for incidental take and/or other habitat mitigation permits or other entitlements under the federal Endangered Species Act and the California Endangered Species Act.

6. Amendments and Waivers.

This Agreement constitutes the entire understanding of the parties thereto and shall not be altered or amended except by a written amendment or other supplementary written agreement, and executed under the proper authority by County, City and Developer. The failure of either party to exercise the rights granted herein shall not constitute a waiver either at the time or upon a later occurrence.

7. Construction and Interpretation.

It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiations, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construction or interpretation of this Agreement.

8. Written Communications and Notice.

Any notice, request, consent, approval or communication that either party desires or is required to give to the other party pursuant to this Agreement shall be in writing and either served personally, sent by fax as evidenced by a fax transmittal, or sent by prepaid first class mail, or nationally recognized over-night delivery company. Such matter shall be addressed to the other party at the following addresses:

To County, at:
County of Sacramento
700 H Street, 7th floor
Sacramento, CA 95814
Attention: County Executive

To City, at:
City of Sacramento
915 I Street, 5th floor
Sacramento, CA 95814
Attention: City Manager

To Developer, at:

North Natomas 575 Investors, LLC
c/o AKT Investments
7700 College Town Drive, Suite 101
Attn: Angelo K. Tsakopoulos

9. Effective Date

This Agreement shall be effective upon the date it is fully executed by the parties.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows:

COUNTY OF SACRAMENTO

CITY OF SACRAMENTO

By: _____
County Executive

By: _____
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
County Counsel

By: _____
City Attorney

ATTEST

By: _____
City Clerk

DEVELOPER

North Natomas 575 Investors, LLC

By: North Natomas Sac Region, LLC
Manager

By: AKT Investments, Inc.
Manager

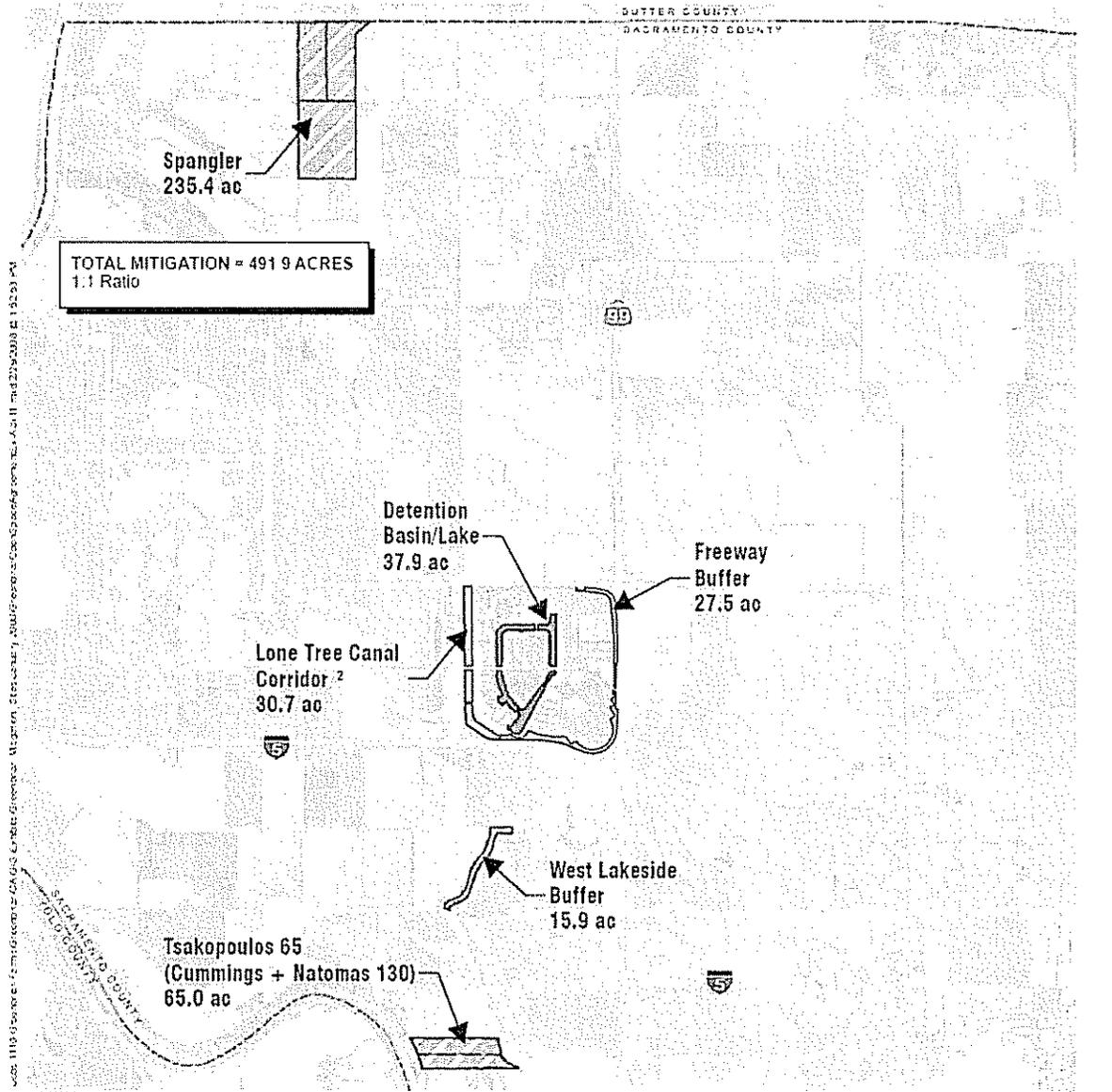
By: _____
Title: _____

Date: _____

Greenbriar Open Space Mitigation

EXHIBIT A

March 11, 2008



NOTES

All numbers are rounded to nearest tenth. Unless otherwise indicated, all numbers were obtained from the Environmental Impact Report and/or the Effects Analysis prepared for the Greenbriar project. On-site acreage calculated from a GIS produced by Wood Rodgers.

Not Shown on Exhibit

- 49.0 acre unidentified site as required by EIR within unincorporated Sacramento County portion of Natomas Basin
- 30.5 acre unidentified site within unincorporated Sacramento County portion of Natomas Basin, pursuant to County Board of Supervisors action on November 27, 2007. This number was not identified in the Greenbriar EIR, however the applicant has since committed to providing this additional acreage.

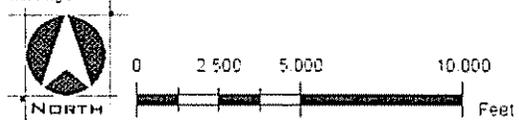
Legend

On-Site Mitigation

- Lone Tree Canal Corridor
- Freeway Buffer
- Detention Basin/Lake

Off-Site Mitigation

- Spangler, Tsakopoulos 65, West Lakeside Buffer



WOOD RODGERS
 DEVELOPERS INNOVATIVE DESIGN SOLUTIONS
 3301 C Street, Bldg. 100-B Tel: 916.341.7760
 Sacramento, CA 95816 Fax: 916.341.7767