

RESOLUTION NO. 2008-145

Adopted by the Sacramento City Council

March 11, 2008

**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.

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Exhibit A – Open Space Agreement

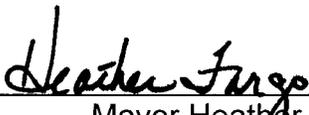
Adopted by the City of Sacramento City Council on March 11, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Councilmember Sheedy.



 Mayor Heather Fargo

Attest:



 Shirley Concolino, City Clerk

**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").

R E C I T A L S

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

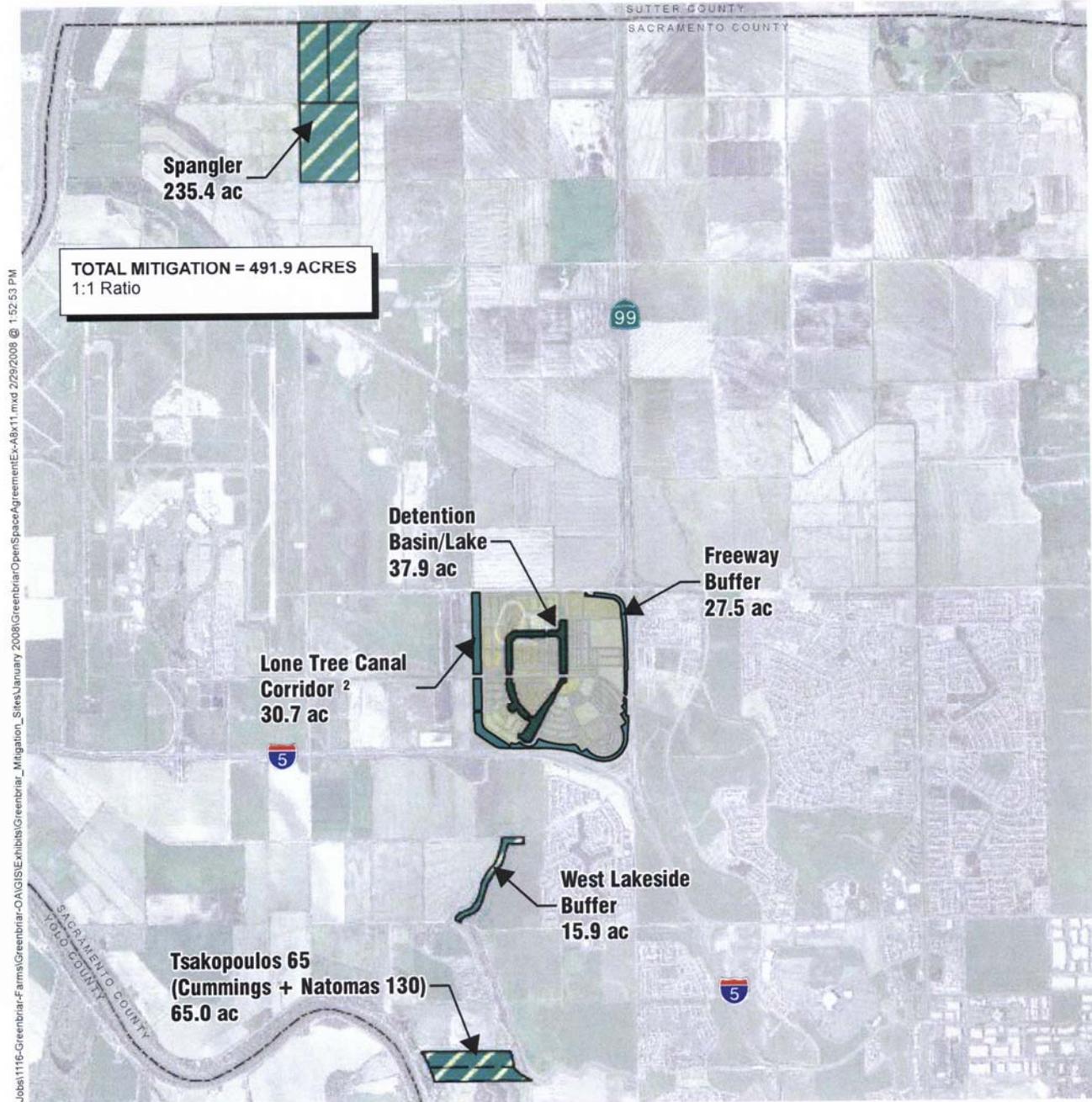
By: _____
Title: _____

Date: _____

Greenbriar Open Space Mitigation

EXHIBIT A

March 11, 2008



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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.

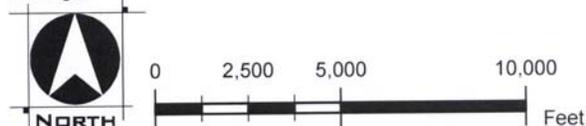
Legend

On-Site Mitigation

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

Off-Site Mitigation

- Spangler, Tsakopoulos 65, West Lakeside Buffer




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