RESOLUTION NO. 2010-266

Adopted by the Sacramento City Council

May 18, 2010

APPROVING THE TAX-EXCHANGE AGREEMENT FOR THE PANHANDLE ANNEXATION (M05-031 / P05-077)

BACKGROUND

A. Before the Local Agency Formation Commission may act upon a proposed annexation to the City of Sacramento, the City and County of Sacramento must adopt a tax-exchange agreement.

B. Landowners and the City have proposed that the so-called Panhandle area be annexed to the City.

C. The County and City have negotiated a tax- exchange agreement specifying how property tax, sales tax and transient occupancy tax revenues will be allocated if the annexation is approved.

D. This tax-exchange agreement was negotiated with respect only to the subject territory, and any future tax-exchange agreement for annexation of additional properties south of Del Paso Road would need to be separately negotiated to acknowledge the tax revenues currently accruing to the Rio Linda Elverta Recreation and Park District and the County General Fund.

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

Section 1. The City Council hereby approves the Tax-Exchange Agreement between the City of Sacramento and the County of Sacramento, attached to this Resolution as Exhibit A, and authorizes the City Manager to execute the Agreement and to do and perform everything necessary to carry out the purpose of the Agreement.

Section 2. Exhibit A is part of this Resolution, and Exhibits A.1 through A.4, inclusive, are part of Exhibit A.

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Adopted by the City of Sacramento City Council on May 18, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.

Vice Mayor Robbie Waters

Attest:

for Shirley Concolino, City Clerk

EXHIBIT A

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

This TAX EXCHANGE AGREEMENT ("Agreement") is made and executed in duplicate this day of 2010 by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California ("COUNTY"), and the CITY OF SACRAMENTO, a charter city ("CITY").

RECITALS

A. On June 6, 1978, the voters of the State of California amended the California Constitution by adding Article XIIIA 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.

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.

C. CITY has filed an application with the Sacramento Local Agency Formation Commission requesting its approval of the annexation of approximately 653 acres of real property to CITY ("the Panhandle Annexation").

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.

E. Close cooperation between COUNTY and CITY is necessary to maintain and improve the quality of life throughout Sacramento County, including CITY, and deliver needed or desirable services in the most timely and cost-efficient manner to all CITY and COUNTY residents.

F. COUNTY recognizes the need for orderly growth within and adjacent to the CITY, and for supporting appropriate annexations by CITY.

G. The provisions of Section 99 of the California Revenue and Taxation Code authorize a city and county to execute a property tax transfer agreement for the exchange of property tax revenues between the county and the city in connection with the annexations of property located in the unincorporated territory of the county to the incorporated territory of the city.

H. COUNTY and CITY after negotiations have reached an understanding as to a rate of exchange of property tax revenues to be made pursuant to Section 99 of the California Revenue and Taxation Code in connection with the annexation of the Panhandle Annexation Area to the CITY.

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.

J. COUNTY and CITY also desire to set out the parameters for exchange of sales tax and transient occupancy taxes generated in the Panhandle Annexation Area under certain circumstances in this Agreement.

K. In consideration of the exchange of tax revenue provided for in this Agreement, COUNTY agrees not to oppose the Panhandle Annexation before the Sacramento Local Agency Formation Commission.

L. The provisions of Article XIII, Section 29(b) of the California Constitution authorize the City and County to enter into a contract to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the local sales and use tax law, provided that the ordinance or resolution approving the contract is approved by a two-thirds (2/3) vote of both the City Council and the Board of Supervisors.

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.1" to this Agreement and described as the "Handle" and a "Portion of the Pan". The Annexation Area includes a total of 653 acres, consisting of the following:

(i) 595 acres of farmland located north of Del Paso Road, west of Sorento Road, and south of Elkhorn Boulevard (depicted on Exhibit A.1 and described as "the Handle"); and

(ii) 58 acres of developed industrial properties immediately south of Del Paso Road/Sotnip Road, west of Kenmar Road, and north of Striker Avenue (the City's North Area Corporation Yard), and the narrow strip of land northeast of the North Area Corporation Yard lying north of Del Paso Road and south of Sotnip Road (depicted on Exhibit A.4). The 58 acres (depicted on Exhibit A.1 and described as a "Portion of the Pan") is a small portion of the unincorporated area of Sacramento County south of Del Paso Road (depicted on Exhibit A.1 and described as "the Pan").

(b) "Unincorporated Island" means the portion of unincorporated area south of Del Paso Road/Sotnip Road (depicted on Exhibit A.1 and described as "the Pan"), excluding the 58 acres described herein and as depicted in Exhibit A.3, that shall remain an unincorporated area of the County.

(c) "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.

(d) "Panhandle Annexation" shall mean the annexation to the CITY as delineated in Sacramento Local Agency Formation Commission Application Control Number "10-00", 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.).

(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 XIIIA 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, County Road Fund, County Water Fund, Natomas Fire Protection District, and Rio Linda Elverta Recreation and Park District. Property Tax Revenue shall not include any Property Tax Revenue Augmentation.

(f) "Sales Tax Revenue" shall mean the revenue from the sales, transaction, and use taxes 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) "Big Box Retail Establishment" shall mean a store of greater than 75,000 square feet of buildable area that will generate sales, transaction or use tax revenue.

(h) "Single-Purpose or Regional Tax-Generating Land Use" shall mean:

(i) hotels, motels, Auto Dealers, and Big Box Retail Establishments;

(ii) the retail and industrial land uses in the Panhandle Prezone Map area (the "Handle") that exceed a cumulative size of 35.6 acres. The 35.6 acres represents 105% of the designated 33.9 acres prezoned C-1 and C-2 as depicted on Exhibit A.2;

(iii) more than 30 contiguous acres of commercial zoned lands configured as a retail mall, including commercially zoned parcels that are adjacent or separated only by public rights-of-way of less than 120 feet in width;

(iv) the rezone of any property within the 58-acre "portion of the Pan" that raises the cumulative total of retail uses within the Annexation Area to more than 35.6 acres (as described in subsection ii above); and

(v) the rezone of any property within the Handle that changes the configuration of lands within the Annexation Area to constitute a retail mall (as described in subsection iii above).

(i) "Auto Dealer" shall mean a retailer who sells new or used cars or trucks who is also a "dealer" as defined by Vehicle Code Section 285. For purposes of this subsection, "cars" include vans that are sold primarily as passenger vehicles, and "trucks" include pickup trucks and cargo vans with a cargo capacity of one ton or less.

(j) "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.

(k) "Property Tax Revenue Augmentation" shall mean the additional property tax revenues allocable to the CITY as a result of legislative or other legal action to compensate the CITY or backfill for transfer from the CITY to the State of other taxes, fees, charges or revenues otherwise payable or owing to the CITY, including but not limited to the "triple flip" and vehicle license fee revenue shifts.

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;

(b) to fairly allocate Sales Tax Revenue and Transient Occupancy Tax Revenue collected within the Annexation Area; and

(c) to delineate service agreements for that territory depicted on Exhibit "A.3" which will remain in the Unincorporated Island.

Section 3. Exchange of Tax Revenues.

(a) Exchange of Property Tax Revenues. On and after the Annexation Date within the Panhandle Annexation Area, the COUNTY and CITY shall exchange Property Tax Revenue as follows: Property Tax Revenue will be pooled and shared equally between the City and the County as set forth herein.

(i) The weighted average post-ERAF base tax factor for these pooled property tax funds shall be split equally unless otherwise directed in this section.

(ii) CITY shall receive 100% of the Property Tax Revenue Augmentation.

(b) Exchange of Sales Tax and Transient Occupancy Tax Revenues. On and after the Annexation Date, CITY shall receive all Sales Tax Revenue and Transient Occupancy Tax Revenue, provided that the COUNTY and CITY shall exchange Sales Tax Revenue and Transient Occupancy Tax Revenue under the following events:

(i) Single Purpose or Regional Tax-Generating Land Use. In the event that the CITY allows a Single Purpose or Regional Tax-Generating Land Use, as defined in Section 1(g) of this agreement, to conduct business in the area within the Panhandle Prezone Map (the Handle), then the COUNTY and CITY shall share equally in all sales and transient occupancy taxes generated by such Single Purpose or Regional Tax Generating Land Uses.

(ii) Excess retail and industrial land uses. In the event that the CITY zones in excess of the 35.6 acres of retail and industrial land uses in the Handle as described in Section 1(g), then the COUNTY and CITY shall share equally in all sales and transient occupancy taxes generated in the Handle during such times when retail and industrial zoned land uses exceed 35.6 acres.

(c) Notice of Rezone Required. 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.

(d) Cessation of Single Purpose or Regional Tax-Generating Land Use. If a change in land use or zoning causes a land use to become a Single-Purpose or Regional Tax-Generating Land Use within the meaning of Section 1(h) and thereby requires the sharing of Sales Tax Revenue or Transient Occupancy Tax Revenue pursuant to subsection (b) above, and a later change in land use or zoning would no longer meet the requirements for tax-sharing under subsection (b), then the sharing of such taxes shall cease under subsection (b)(i) or (ii), as applicable. For example, if an Auto Dealer goes out of business and is replaced by other retail stores, revenues from those other retail stores would not be subject to tax sharing under subsection (b)(i). On the other hand, if a zoning change increases the cumulative retail and industrial land uses from 33 acres to 40 acres, that change would trigger tax sharing under subsection (b)(ii); but if a later zoning change reduces the cumulative retail and industrial land uses back to 35 acres, that change would trigger cessation of tax sharing under subsection (b)(ii).

Section 4. Adjustment of Property Tax Shares. In the event that the COUNTY is entitled to share in any Sales Tax Revenue, or Transient Occupancy 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 Revenue, and Transient Occupancy Tax Revenue. If the COUNTY's share of Sales Tax Revenue, 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 CITY's fiscal year in which the Sales Tax Revenue and Transient Occupancy Tax Revenue were 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 Park District shall receive $18,000 per year from the City's share of existing base tax revenue from the Annexation Area for a period of 5 years. No revenue from the Annexation Area will be distributed to the Park District after the five year period.

Section 7. Services. Within the area of the Unincorporated Island, generally depicted on Exhibit "A.3", the CITY agrees, subsequent to annexation, to provide, at the request of the Sacramento County Sheriff, law enforcement services as may be required at the level of mutual aid; any City police services in excess of mutual aid shall be the subject of a separate agreement.

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 A.4.

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 attorney's 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, COUNTY hereby

waives any right to the retroactive recovery of any Sales Tax or Transient Occupancy 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 Panhandle 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.

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:

COUNTY	CITY
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.

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.

Section 19. Incorporation by Reference. Exhibits A.1, A.2, A.3, and A.4, attached hereto, are incorporated into this Agreement by this reference.

Section 20. The Parties acknowledge that this Agreement shall not become effective unless the ordinance or resolution approving the contract is approved by a two-thirds (2/3) vote of both the City Council and the Board of Supervisors.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the county of Sacramento, State of California, on the date 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

Attachments:
Exhibit A.1 – Map of Panhandle Annexation Area
Exhibit A.2 – Prezone Map of Panhandle Annexation Area
Exhibit A.3 – Remainder Unincorporated Area
Exhibit A.4 – North Area Corporation Yard Included within Panhandle Annexation Area

Exhibit A.1 – Map of Panhandle Annexation Area

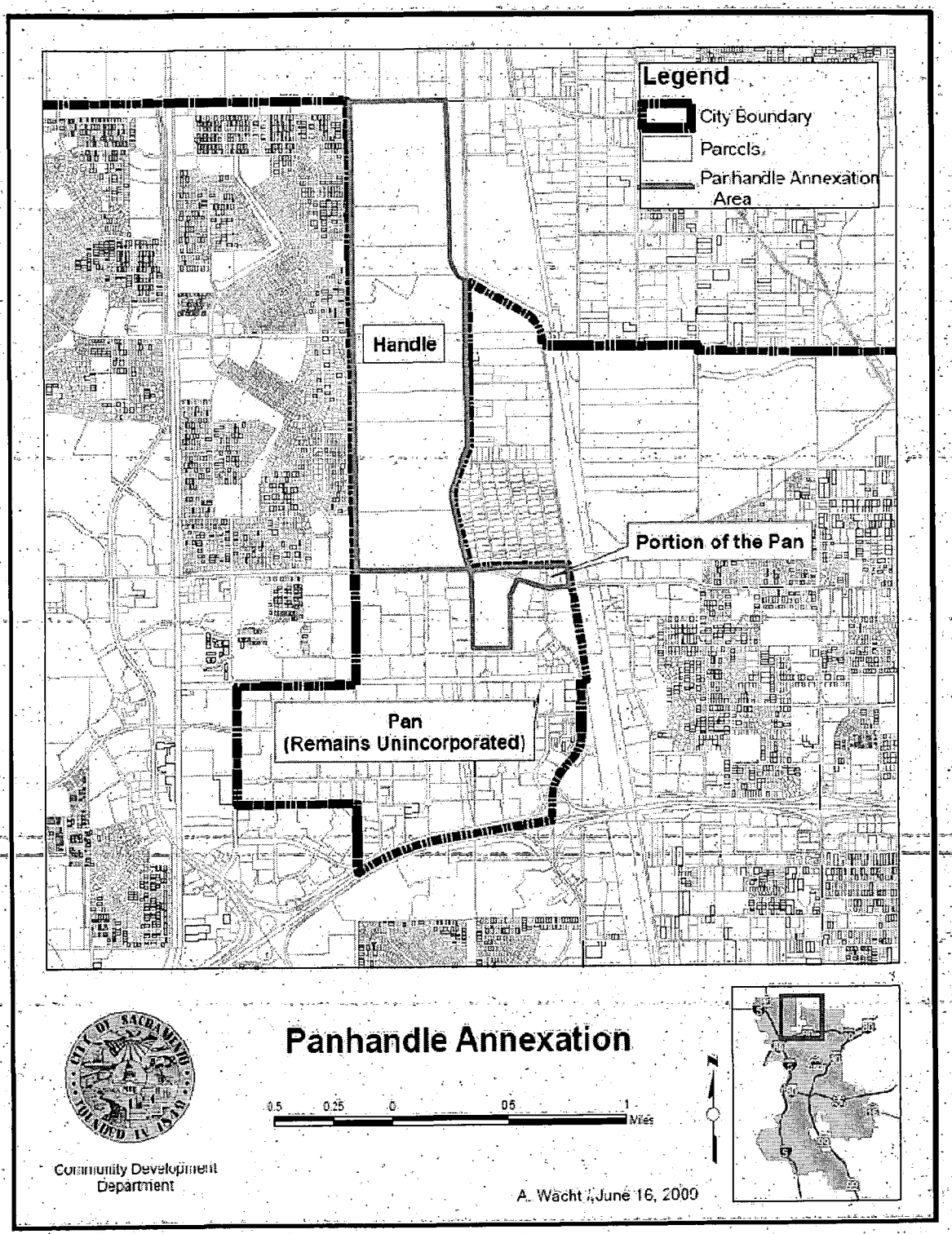
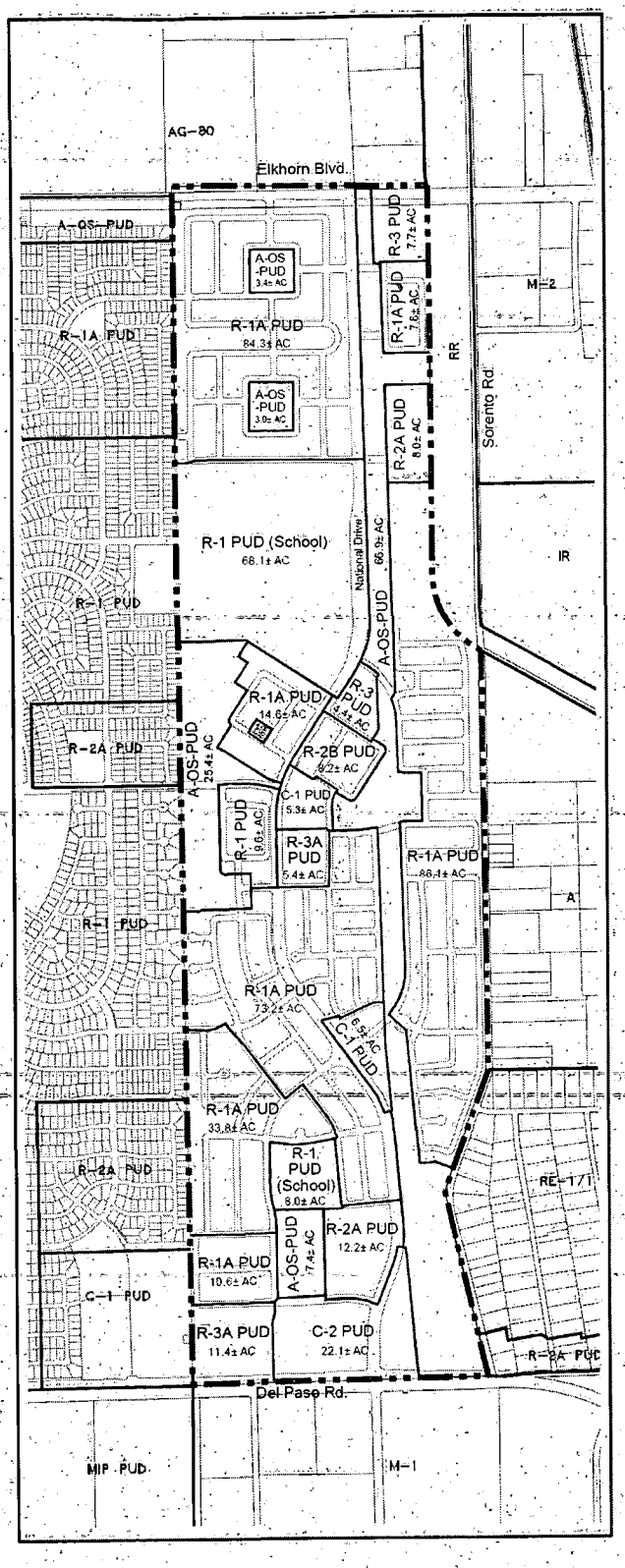


Exhibit A.2-1– Prezone Map of Panhandle Annexation Area –"Handle"



Handle

PREZONE DESIGNATION	ACREAGE
R-1-PUD	9.6
R-1-PUD (School)	76.1
R-1A-PUD	310.4
R-2A-PUD	20.2
R-2B-PUD	8.2
R-3-PUD	12.1
R-3A-PUD	16.8
A-OS-PUD (Open Space)	107.4
C-1-PUD (Limited Commercial)	11.8
C-2-PUD (General Commercial)	22.1
TOTAL	594.7

Portion of the Pan

DEVELOPED INDUSTRIAL AREA	
PREZONE DESIGNATION	ACREAGE
M-1	58

Exhibit A.2-2 – Prezone Map of Panhandle Annexation Area – "Pan"

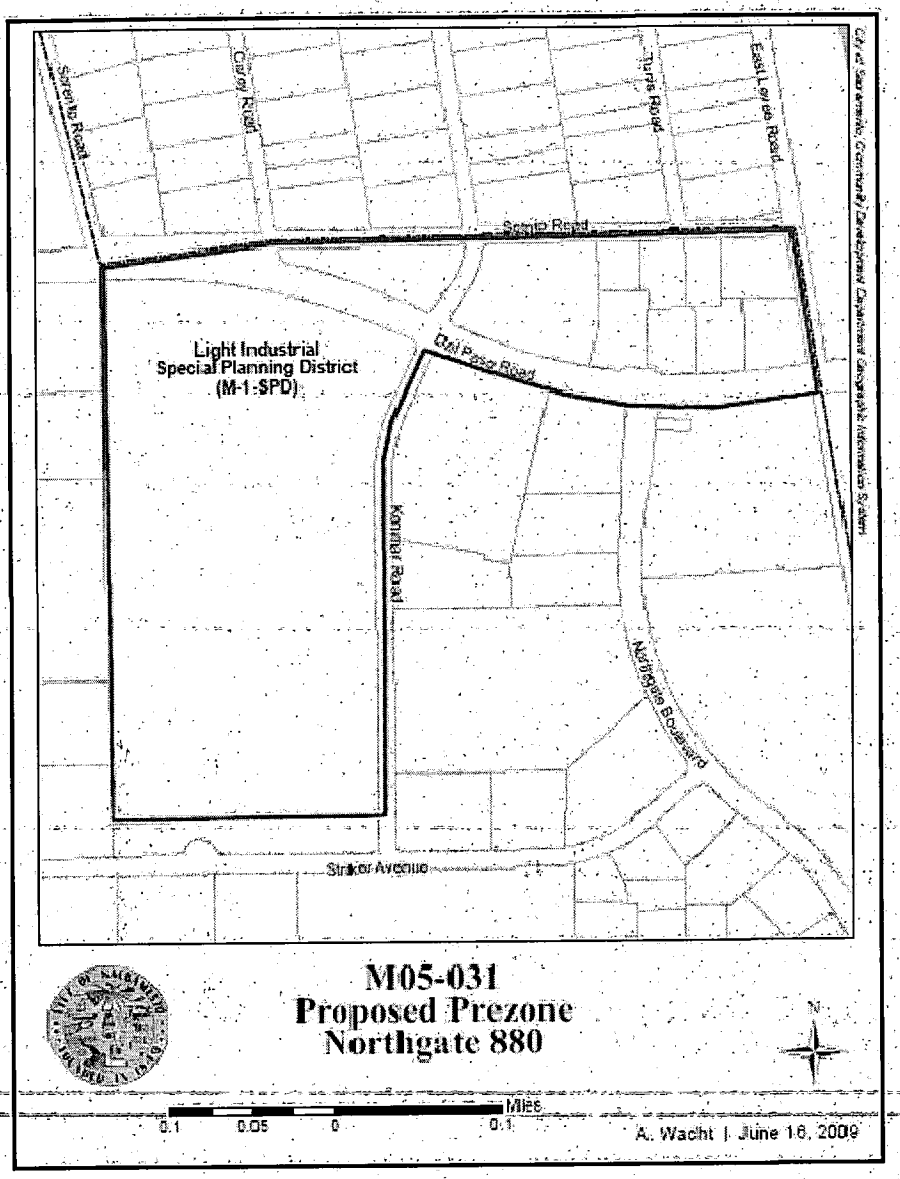
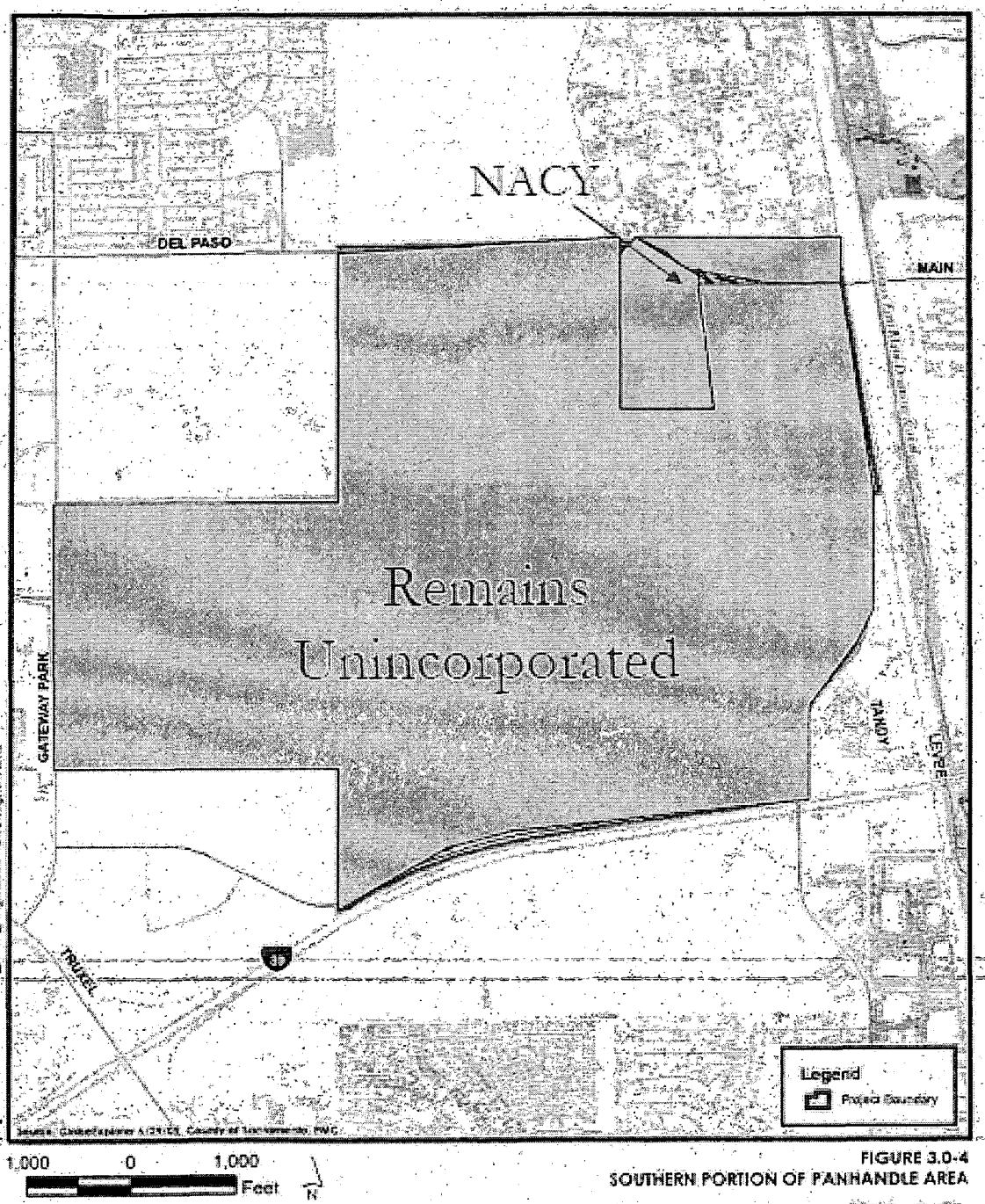
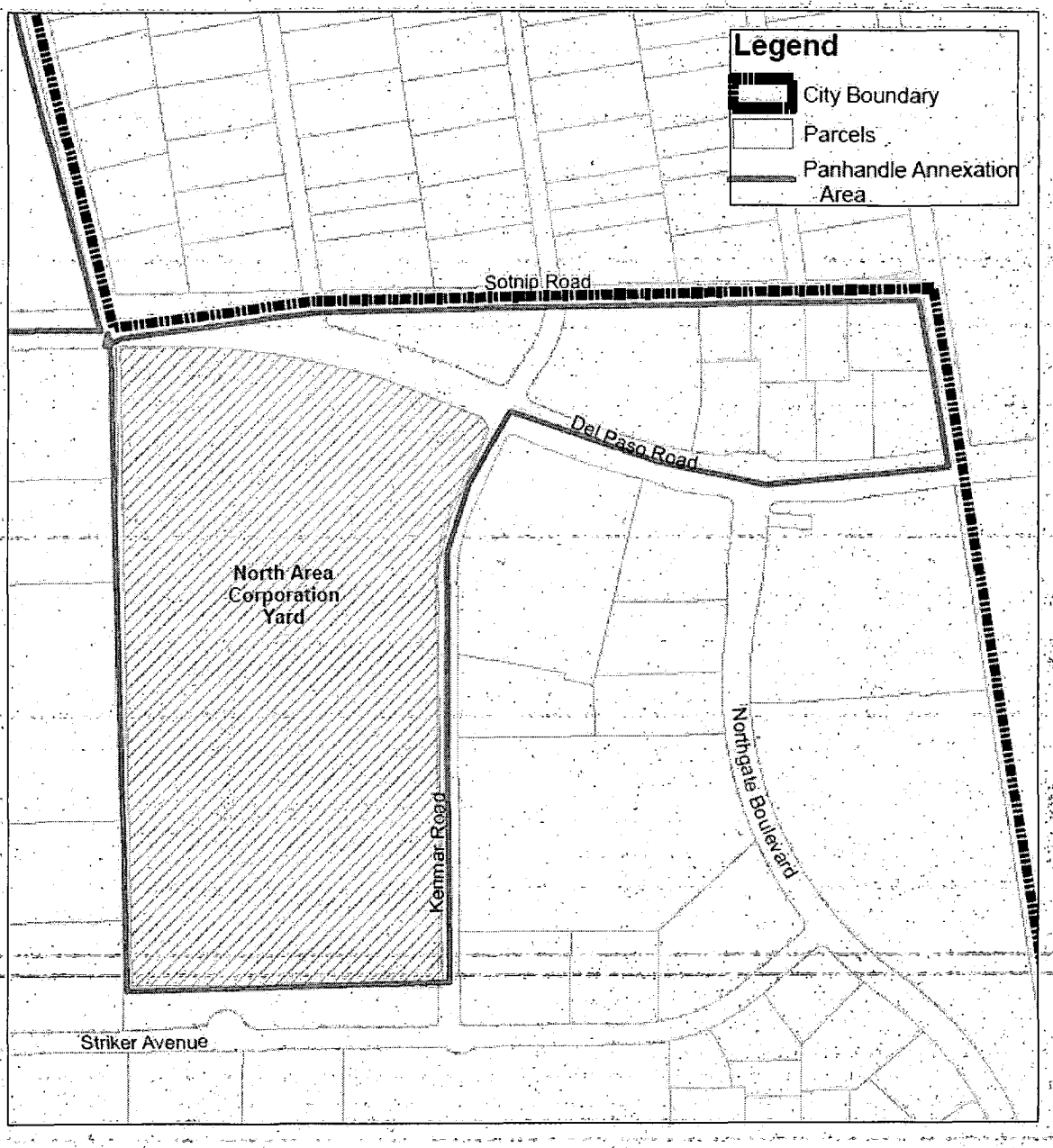


Exhibit A.3 – Remainder Unincorporated Area



The area depicted in pale green stipple – generally south of Del Paso Road – is proposed to remain in the unincorporated area of Sacramento County. The area depicted in solid lavender is proposed to be included in the Panhandle annexation.

Exhibit A.4 – North Area Corporation Yard Included within Panhandle Annexation Area



The boundaries of the Panhandle annexation include a "Portion of the Pan" consisting of the area south of Sotnip Road and north of Del Paso Road, plus the City of Sacramento's corporation yard (approximately 33 acres), located at the southwest corner of Del Paso Road and Kenmar Road.