Supplemental Material

For

City of Sacramento

City Council
Housing Authority
Redevelopment Agency
Economic Development Commission
Sacramento City Financing Authority

Agenda Packet

Submitted: Date Submitted

For the Meeting of: June 12, 2007

- [x] Additional Material
- [ ] Revised Material

Subject: Northgate 880/Panhandle

Please include this supplemental 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 Interim City Hall, 730 I Street, Suite 211, Sacramento, CA 95814-2671 B (916) 808-7200

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FACSIMILE

TO:	COMPANY:	TELEFAX:
City Clerk	City of Sacramento	916-808-7672
City Council	City of Sacramento	916-264-7680
cc:Jim Gately	JB Management, LP	916-929-2890

FROM: Brigit S. Barnes, Esq.
TELEFAX NO: (916) 660-9554
CLIENT/MATTER: Gately / Annexation / File No. 2219

NUMBER OF PAGES (Including this cover page): 20
DATE: June 11, 2007
TIME: Within 10 minutes of 2:15 p.m.

HARD COPY TO FOLLOW: Yes, via FedEx
DESCRIPTION OF CONTENTS/COMMENTS:

Letter of today's date - Comments re: Item 18 [Northgate 880/Panhandle (M05-031 / P05-077)] on the City Council's Agenda for June 12, 2007.

**** Please distribute as addressed for tomorrow's City Council meeting. Thank you.**

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June 11, 2007

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Sacramento, CA 95814
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: June 12, 2007 Agenda Item 18 - Northgate 880/Panhandle (M05-031 / P05-077)

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 Item 18, Northgate 880 / Panhandle (M05-031 / P05-077).

First, the proposed project which is the subject of this item has not been approved by the Planning Commission. Although, as Staff states, the Planning Commission heard three hours of testimony on May 24, 2007, and voted to continue the project to June 14, 2007, the matter has not yet been approved. Staff makes the assumption: "The Planning Commission is anticipated to conclude the hearing and issue a recommendation at the June 14, 2007 meeting date."

Second, it appears that this project (segregation of zoning approvals for the southern portion of the annexation area) is an attempt to address concerns specific to the southern portion, and our clients, by segregating the already constructed commercial and industrial properties in the southern portion into a special planning area. Concerns are only partially addressed, however, so we are providing land use / consistency / entitlement objections, as follows:

Environmental Considerations: The concerns of our clients regarding inconsistencies in the Environmental Impact Report ("EIR"), with its acknowledged number of "Significant and Unavoidable" and "Cumulatively Considerable and Significant and Unavoidable"

determinations, requiring findings of overriding consideration, which the City Council will be faced with, are expressed in a detailed letter to the Planning Commission, a copy of which will be provided to the City Council as well (see attached).

Financial Considerations: The Draft Panhandle Planned Unit Development Public Facilities Plan (PFFP) dated May 4, 2007 only addresses the northern portion PUD project area—all backbone infrastructure improvements, public facilities, and associated administrative costs to serve the defined PUD project area (improvements to roadways, sewer, water, drainage, parks, landscaping, schools, fire, police, library and transit), including the costs and financing mechanisms that will be used to create these improvements in the PUD project area. **The PFFP does not address any costs or financing in the southern portion.** In spite of completely omitting the southern portion from the PFFP, it does not state that it is not addressed because there will be no financial impact of the Annexation and PUD on the southern portion. In fact, there are clear discrepancies in the environmental documents/mitigation regarding this. Furthermore, the Draft PFFP does not acknowledge or discuss previously constructed improvements or proposed reimbursements relating to the improvements in the southern portion.

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, and to construct infrastructure improvements on Gateway Park Boulevard, National Drive, and Del Paso Boulevard in exchange for specific reimbursements for previously constructed improvements. Many of these improvements have been completed. Again, there is no recognition for previously constructed improvements or proposed reimbursements in the Draft PFFP.

JB Management, LP and North Market Center, LP are relying on the statements contained in the FEIR, at p. 3.0-117:

> "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 must be 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.]

Meetings with JB Properties indicated that despite the construction of the foregoing improvements, the City intends to impose substantial additional upgrade costs on our clients, totaling nearly $10,000,000.00.

- 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. ("[T]he 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.")

Policy Considerations: According to Staff's report to the City Council, "Staff is proposing land use designations that will **generally be consistent** with the land use designations and existing development already in place in the County." [Bolding added.] For consistency in the southern portion (M05-031), all documents, the General Plan, Proposed Community Plan, and the Zoning, should state Northgate 880 Special Planning District M1 (Light Industrial).

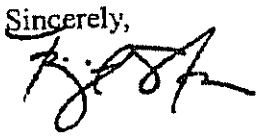
However, the DEIR indicated that the General Plan designations for the southern portion would be changed from Rural Estates, Low Density Residential, and Mixed Use to Heavy Commercial or Warehouse, Water, and Roadways. The NNCP designations would be changed from Rural Estates, Low Density Residential, 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 to the Planning Commission 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 still 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).

Finally, concerns have been raised in the past as to the applicability of the North Natomas Development Guidelines ("NNDG") design criteria to development in the southern portion. It appears that they have been addressed in the northern PUD portion by the changes to the General Plan and Community Plan, in 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." However, prior to adoption, the NNCP needs to clearly state that there is no intent to apply conditions to the nearly built out southern portion.

We ask, therefore, that you postpone any second reading of this item until all inconsistencies outlined in this letter have been remedied. Thank you for your consideration of the above concerns.

Sincerely,



Brigit S. Barnes

Attachment:
May 24, 2007 letter to Planning Commission

cc: Clients *[via fax, w/out attachment]*

Gately\CityCouncil L01-Comments re June 12 Agenda

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= ATTACHMENT =

May 24, 2007

Hand Delivered

City of Sacramento Planning Commission
Historic City Hall
915 I Street, 2nd Floor Hearing Room
Sacramento, CA 95814
Attn: Hon. Joseph Yee, Chairperson
Hon. Darrel Woo, Vice-Chairperson
Hon. D.E. "Red" Banes, Commissioner
Hon. John Boyd, Commissioner
Hon. Joseph Contreraz, Commissioner
Hon. Chris Givens, Commissioner
Hon. Michael Notestine, Commissioner
Hon. Jodi Samuels, Commissioner
Hon. Barry Wasserman, Commissioner

Re: Natomas Panhandle Annexation Project (M00-066)
Comments on FEIR 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 Respected Commissioners:

On behalf of our clients, Jim Gately, J.B. Management, L.P. ("J.B. Management"), J.B. Properties, and J.B. Company, we hereby submit the following comments on the Final EIR prepared by the City for the Natomas Panhandle Annexation Project ("Annexation Project").

The Staff Report incorporates over 600 pages of proposals, which attempts to rezone the proposed annexation property, provide for preliminary zoning for subdivisions and form the PUD, and resolve internal consistency issues between County properties, your staff is aware, we did not receive 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. We became aware of the May 24th hearing when our client faxed us the May 3rd notice, which he in turn did not receive until May 9th.

Despite our many requests for review and coordination meetings, none have occurred. We note that an attempt has been made by City staff to segregate the already constructed commercial and industrial properties in the southern portion into a special planning area, which partially addresses concerns specific to our clients' property. Unfortunately, however, due to the number and interrelationships of the entitlement approvals described in the Staff Report (and the jurisdictional limits of the Planning Commission's review), we can only summarize our environmental concerns, and file more detailed land use / consistency / entitlement objections prior to hearing by the City Council and/or LAFCO. We note also that the Tax Exchange Agreement has never been negotiated by the Parties.

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 are not responded to in the FEIR, but proposed resolutions are 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 our clients, 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

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.

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.

Transit-Oriented Development

The design shows more density located to the Northeast corner of the project, which is not placed close to the transit and transportation features of the project, located in the southern portion.

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 means to impose a fee program for the light rail system, it must 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.

LAND USE ISSUES

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.

These inconsistency arguments also apply to the North Natomas Community Plan, which are set forth in detail below.

Inconsistency With 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."

Loss of Revenue to Districts Serving Detachment Area

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

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.

SPECIFIC IMPACTS TO J.B. PROPERTIES

The Planning Commission 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.

JB Management, LP and North Market Center, LP are relying on the statements contained in the FEIR, at p. 3.0-117:

> "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 must be 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 needs 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 provides the modifications to the Panhandle PUD since the release of the DEIR, and in the section on Project Alternatives Summary 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

Consistency Between GP, CP, and Zoning for the Southern Portion

The DEIR indicated that the General Plan designations for the Southern Portion would be changed from Rural Estates, Low Density Residential, and Mixed Use <u>to Heavy Commercial</u>

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 still 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).

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. Prior to adoption, the NNCP needs to clearly state that there is no intent to apply conditions to the nearly built out Southern Portion.

Sincerely,

Brigit S. Barnes

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

Gately\CityPlanningCommission.FEIR Comments