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Comments of Sierra Club - Mother Lode Chapter, Environmental Council of Sacramento, Sacramento Audubon Society, and Friends of the Swainson's Hawk, on the Draft Recirculated Environmental Impact Report, Greenbriar Project, November 2006

Dear Messrs. Buford and Brundage,

The following comments, including attached Exhibits, are submitted on behalf of Mother Lode Chapter, Environmental Council of Sacramento, Sacramento Audubon Society, and Friends of the Swainson's Hawk regarding the RDEIR for Greenbriar. We also incorporate herein by reference our previous comments on the original Greenbriar DEIR and all of the comments of other individuals and organizations regarding the DEIR and RDEIR, and will rely on these comments as well as our own. Our organizations continue to oppose the proposed SOI expansion, annexation, general plan amendment, rezone, and related land use approvals.

Included also are comments on the original DEIR's analysis of the project's impacts on agriculture and consistency with LAFCo policies on agriculture.

A. FLOOD HAZARD FROM POTENTIAL LEVEE FAILURE ON SACRAMENTO AND AMERICAN RIVERS, AND NATOMAS CROSS-CANAL

1. The RDEIR Fails to Disclose the Full Extent or Seriousness of the Risk of Catastrophic Deep Flooding of the Project Site

Please refer to our previous comments on the DEIR.

Lester Snow, Director of the California Department of Water Resources, by letter addressed to Sacramento Mayor Heather Fargo, dated November 21, 2006, (**EXHIBIT ONE**) stated that the Natomas levee system does not meet minimum federal flood insurance program standards for 100-year flood protection, that "the area is at high risk" and that DWR was working with FEMA to have the Basin remapped into an AR or A99 Special Flood Hazard Zone. Director Snow further stated: "In the meantime it is imperative that additional measures be taken to reduce the threat to public safety and property" and that "with less than 100-year flood protection, the chance of homes flooding over the next ten years is approximately 10 percent." He recommended a number of measures which City of Sacramento should undertake "to protect the public against this higher risk," which included a "limitation on new construction until minimum flood protection is achieved." (*Id*, p. 2)

The SAFCA Executive Director's report to the SAFCA Board ,dated February 16, 2006, titled "Information - Natomas Levee Evaluation Study", (**EXHIBIT TWO**) stated that less than 100-year flood protection was "high risk", and that greater than 100-year but less than 200 year protection was "moderate risk." (p. 1); that a study by URS in 2002 concluded that most of the levees would need "substantial additional work . . .to reach a high level of flood protection" (p. 2), and that the 2005, URS report for the Corps determined that at some locations, there was potential for subsurface permeability "that could threaten the stability of the affected levees ..." (p. 3)

Do City and LAFCo agree with the statements by the Director of DWR, supra, that Natomas is at high risk of flooding from the Sacramento or American Rivers due to having less than 100-year flood protection? (see **EXHIBIT ONE** p. 1.) If not, please explain why not.

Do City and LAFCo agree with the statements by the Executive Director of SAFCA, supra, that less than 100-year flood protection is "high risk", and that greater than 100-year but less than 200 year protection was "moderate risk"? (See **EXHIBIT TWO**, p. 1) If not, please explain why not

What actions is City undertaking to comply with the request of the Director of the California Department of Water Resources (**EXHIBIT ONE** p. 2) to limit new construction in Natomas Basin until the levees are upgraded and re-certified by the Corps as providing adequate protection against the FEMA 100-year flood event?

Does the City intend to comply with the request of the California Department of Water Resources (**EXHIBIT ONE**, p. 2) to limit new construction in the Basin "until minimum flood protection is achieved"?

If the City does not intend to comply with the Director's request, please explain why.

Do the City or LAFCo contend that the Basin is not at high risk of flooding due to its present lack of 100-year flood protection? If so, please explain why City or LAFCo believe that the Basin is not at high risk of flooding.

It is increasing apparent that the City and AKT are fast-tracking the Greenbriar project for expedited approval, hoping for land use entitlements and start of construction before FEMA

issues new a Floodplain Insurance Rate Map ("FIRM") which recognizes that the Natomas Basin, including the Greenbriar project area, is a flood basin with less than 100-year flood protection. Such a designation by FEMA would require City to impose very strong restrictions on new development within the Natomas flood plain, including Greenbriar, as a condition of retaining the community's eligibility for FEMA Flood Insurance.

The RDEIR p. 6.10-23, 7-23, mistakenly asserts that SAFCA will construct a new setback levee inland of the existing east levee of the Sacramento River. In fact, SAFCA has rejected that option from further consideration. See SAFCA's DEIR "Local Funding Mechanisms for Comprehensive Flood Control Improvements," November 2006.

The RDEIR pp. 6.10-24 incorrectly states that SAFCA "is currently proceeding with necessary improvements to provide a 200-year level of flood protection". In fact, SAFCA has developed a plan for such flood protection, but lacks the funding to implement it.

It would be more truthful for the RDEIR to disclose that SAFCA is now seeking funding to implement its plan but that there is presently no assurance that adequate funding will be provided, and no assurance that the estimated budget for achieving 100-year and 200-year levels of protection will be adequate.

2. There Is No Substantial Evidence That Flood Protection at the 100-year FEMA Level Would Reduce The Potential For Flooding to Less Than Significant

The RDEIR pp. 7-21, 7-30, states that once levee improvements are made which provide a 100-year level of flood protection, exposure to the potential 100-year level flood event would be less than significant. Please explain why achieving a 100-year level of flood protection would reduce exposure to flooding to "less than significant".

A 100-year level of flood protection means that there is a 1 percent chance of a 100-year level flood every year, which amounts to a 26% chance of a 100-year level flood during any 30-year period. Such a flood in Natomas Basin would be deep, with catastrophic damage to property and perhaps with large loss of life. BY COMPARISON, the odds of losing a round of Russian Roulette is one out of six, or 16-2/3%, which is considered unacceptably hazardous yet is substantially less than the 26% chance of deep flooding in the Basin during thirty years.

Please explain why the authors of the DEIR believe that a 26% chance of such a flood event occurring during a 30 year period is "less than significant" exposure.

Please explain why the City believes that a 26% chance of such a flood event occurring during a 30 year period is "less than significant" exposure

3. Development of the Greenbriar Site Would Violate "Sacramento General Plan Section 8, Health and Safety, Goal A, Policy One" (Flood Hazards)

Permitting development on the Greenbriar site prior to upgrade of the levees to 100-year level of flood protection (current FEMA and Corps 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." (RDEIR 6.10-13)

Lester Snow, Director of DWR, in his letter dated November 21, 2006, **EXHIBIT ONE**, p. 2, first paragraph, states that "with less than 100-year flood protection, the chance of homes [in Natomas Basin] flooding over the next 10 years is approximately 10 percent," and that Natomas is at high risk of flooding from the Sacramento or American Rivers due to having less than 100-year flood protection. (**EXHIBIT ONE** p. 1.) The Executive Director of SAFCA, supra, has stated that less than 100-year flood protection is "high risk". (**EXHIBIT TWO**, p. 1)

Does not the City believe that the expert opinions of the Directors of DWR and SAFCA, *supra*, are conclusive evidence that there is "unreasonable risk of flooding", which requires prohibition of development in the Basin under General Plan Section 8, Goal A, Policy One (Flood Hazards), *supra*?

If not, please explain why City believes that there is not unreasonable risk of flooding which triggers the prohibition against development in the Basin pursuant to General Plan Section 8, Goal A, Policy One (Flood Hazards).

Isn't new development on the Greenbriar project site inconsistent with this General Plan policy?

If the authors of this EIR or City or LAFCO contend that urban development on the Greenbriar project site, prior to upgrading of the levees to 100-year level of flood protection as determined by current Corps standards, is consistent with General Plan Policy One, Flood Hazards, please explain why.

4. Development of Greenbriar Would Violate the "North Natomas Community Plan Flood Control Policy Guiding Policy A"

Development on the Greenbriar site prior to upgrade of the levees to 100-year level of flood protection (current FEMA and Corps standards) would be inconsistent with the North Natomas Community Plan Flood Control Guiding Policy A, which states:

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

The DEIR, p. 4.11-12, states that "this level of flood protection has been previously obtained", which was once believed to be true. Per the documents and reports cited and discussed above and in our comments on the DEIR, it is now known that the Basin does not have 100-year flood protection, which is known to City.

City cannot rely upon the fact that FEMA's Flood Insurance Rate Map (FIRM) still shows the Basin as outside the 100-year flood plain. Per the documents cited above, the Basin clearly does not have 100-year flood protection.

5. The RDEIR Fails to Disclose That Flood Hazard for the Basin May Have Increased Since 1997 Due to Levee Improvements On the Feather and Yuba Rivers Upstream of Sacramento

The RDEIR correctly states that the Sacramento and American River levees protecting Natomas Basin withstood the high flows of the Sacramento and American Rivers during the storms of 1986 and 1997.

The RDEIR fails to disclose that during the 1986 and 1997 storm events, levee failures on the Feather and Yuba Rivers diverted huge volumes of water into the Middle American Basin east of the Feather River upstream from Sacramento between Yuba City and the Bear River, where the water was detained until the floods receded. Had the Feather and Yuba River levees held, this volume of water would have passed by Sacramento at the peak of the 1986 and 1997 flood. Whether the Sacramento River levee would have held if the Feather and Yuba River levees had not failed in 1986 and 1997 is unknown but a worrisome concern that now must be considered in any assessment of today's potential flood hazard to Natomas Basin.

During the past two years, those portions of the Feather and Yuba River levees which failed in 1986 and 1997, and other vulnerable portions of the Feather-Yuba-Bear River levees, have been upgraded. The upgraded levees on the Feather-Yuba-Bear River levees are much less likely to fail during future major storm events. The DEIR should re-examine its assessment of the likelihood of flooding in light of the fact that the area east of the Feather River upstream of Sacramento is now much less likely to provide a de facto "detention basin" by flooding, as it did in 1986 and 1997 during future major storm events.

B. ALTERNATIVES ANALYSIS: alleged benefit of the project not supported by evidence

The RDEIR's assessment of alternatives, and selection of preferred alternative, repeatedly states that a key objective of the project is to provide residential development to support a light rail line from downtown to the Airport. However, new information plus earlier information cited in our comments on the original DEIR provide overwhelming evidence that light rail from downtown to the Airport is financially infeasible even if Greenbriar is built. An alternatives analysis cannot rely upon speculation as a reason for selection of the preferred alternative. For that reason, a new analysis of the alternatives must be included in a Recirculated RDEIR which acknowledges that light rail to the Airport is not feasible.

1. No Evidence That Light Rail To The Airport ("LRT" or "DNA Line") Will Ever Be Built

RDEIR 8-1 asserts that "the basic objectives of the project" include "providing a light rail stop along the proposed [DNA] light rail line with densities that would support the feasibility of a light rail line." The RDEIR p. 8-6 says that "the project's objective" is "providing readily

accessible light rail opportunities on-site.” The RDEIR p. 8-19 asserts that the "disperse development" alternative should be rejected because it “would not meet the key project objective of providing a development along the Downtown-Natomas-Airport light rail line.”

As discussed in our previous comments on the original DEIR, there is absolutely no evidence that the Federal or State governments, or the region’s taxpayers, will fund the very costly proposed DNA line. The RDEIR provides no evidence to demonstrate that the DNA line would even come close to meeting the Federal cost-benefit criteria even assuming the Greenbriar project. The RDEIR provides no evidence of any Federal interest in funding DNA.

The proposed DNA line would have 13 station stops between Downtown and the Airport, providing a slow ride to the Airport that would be unattractive to air travelers, particularly those concerned about arriving timely at the Airport. Express bus or super-shuttle service from downtown to the Airport would be much quicker and more reliable, and thus much more attractive to air travelers.

In December 2006, the General Manager of Regional Transit announced that Regional Transit will no longer qualify for federal transit money for rail expansions until it shows that it has enough of its own money to run all of its trains and routes. It is not known how RT will find the additional money, and leaders of RT are now considering means of expanding transit service that are less costly than light rail. See *Sacramento Bee*, “Finances Put Brakes on Light-Rail Work”, December 15, 2006, attached **EXHIBIT THREE**.

The same Bee article also reported that the estimated cost of the DNA line would be \$90,000,000 per mile, which computes to \$1,170,000,000 for the entire 13-mile line. This is a dramatic increase above the previously projected cost of \$650 million announced at the December 2005 meeting of the Regional Transit Board.

2. Without Light Rail, the Project is Inferior to the Alternatives and Should Be Rejected

The RDEIR repeatedly demonstrates that the alternatives (Off-Site within North Natomas Community Plan area, Dispersed Development, Reduce Size, and No Project) are environmentally superior to the proposed Greenbriar project. (See RDEIR 8-1 through 8-19, summarized at 8-19). There is sufficient vacant land within the NNCP area and elsewhere within the City to accommodate a project similar to Greenbriar.

The RDEIR rejects these alternatives because the landowner, AKT development, does not own sufficient vacant land within the City limits which is suitable for the project. (RDEIR p. 8-19). However, City is under absolutely no obligation to annex unincorporated land zoned agricultural (Greenbriar site) to accommodate a particular landowner. Indeed, City would be guilty of malfeasance if it annexed and authorized development primarily to accommodate the landowner, particularly where, as here, the project would have numerous adverse environmental impacts which could be avoided by instead authorizing a similar amount of similar development, as a single development or dispersed smaller projects, elsewhere within City.

There are 2000 acres designated for commercial and industrial in nearby MetroAirPark, all of which remains vacant and cannot be re-designated for residential use due to proximity to the Airport. There are large areas of vacant land within the existing NNCP. Much of that (alongside I-5) is presently designated for commercial uses which have not materialized. This land is likely to remain vacant for years unless there is a dramatic upswing in the demand for commercial land in Natomas Basin, which is unlikely, or unless City redesignates it for residential use, which is much more likely.

It is pointed out that a large population growth is projected for the City in the future. This projection is speculation. The City's population growth will largely be determined by decisions which City Council will make in the future regarding its footprint, infill, and density.

Why doesn't City exhaust all opportunities for infill development within its existing footprint before considering annexing vacant prime farmland for urban development?

Why does City feel that it should approve this project to accommodate this particular developer (AKT), despite all of the adverse environmental impacts of developing the site, while other suitable land within the City limits, already designated for urban development, remains vacant? Please explain.

C. IMPACTS ON AGRICULTURE: Analysis, Proposed Mitigation, and Inconsistency with LAFCo policies

The DEIR is inaccurate in characterizing the lands surrounding the project and their current and future agricultural uses.

The DEIR fails to fully describe the Metro Air Park site which is adjacent to the Greenbriar site to the west. It describes Metro Airpark as “these lands are in the process of being developed with commercial land uses consistent with the County’s recently approved Metro Airpark Development.” In fact, Metro Air Park has no expectations of development in the foreseeable future. It is entitled for development and some infrastructure has been constructed. However there are no development plans underway due to lack of market. Metro Air Park cannot be redesignated for residential use because of its proximity to the Airport. Meanwhile, the Metro Air Park HCP requires that the land be used in agriculture until developed. The proposed Greenbriar project provides for only a narrow buffer on its west side to reduce any conflicts between urban development and adjacent agricultural activities on the Metro Air Park site, which could continue for decades.

Similarly, the RDEIR at 5-11 says that agricultural lands to the north will be developed under the Joint Vision Plan. This is inaccurate. The Joint Vision Plan does not designate lands to be developed but instead leaves that decision for future agreement considering that habitat, agriculture and open space must remain in the Sacramento County portion of the North Natomas Basin. The DEIR must assume that lands to the north may stay in agriculture in perpetuity. At least a 250-foot buffer in the northern portion of the project is needed to mitigate the impacts. Moreover, the impacts of conversion of Greenbriar on agricultural land loss might best be mitigated through permanent agricultural easements on lands to the immediate north.

The DEIR states that lands to the south are either urban land or planned to be urban land. In fact, the land to the south of the project (south of I-5), which is not in the City of Sacramento, is not entitled to develop and is used for agricultural purposes. Development of Greenbriar will put additional growth inducing pressure on these lands. There also can be conflicts between the agricultural uses on the lands south of I-5 and the residential uses at Greenbriar, but the DEIR is silent on these impacts.

The DEIR correctly assesses cumulative impacts on surrounding agricultural lands. However the concluding statement at DEIR 7-21 that “no additional feasible mitigation measures are available” to mitigate for impacts on nearby agricultural lands is clearly untrue. As discussed below under the heading "Biological Impacts", the project proponent, AKT, or entities controlled by AKT, owns much of this land (several tracts are listed elsewhere in this letter), and a permanent agricultural easement could be placed on the lands to protect them from future development pressures. Moreover, the easement could require organic production, thus eliminating potential conflicts with neighboring residential uses which could otherwise arise due to use of agricultural chemicals.

The City’s NBHCP makes a commitment to permanent protection of the Swainson’s Hawk zone. Agricultural lands in that zone and in close proximity are excellent candidates for agricultural easements. It is also appropriate that those landowners benefiting from development outside the NNCP permit area should be required to guarantee the permanent protection of lands not to be developed.

1. Inconsistency with LAFCo policies regarding preservation of agricultural land and open space

LAFCo is currently in the process of reviewing and updating its policies regarding agricultural and open space land preservation. The project's impact should be evaluated in terms of updated policies. The proposed Greenbriar project would be the first new development outside of the County Urban Services Boundary (USB) since 1993 and represents a significant change in the baseline conditions for which the present LAFCo policies were developed. Greenbriar would be precedent-setting for LAFCo and the cumulative impacts haven’t been adequately analyzed for LAFCo.

The project is also inconsistent with the LAFCo policies as presented in the DEIR and RDEIR. LAFCo policy requires findings that all or a substantial portion of land proposed for annexation will be developed within five years of annexation. (DEIR p. 5-5). The Greenbriar project cannot be started, much less completed, within this 5-year window because of various constraints, chief of which is the flood hazard and imminent revision of FEMA's Flood Insurance Rate Map affecting the area. These constraints are described in this and our previous comment on the DEIR (9/5/06). The DEIR and RDEIR fails to offer any convincing evidence that “development of a substantial portion of the proposed project would occur within 5 years,” or that construction of the proposed project can begin in the spring of 2007, as asserted. There is no reason to believe that FEMA will ignore its statutory obligation to revise its Flood Insurance Rate Map to show the Greenbriar site as being within the 100-year floodplain, which will trigger restrictions that would effectively prevent the project from proceeding until levee repairs are completed and the area re-mapped as being outside of the floodplain. Completion of repairs are

not expected until 2012 at earliest, assuming that there is sufficient and prompt funding and no substantial unforeseen engineering challenges.

The DEIR fails to identify or incorrectly interprets facts pertaining to consistency with LAFCo policy related to agricultural land conversion. The DEIR at 5-11 concludes that “insufficient vacant nonprime land exists within the City’s SOI”. . . “there is no known site that could accommodate a development similar to the Greenbriar project (in size) that is not already being pursued for development by other property owners.”. . . “because of its logical connection to the North Natomas community, the project site is highly accessible.”

In fact, the housing market has changed dramatically in 2006 and demand for the type of housing proposed for the project is no longer growing. No evidence is presented in the DEIR or RDEIR that housing need or demand justifies conversion of important farmland. The City of Sacramento has a 350 acre plus project underway called “Natomas Central” that has yet to be built and marketed. The Panhandle area in the SOI is seeking annexation to build a project of the size and type of the Greenbriar project. In contrast to the Panhandle, there is no direct physical connection between the North Natomas Community Plan and the Greenbriar project. Greenbriar is landlocked by two intersecting freeways and an undeveloped vacant 2000 acre industrial-commercial project to the west. The proposal to convert and urbanize this important farmland (most of which has been classified as prime agricultural land) is exceedingly premature and should not be considered until Metro Airpark is built out and all of the existing NNCP including the Panhandle are completed. In addition, the City of Sacramento has many acres of infill potential, including over 200 acres in the Railyards Project. These infill projects are more consistent with City policies and the Regional Blueprint and should precede new SOI/annexation for Greenbriar.

2. LAFCo's Authority

The RDEIR, p. 3-17, states that LAFCo will consider the merits of the project as it relates to issues of growth projections, buildout rate, municipal services, open space, and prime agricultural resources.

Does City contend that LAFCo lacks the authority to consider other issues and to base its approval or disapproval of an SOI or annexation on other issues, as flood hazard, unmitigated significant impacts on regional transportation and circulation, violation of the “Joint Vision” MOU, violation of the Natomas Basin HCP by failure to obtain Incidental Take Permits prior to rezoning, or failure of City to utilize opportunities for infill prior to considering this project. All of these are significant issues as to the Greenbriar proposal

3. Mitigation Measure for Impact of Conversion of Agricultural Land

The proposed Mitigation Measure 6.11-1 is inadequate and fails to meet the requirements of CEQA. For the conversion of 518 acres of important farmlands, the EIR proposes the mitigation measure shall be MM 6.6-2, which is a mitigation measure to offset loss of habitat and open space at .5 to 1. The DEIR p. 7-21 erroneously asserts, without basis, that no additional feasible mitigation measures are available.

The mitigation measure proposed double counts (“stacks”) mitigation of agricultural land on top of land to be preserved for open space and habitat loss mitigation. It fails to achieve any guarantee of permanent agricultural uses and does not require agricultural easements on the preserved lands.

Other jurisdictions are mitigating farmland loss at a minimum of 1:1. Therefore the Mitigation Measure 6.11-1 should at minimum require 518 acres of important farmlands, including at least 329 acres of prime farmland, in the Sacramento County portion of North Natomas, be placed in permanent agricultural easement.

For example, the City of Lathrop recently entered into an agreement with a developer to mitigate for loss of agricultural land at 3:1 ratio. (“Win-Win Project” Preserves Farmland, Allows City Of Lathrop To Expand” at http://www.consrv.ca.gov/index/news/2006%20News%20Releases/NR2006-26_Lathrop_Easement_Exchange.htm).

There is no substantial evidence that preservation of habitat mitigation land under the NBHCP will also mitigate for loss of farmland. The farmland and endangered species habitat mitigation requirements have differing goals, which in some instances are incompatible. Mitigation for loss of agricultural land is intended to preserve commercial production agriculture. By contrast the Natomas Basin Conservancy is mandated to manage its land as “high quality habitat” for covered species, notably the threatened Giant Garter Snake and the Swainson’s Hawk. Twenty-five percent of NBC land is required to be converted to managed marsh, a non-agricultural use, and another 25% managed for “high quality” upland habitat values, which, due to soil and agricultural market conditions, is nearly impossible to achieve in the Basin on land managed for production agriculture.

The DEIR does not address the incompatibility of NBHCP and stacking or the risk and consequences of failing to meet multiple mitigation objectives with the same land easement. There is substantial risk that the multiple mitigation objectives cannot be met in perpetuity. Given the legal status of the NBHCP as a state and federal permit, it is likely the objectives of the agricultural land mitigation measure would ultimately not be met if the mitigation requirements were stacked. Therefore stacking is not an adequate CEQA mitigation measure because there is no evidence that it is capable of full implementation.

4. Impacts on Agriculture.

The DEIR identifies three land classification systems used to determine agricultural significance. They do not identify alternative land classification systems that were not included in the analysis and why they were not included. Nor does the DEIR address the issue of the cumulative impacts of using the three land classification systems as used in this DEIR to assess agricultural impacts of continued development in the Natomas Basin and in southern Sacramento County. If the analysis and conclusions used in this EIR is replicated in the future EIR for “Joint Vision”, what are the cumulative impacts on agriculture compared with alternative analytic techniques and conclusions.

The DEIR claims the Storie index of soils shows a specific distribution of soil types and it claims

to have calculated a LESA model score of 45.49. It interprets these data to show that the site consists of agricultural land that is not considered significant. The analysis and data used to reach this conclusion should be approved by the Department of Conservation, which was not done here. A recirculated RDEIR should include all scientific reports and calculations relied upon to reach the conclusion that the agricultural land is not considered significant, not just the final scores.

D. BIOLOGICAL IMPACTS AND ENDANGERED SPECIES

Please refer to our previous comments on the original DEIR.

City agreed, as a condition of approval of the 2003 NBHCP, that it would obtain an amendment to the 2003 NBHCP and Incidental Take Permits issued by the Federal and State wildlife agencies covering any new development outside the NBHCP Permit Area prior to City's approval of rezoning for such new development. Specifically, the 2003 NBHCP Implementation Agreement, p. 3, § 3.1.1(a), executed by the City states:

"Thus, the CITY and SUTTER further agree in the event this future urban development should occur [outside the City's NBHCP Permit Area], **prior to approval of any related rezoning or rezoning**, such future urban development shall trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and **issuance of Incidental Take Permits** to the permittee for that additional development"

The DEIR acknowledges that a new or amended HCP and Incidental Take Permits, approved by DFG and USFWS, will be required for Greenbriar. However, neither the DEIR nor RDEIR acknowledge that such amended or new HCP and Incidental Take Permits must be approved by DFG or USFWS prior to rezoning. City's attorneys (Morrison and Foerster) have incorrectly asserted at a previous LAFCo meeting that City need not obtain an amended HCP and new Incidental Take Permits covering Greenbriar until approval of the final tract map.

Does the City now contend that it need not obtain approval by FWS and DFG of an Amended or new HCP and Incidental Take Permits covering Greenbriar prior to rezoning by the City? If this is the City's position, please explain why.

The RDEIR, p. 7-25, states that the project applicant would "consult with" USFWS and DFG on the mitigation plan. "Consultation" is not compliance with NBHCP Implementation Agreement 3.1.1(a), *supra*.

Does the City now contend that it need not obtain approval by FWS and DFG of an HCP and Incidental Take Permits covering Greenbriar? If so, please explain why

LAFCO's schedule of sequence of activities should include LAFCO's verification that California Department of Fish and Game and U.S. Fish and Wildlife Service have approved a new or amended HCP and issuance of Incidental Take Permits to City covering the project area, prior to LAFCO's consideration of annexation. If LAFCo approves an SOI, LAFCO should include, as a

condition of approval of the SOI, the requirement that an HCP and Incidental Take Permits for the project be obtained by the City prior to rezoning.

City proposes a mitigation ratio of one-half acre of habitat preserved for each acre developed in Greenbriar. We are reliably informed that USFWS and DFG rejected this proposal as inadequate, so it is puzzling that the DEIR and RDEIR continue to claim that this proposal is adequate.

The "Joint Vision for Natomas" MOU requires a one-to-one mitigation ratio for loss of open space. However, an attorney representing AKT development asserted, at a City Council meeting, that this is economically infeasible, and the DEIR proposes that parks, bicycle paths, and detention basins within the project be credited towards the applicant's "open space". However, applicant AKT, and entities controlled by AKT already own or contractually control sufficient land to meet the 1 to 1 open space requirement of Joint Vision in Natomas Basin, Sacramento County. These parcels, which would be difficult or infeasible to develop, are shown on the map attached as **EXHIBIT FOUR**, indicated with hand-written crosshatches. All are next to existing habitat preserves of the Natomas Basin Conservancy in Sacramento County and could be readily incorporated as part of the Conservancy's preserve system. These parcels are:

- APN No 201-110-22: 317 acres north of Elverta Road, connects two Natomas Basin Conservancy preserves. The northern half is within the mile-wide open space "community separator" designated by Joint Vision along the County line, and most is within the internal 100-year flood plain, shown on the map attached as **EXHIBIT FIVE**, and thus difficult or perhaps infeasible to develop.
- APN No 225-020-22, -24, -03, -05, -26, -27, -21, -16, -10, totaling 275 acres, south of I-5, between I-5 and the West Drainage canal, adjoins the NBC's Fisherman Lake preserve, and is entirely within the internal 100-year flood plain, per map attached as **EXHIBIT FIVE**. Much of it flooded on January 1, 2006 from stormwater and overflow from the West Drainage Canal. Proximity to the Airport makes residential development infeasible. Commercial development would be very expensive, perhaps infeasible, because it would require at least 18 inches of fill and a new drainage canal to the Sacramento River with pumps. The existing West Drainage Canal cannot accommodate additional stormwater (J. Lamare & J. Pachl pers. observation, January 1, 2006.) Commercial development at that location would compete with efforts to develop Metro Air Park, immediately north, which County hopes will become a revenue-generator.
- APN No 225-030-11, -46, is 135 acres on the east side of Fisherman Lake north of Del Paso Rd. AKT filed an application for annexation with City that has been "on hold" for several years. Approximately forty percent is in the Swainson's Hawk Zone, which is to remain undeveloped as a mitigation measure of the Natomas Basin HCP. (The SWH Zone is measured one mile from the inland toe of the Sacramento River levee.) Jets flying 3000 feet overhead make it unsuitable for residential development. The western part was flooded from stormwater on January 1, 2006 (J. Lamare & J. Pachl pers. observation). Homeowners along the top of the low bluff to the east (Westlake) paid premium prices for the view because the sales agents of the developers (AKT and Lennar) told them that it would remain undeveloped.

- APN No 225-090-14, 225-010-50, which is 65 acres between Garden Hwy and Fisherman Lake, adjoining a small NBC preserve to the south.

AKT or entities controlled by AKT acquired these parcels when Natomas land prices were much lower than today, and there is no reason why AKT cannot dedicate all of these lands to mitigate for the loss of open space and habitat destroyed by the Greenbriar project.

E. AIR QUALITY

The RDEIR p. 6.2-28 states that the average residence time in an owner-occupied house will be 11 years, and uses the ratio of this duration to a 70-year lifetime to adjust the peak cancer risk at a residence in the proposed Greenbriar project. The fault with this logic is that it uses the average residence time to characterize expected risk for every member of an exposed population. In this analysis, the peak expected exposure should be used to determine the impacts to the most impacted resident, which is one of the standards in health risk assessment methodology. The California Office of Environmental Health Hazard Assessment (OEHHA), in its health risk assessment guidance published in 2000¹, recommends using a 30-year residency period for peak exposure analyses. This term was determined to represent the 90th-percentile of occupancies from a variety of data sources. Using this exposure period, the 29-in-a-million risk 70-year average cancer risk reported by the Sierra Research health risk assessment would equate to a 30-year exposure risk of 12.4-in-a-million cancer risk. Additionally, the maximum 30-year (2007-2037) average cancer risk interpolated from the Sierra Research report is 43.2-in-a-million. When this impact is adjusted to a 70-year average, the result is 18.7-in-a-million increased cancer risk. Both of these levels exceed the significance threshold reported in the RDEIR of 10-in-a-million cancer risk. On this basis, the impacts from off-site mobile sources should be concluded to be ***significant and unavoidable***.

The RDEIR should also be amended to include the analyses of mitigation measures and the adoption of feasible measures. The list of mitigation measures should include, at a minimum, the cultivation of a fully-opaque vegetative screening within the project boundaries and adjacent to I-5 and SR-99, and the installation of HEPA filters in HVAC systems serving residences within the 10-in-a-million risk isopleth

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Respectfully submitted,

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¹ Air Toxics Hot Spots Program Risk Assessment Guidelines Part IV: Exposure Assessment and Stochastic Analysis Technical Support Document, OEHHA, July 2000, http://www.oehha.ca.gov/air/hot_spots/pdf/chap11.pdf