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January 8, 2008

Mayor Heather Fargo
Members of the City Council
City of Sacramento cc: City Manager Ray Kerridge

RE **Council Workshop on Greenbriar project**, January 8, 2008. 6 pm agenda, Item 20

Dear Mayor Fargo and City Councilmembers,

These comments are submitted on behalf of Sierra Club, Friends of Swainson's Hawk, and Environmental Council of Sacramento, which oppose the Greenbriar project, a suburban development project atop prime farmland in a deep flood basin.

There is growing public concern about local government's continued approval of sprawl development. Greenbriar supporters are attempting to disguise the project with false claims of "smart growth," and to justify it with the preposterous assertion that a few hundred acres of development at Greenbriar will magically induce the Federal government to pay for an $800 M light rail line to the Airport by 2026.

City staff incorrectly assert that the Greenbriar project will generate funding that will pay for all project public facilities and infrastructure, plus surplus funds that will help ameliorate the City's fiscal deficit and the enormous deficit of the North Natomas Public Infrastructure Financing Plan. However, staff has failed to provide the Council with the project financing plan, fiscal analysis, and City-County revenue sharing agreement required by Joint Vision, prior to this Workshop even though staff earlier presented a detailed public infrastructure financing plan and fiscal analysis to the Planning Commission.

The City Planning Commission rejected the project on November 8, 2007, by a 5 - 3 vote, with one recusal. A divided LAFCo earlier approved expansion of City's Sphere of Influence to include Greenbriar by a bare margin of 4 – 3.

The project is opposed by the Natomas Community Association, Sacramento County Taxpayers League, Sacramento County Farm Bureau, County of Sutter, environmental organizations (Environmental Council of Sacramento, Sierra Club, Audubon, Friends of the Swainson's Hawk), and numerous citizens. The U.S. Fish and Wildlife Service, California Department of Fish and Game, State Office of Environmental Health Hazard Assessment (as to air toxics effects), California Department of Transportation, and Swainson's Hawk Technical Advisory Committee have stated very strong concerns by letters submitted to City and LAFCo.

The project is supported by SACOG, the Regional Air Board, and Regional Transit, whose Boards are comprised of representatives of the same local jurisdictions which have repeatedly approved the suburban sprawl development that has become the hallmark which defines this region. The former City Manager, Bob Thomas, vigorously spearheaded the Greenbriar project while he was City Manager, and then was hired as a consultant by the project developer, AKT, after he left City employment.

The current lawsuit challenging LAFCo's erroneous approval of the SOI and certification of the EIR is "on hold" pending City's decision. City was named as a real party in interest, but not as a defendant. City has the discretion to disapprove or modify the Project, the EIR, and mitigation measures.

This letter focuses primarily on the impacts of the project on City's finances. The numerous other problems with the project will be addressed by others at this Workshop hearing, and by letter prior to the next hearing.

1. The project fails to provide funding sufficient to pay costs of project infrastructure and public facilities

A fundamental principle of the North Natomas Community Plan ("NNCP") was that the infrastructure, public facilities, and other costs of development would be paid in full by the new development. The reality was dramatically otherwise. The North Natomas Financing Plan greatly understated costs of infrastructure, and developers consistently resisted fee increases, sometimes claiming that development "would be infeasible" if fees were increased. All too often, City acceded to developer demands, and much of what was promised to new residents by the City in the Community Plan was not delivered. See

Several months ago, City staff admitted that $70,000,000 was needed to complete the community infrastructure promised by the Financing Plan. More recently, City staff told Natomas residents that it would cost $150,000,000 to complete infrastructure and facilities promised by the Financing Plan and not delivered. Most of the NNCP area is now built out, and remaining future development project cannot legally be required to contribute more than its proportionate share of cost of community infrastructure due to legal nexus requirements.

The Report of the Sacramento County Grand Jury, June 2007, page 28, (**ATTACHED**) strongly recommended an independent public audit of "whether the City has met the stated fiscal goals" of the NNCP, and listed a detailed set of issues to be addressed which go well beyond the scope of the usual municipal financial audit. <u>City should undertake no new development in Natomas until the audit recommended by the Grand Jury, addressing all of the issues listed on page 28 of the Report, is undertaken and made available to the public, and steps are firmly in place to avoid repeating the same errors that caused the failure of the North Natomas Financing Plan.</u>

Tonight's Staff Report, p. 4, states that a financing plan and tax revenue-sharing agreement for Greenbriar are being prepared, which is rather strange because the Public Infrastructure Financing Plan and Fiscal Impact Analysis were previously completed and submitted to the Planning Commission. <u>See</u> <u>"Greenbriar Public Infrastructure Finance Plan", 8/14/07</u>, on a CD in back cover of Greenbriar FEIR, particularly pp 31 – 35, "Feasibility of Finance Plan".

The Finance Plan shows that the project and its public infrastructure finance plan verge on financial infeasibility, and that there are major uncertainties and likely additional costs that could easily push public facilities financing into the "infeasible" range, unless City subsidizes the project. There should be no consideration of annexation, prezoning, or other approvals until all financial questions are resolved and revised Finance Plan, fiscal analysis, and Joint Vision revenue-sharing agreement are prepared.

ATTACHED are pages 23 and 32 – 36 of the Greenbriar Public Facilities Finance Plan presented to Planning Commission. Page 32, states that development having a public infrastructure burden between 15 -20% of market sale price may be feasible, and that development having an infrastructure burden above 20% is infeasible, "based on EPS experience ... for over two decades." EPS' analysis in Table 9 on page 33, "Infrastructure Burden," shows Greenbriar's cost burden as 19.5% of the sale price of a medium-density home, which is the majority of homes, 16.4% of the sale price of low-density homes, and 14.7% of the sale price of high density residences.

Cost projections in Table 9 (page 34) are highly speculative. For example, the Finance Plan does not explain how it computed the Table 9 projected habitat mitigation cost. The Federal and State wildlife agencies been clear that Greenbriar's proposed endangered species habitat mitigation, approximately 0.5 acre preserved for every acre developed, is grossly inadequate. For each acre of mitigation land required, there are associated fees (for monitoring, endowment, maintenance and operations). The habitat mitigation costs will remain unknown until the City completes an Effects Analysis and new HCP, if approved by the USFWS and CDFG, and those agencies issue Incidental Take Permits that state the extent and type of habitat mitigation required. Habitat mitigation (acreage and fees) required by USFWS and CDFG will be much greater than presently proposed by City and assumed by the Finance Plan.

The Finance Plan, p. 23, states that the developer "may be required to advance funds and construct additional off-site roadway improvements" but does not include those costs in the Finance Plan. The California Department of Transportation insists that the project should financially contribute to off-site highway improvements. A sizeable contribution by the project will likely be required, which will further increase the project's cost burden.

The Financing Plan, Table 9, page 33, includes no funding to implement the Joint Vision requirement that development provide 1 acre of open space mitigation in the Sacramento County area of the Basin for every acre developed. The Report's assertion that artificial detention basins, bicycle paths, and freeway buffers within the project are "open space" under Joint Vision are contrary to the City's promises in the Joint Vision MOU, and Government Code §§56060 and 65560 which defines "open space."

The Finance Plan, Table 9, page 33, says that the Supplemental Levee Fee is only a preliminary estimate. In fact, SAFCA staff has privately indicated that the likely fee would be at least $2 per square foot for each home, which is substantially more than the Table 9 estimate for medium and low-density homes. Every levee project in the region has generated huge costs overruns. It is very likely that the pending SAFCA project, which is the largest ever, will also generate huge cost overruns that will require a substantial increase in the levee fees and assessments.

The Finance Plan, p. 32 states that a total of taxes and assessments of less than 2 percent indicates financial feasibility. Finance Plan, p. 34, Table 10, shows estimated total taxes and assessments as ranging from 1.24 to 1.67 percent of assumed sale prices. However, the Finance Plan, p. 35, footnote 2, states that "actual tax rates adopted for Greenbriar could be significantly higher than those shown."

The percentage calculations used in Tables 9 and 10 to determine feasibility are based on home prices equal to 2005 Natomas price levels (p. 34). However, 2005 home prices were the peak of the market and were driven, in part, by unrealistic home loans that are no longer available. Home prices and sales have since declined substantially and are projected to decline further If, as is extremely likely, Greenbriar home prices prove less than those assumed by the Financing Plan and/or costs are higher, then the ratio of costs and total taxes to home prices will be greater than shown in Tables 9 and 10, and most likely within the "infeasible" range beyond 20%.

In such event, the City would likely eliminate, and/or indefinitely defer, "nonessential" promised public infrastructure at the developer's request (as happened in North Natomas Community Plan), and would need to apply its General Fund to pay for essential infrastructure. Decline in home values below 2005 levels would also lead to a reduction of property tax revenues anticipated from Greenbriar by the Finance Plan (which is based on 2005 home prices).

The Joint Vision MOU says that the 1 percent ad valorem property tax from parcels annexed within the Joint Vision area shall be distributed equally between County and City, that other revenues would be shared, and that City and County would adopt a master Tax Sharing and Land Use Agreement for Annexations. (See Joint Vision, pp. 4, 5). There is no Joint Vision revenue sharing agreement. The Greenbriar financial analysis does not account for the effect of Joint Vision revenue sharing. Joint Vision revenue-sharing is very relevant to question of whether providing services to Greenbriar will cost the City more than it will receive in revenue from Greenbriar, and whether CEQA mitigation measures which rely upon revenue generated by Greenbriar are financially feasible.

This project should not be considered for any approvals until there is a Joint Vision revenue-sharing agreement, much more certainty as to actual fees and public facilities costs discussed above, and revised financial and fiscal analysis. The North Natomas Community Plan was not subject to the Joint Vision revenue-sharing agreement and cannot pay for itself, so it is mysterious why staff think that Greenbriar would pay for itself and produce surplus revenue despite revenue-sharing under Joint Vision.

CEQA mitigation measures which rely on revenue subject to Joint Vision revenue-sharing must be deemed speculative and infeasible due to the fiscal effect of Joint Vision revenue sharing, unless demonstrated otherwise by a revised financial analysis after there is a Joint Vision revenue-sharing agreement. The FEIR should not be certified with speculative or infeasible mitigation measures.

2. Assertions that Greenbriar will provide net revenue to subsidize infill and contribute to completing NNCP infrastructure are unsupported.

In light of the information disclosed by the Financing Plan, above, and the substantial decline of housing prices and constriction of the home loan market, there is no reason to believe that the Greenbriar development will generate surplus revenue to subsidize infill and contribute to completion of community facilities within existing Natomas development. Revenues cannot even be estimated until there is a Joint Vision revenue sharing agreement, much more certainty of Greenbriar fees and infrastructure costs, and a realistic estimate of probable sale prices of homes in Greenbriar (which will be substantially less than in 2005). In light of (1) uncertainty about public infrastructure costs and fees which, even as tentatively estimated by the Finance Plan Table 9, cause the project to verge on infeasibility, *supra*, and (2) the reduction of City's tax revenue from Greenbriar due to Joint Vision revenue sharing, there is no basis for assuming that the project can generate revenue and fees in excess of that needed for on-site development.

3. Greenbriar Fiscal Impact Analysis, January 2007

The Greenbriar Fiscal Impact Analysis, dated January 2007, was submitted to Planning Commission on October 11. It purports to reflect the division of revenue between City and County required by the Joint Vision MOU, but the Analysis is written obscurely and it is unclear as to how revenue available to City after the Joint Vision revenue split is computed or whether Greenbriar would be a net revenue gain or net revenue loss for the City. At page 7, **(ATTACHED)** the Analysis states that "the results suggest a fiscally negative impact to the City", which means that there will be a net revenue loss.

Moreover, the Joint Vision MOU, Section II, states that there will be further negotiations, and that City and County will adopt a Master Tax Sharing Agreement. There is no Master Tax Sharing Agreement. A reliable fiscal analysis cannot be done until City and County have adopted a Master Tax Sharing Agreement for Joint Vision, or, at minimum, for Greenbriar.

4. The Partial Reversal Of The Position Of Sacramento Metropolitan Air Quality Management District Was Politically-Dictated And Lacks Scientific Basis

The Sacramento Metropolitan Air Quality Management District ("SMAQMD") was highly critical of certain elements of the EIR and the project. See letters of the District dated August 31, 2006, December 29, 2006 (FEIR 4-268, 5-23), September 19, 2007 and the letter of the State Office of Environmental Health Assessment, September 26, 2007, submitted to Planning Commission, which are very clear about the health hazards arising from placing residences within 500 feet of a busy freeway.

Thereafter, on October 25, 2007, the SMAQMD Board (comprised of City and County elected officials) adopted the following policy, by a 5 – 4 vote:

> "8. Land use – Support communities in their efforts to meet sustainable land use and energy use goals ands objectives or **adopted Blueprint Preferred Scenario targets**."

This new policy leaves Air District staff with little choice but to support any new development project supported by local government within the Blueprint Preferred Scenario map area (such as Greenbriar) regardless of possible detrimental effects upon air quality and human health; and robs District staff of their scientific independence. "Blueprint" underwent no environmental review, and never addressed the potential health hazards of locating new residential development next to freeways. The District Board's blanket support for any project within the Blueprint map area, regardless of its effects, is inconsistent with the District's legal responsibility to protect the public's health.

A few days later, the District submitted its letter dated October 29, 2007, which for the first time stated District support for Greenbriar and asserted that the Air Resources Board guidance document was not applicable to the Sacramento region or to the project site, (even though located at the junction of I-5 and Hwy 99).

Thereafter the State Office of Environmental Health Assessment decisively rebutted the local Air Board's assertion, by letter dated December 10, 2007, which City staff failed to disclose in its Staff Report. A copy of that letter will be submitted to Council.

5. Assertions that Greenbriar will increase jobs-housing balance are unsupported.

It is asserted that Metro Air Park will provide jobs for Greenbriar residents. Unfortunately, many industrial and warehouse workers cannot afford new home prices in Natomas.

The 2000-acre Metro Air Park site is completely vacant, despite having been fully permitted in 2002 and the construction of detention basins, main roads, and placement of fill. There is no evidence that there will be substantial development at Metro Air Park in the foreseeable future. It must compete against existing industrial and office parks which are served by existing infrastructure and public facilities, including large vacant parcels designated for commercial and employment centers in the City's existing North Natomas Community Plan area.

If the justification for Greenbriar is to provide housing next to a major employment center, then consideration of Greenbriar should be deferred until substantial employment-generating development actually exists at Metro Air Park, which pay wages sufficient for workers to buy homes in Natomas. Job-housing balance can be more feasibly accomplished **now** by infill development within the existing urban area.

6. The assertion that the Greenbriar project will cause the Federal government to fund construction of light rail to the Airport is fiction.

Regional Transit now states that projected completion date is 2026 and estimated cost is $800 M. There is no evidence that the Federal government is interested in funding light rail to the Airport, and no evidence, other than wishful assertions by local government, that development of Greenbriar will induce Federal funding. RT was recently required to suspend its planning of light rail extensions due to shortfall of locally-generated operating revenues, and has reduced or eliminated service on some bus routes. Bus service to existing North Natomas development is minimal, even though the North Natomas Community Plan was promoted as "transit-oriented." RT's plan for the DNA line includes 12 station stops between downtown and the Airport, a slow ride that would be unattractive to persons who need rapid and timely transit to the Airport. Well-publicized express bus from a downtown RT station, perhaps with a small indoor waiting area, would provide much faster ride to the Airport, and would be more cost-effective and feasible, and could be implemented how.

There are at least 10,000 mostly-developed acres in South and North Natomas, plus Airport and Metro Air Park that would be served by light rail to the Airport. The assertion that an additional 500 acres of Greenbriar development would magically induce the Federal government to pay the $800 M estimated cost of the project is ludicrous.

Thank you for considering these comments.

Respectfully submitted,

James P. Pachl, Attorney