



915 L St., C-425 Sacramento, Ca. 95814 www.swainsonshawk.org

January 8, 2008

Mayor Fargo and Members of the Council
915 I Street
Sacramento, Ca. 95814

Re: Annexation of Greenbriar, impacts on habitat, Natomas Basin Conservancy (NBC),
Natomas Basin Habitat Conservation Plan (NBHCP)

Dear Mayor Fargo and Members of the Council:

Friends of the Swainson's Hawk is well on record in numerous comment letters regarding the Greenbriar project and its Environmental Impact Report since 2005. I am attaching some of these documents as well as relevant comment letters by the wildlife regulatory agencies and the Swainson's Hawk Technical Advisory Committee. These comments are still relevant because the City has not presented an adequate habitat mitigation program for Greenbriar. Instead, the FEIR claims that mitigation will be adequate when the proponents meet all permit requirements with wildlife regulatory agencies. This claim violates California Environmental Quality Act by deferring mitigation. It also constitutes a violation of the existing Habitat Plan by the City. FOSH is also very concerned with the lack of adequate farmland mitigation for the project since the NBHCP assumes the continuation of agriculture in the basin in perpetuity. Farmlands are important to the sustainability of the Basin's Swainson's Hawk population and its Giant Garter Snake population.

Approval of the Greenbriar Annexation Would Violate The 2003 Natomas Basin Habitat Conservation Plan (NBHCP)

The effectiveness of the NBHCP's Operating Conservation program is explicitly premised on City's commitment to limit development to 8,050 acres within the City's Permit Area, Sutter to 7,464 acres, and Metro Air Park's to 1,986 acres, for a total of 17,500 acres. The NBHCP, EIR/EIS, and other decision documents rely upon the assumption that the rest of the Basin will remain in agriculture and continue to provide habitat values for threatened Giant Garter Snake (GGS) and Swainson's Hawk (SWH).

The Federal District Court, Judge David Levi, construed the effect of these provisions in its decision upholding the 2003 NBHCP, September 8, 2005, as follows:

At pg. 30, fnt 13, of the Opinion, the Court states that:

"...the Service and *those seeking an ITP (Incidental Take Permit) in the future will face an uphill battle if they attempt to argue that additional development in the Basin beyond 17,500 acres will not result in jeopardy,*" pointing out that the HCP, Biological Opinion, Findings, and EIR/EIS are predicated on the assumption that development will be limited to 17,500 acres and the most of the remaining lands will remain in agriculture during the 50-year Permit Term.

At pg. 22 ftnt 10, of the Opinion, the Court states that:

"...while plaintiffs contend that future development will vitiate the NBHCP, it is more likely that, if future development in the [Sacramento] County will have this effect, *the Secretary will decline to issue ITP's for development in [Sacramento] County or will insist on mitigation that may be considerably greater than required by the NBHCP.*"

The wildlife agencies have not agreed to issue Incidental Take Permits for Greenbriar. The required habitat mitigation ratio likely will substantially exceed 1 to 1 if these agencies ultimately do issue Permits. The City does not know what may be required to obtain these permits and would be well advised to maintain flexibility in dealing with the wildlife agencies. By pre-committing itself to many details of the project prior to final resolution of the habitat mitigation issues, the City reduces its flexibility and future options not only for the project area, but also for compatible and successful land uses in the rest of the Basin. Moreover, by approving annexation of this project without an agreement with the wildlife agencies, the City puts its land use and transportation program in limbo. It sets itself up to break promises later. Not knowing what the mitigation requirements might be, the City signs a blank check committing itself and its resources to the annexation. The likely result is that the City will later have to make disappointing changes in project. It will not be able to reverse the annexation.

City's FEIR/EIS for the Natomas Basin Habitat Conservation Plan, pp. 3-30 - 3-31, certified by Sacramento City Council on May 13, 2003, represented to the wildlife agencies that:

"Development of West Lakeside and Greenbriar Farms is not considered reasonably certain to occur *because extensive studies, planning and further analyses are required as part of the Joint Vision process before any development approvals may be considered* for any of these areas, and because the outcome of these efforts is unknown." (FEIR/EIS p. 3-31, attached.)

Yet the City is now proceeding to annex Greenbriar without completing those "Joint Vision studies, planning and further analysis." It would be wiser to stick to the previous strategy.

The City in the Natomas Basin Habitat Conservation Plan and in the Implementation Agreement that it signed with the wildlife regulatory agencies agreed to do a effects analysis and fully mitigate for all impacts on the NBHCP and the operating program of the Natomas Basin Conservancy for any future development in the Basin. Yet it has not achieved agreement with the wildlife regulatory agencies about those effects and mitigations for the Greenbriar project. To quote from the wildlife agencies' letter:

"The Effects Analysis and proposed conservation strategy in the DEIR were created with little input from the Wildlife Agencies and have not been evaluated by the Wildlife Agencies to

determine their consistency with Federal and State Endangered Species Act requirements or their effects on the efficacy of the NBHCP.”

and

“Future development in the basin will require a new conservation strategy that is developed with input and review from the Wildlife Agencies, to address these impacts.”

[US FWS and CDFG September 5, 2006 letter entitled “Comments on the City of Sacramento's July 2006, Draft Environmental Impact Report for the Proposed Greenbriar Development Project, Sacramento County, California”]

Though the quoted wildlife agencies’ letter was submitted over 18 months ago to the City, there has been no change in this assessment. The “effects analysis” circulated with the DEIR was grossly inadequate; we commented at the time (attached) and our comments are still relevant. The City has an obligation under CEQA and under its NBHCP to fully evaluate, fully disclose, and to fully mitigate proposed Greenbriar project impacts to the species, their habitat and to the Natomas Basin Habitat Conservation Plan and the Natomas Basin Operating Program.

The Staff report presented to Council for the January 8 Workshop fails to note the submittal of the recent letter from California Fish and Game to City staff dated December 13, 2007 which is attached. The Fish and Game letter points out two very important key elements that are missing from the Greenbriar package before you:

- 1) a minimum of 1:1 habitat mitigation is required to mitigate for impacts on Swainson’s Hawk; and
- 2) analysis of effects on the NBHCP is best done in the Joint Vision process, in a comprehensive way, not for one project.

Wildlife and Habitat Mitigation for Greenbriar is Inadequate.

As you know, Friends of the Swainson’s Hawk has joined a lawsuit to overturn the approval of the Final Environmental Impact Report on Greenbriar by LAFCo. A primary reason why the Friends of the Swainson’s Hawk Board voted to join this lawsuit is that the mitigation program for Swainson’s Hawk in the FEIR is grossly inadequate, and the analysis of impacts on Swainson’s Hawk contradicts the publicly stated scientific opinions of both the California Department of Fish and Game and the Swainson’s Hawk Technical Advisory Committee. (See attached letters.) The FEIR illegally defers mitigation. Our comment letter is attached.

In its staff report for the January 8 workshop, the City staff tries to minimize the difficulties the City faces with the habitat mitigation issues. Staff seems to be relying on the applicant to manage the interface with the regulatory agencies. While applicant claims that they will take care of all wildlife regulatory requirements, the fact is that the City must be the primary local party to these negotiations and agreements because the City is the permittee under the Natomas Basin HCP and has pledged to protect that plan in any further development in the Basin. While USFWS seems willing to defer agreement on mitigation to a future date, the fact is that CEQA does not provide that flexibility, and California Department of Fish and Game has not concurred in deferral of mitigation. By moving ahead now with annexation, before it has reached agreement with the wildlife agencies with whom it has an agreement (Natomas Basin Habitat Conservation Plan) the City puts that agreement in jeopardy.

Farmland Mitigation Not Provided.

While other jurisdictions including SAFCA and the County of Sacramento Department of Airports, are mitigating loss of farmland with 1:1 mitigation requirements, the Greenbriar proposal FEIR is not. Over 500 acres of prime farmland are to be paved over with no guarantee that equivalent farmland will be preserved in the Basin to ensure that farming continues. We have commented in the EIR process that double counting mitigation land for farmland mitigation is not acceptable in this case. There are no guarantees that any of the habitat land will be maintained permanently in agriculture.

Thank you for considering this letter, and the attachments.

Sincerely,

A handwritten signature in black ink that reads "Judith Lamare". The signature is written in a cursive, flowing style.

Judith Lamare, Ph.D., President judelam@sbcglobal.net swainsonshawk@sbcglobal.net