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Re: Panhandle Annexation and PUD DEIR Comment

Dear Ms. Hageman,

The following comments, which incorporate the attached “Panhandle Working Group Support Position for Open Space Buffer,” and accompanying Exhibits 1 – 13, are submitted on behalf of the Environmental Council of Sacramento, Natomas Community Association, Friends of the Swainson's Hawk, and Sierra Club - Mother Lode Chapter, regarding the DEIR for the proposed annexation of Panhandle, PUD, and related approvals. We also incorporate into our comments all of the comments of other individuals and organizations, and will rely on these comments as well as our own. These comments highlight some of the deficiencies of the DEIR and the project. We also request information in a Recirculated DEIR. Our organizations oppose the project, including the annexation, General Plan Amendments, rezone, PUD, and development of the project site.

**Agricultural Resource**

While the DEIR contains mitigation for agricultural resource lost, LAFCo is now reconsidering its mitigation policies. The final EIR should include any mitigation necessary to comply with LAFCo policies.

An agricultural buffer on the northern boundary of the project area is necessary to be consistent with the NNCP. The DEIR recommends mitigation to include this buffer and its maintenance (MM4.2.2a and MM 4.2.2b). However the funding mechanism for acquisition and maintenance of the buffer is not identified in the DEIR or other project documents. Therefore there is no evidence that implementation of this proposed mitigation measure is financially feasible, and thus no evidence supporting the finding that impacts are mitigated to less than significant. (MM 4.2.2 – see discussion, below, regarding funding for traffic mitigation measures).

The DEIR MM 4.2.1 states that the requirement to acquire land suitable to mitigate for loss of farmland shall be satisfied by acquisition of habitat mitigation land to mitigate for impacts on wildlife (ie: compliance with the NBHCP, MM 4.8.1). 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 having differing goals which in some instances are incompatible. Mitigation for loss of agricultural land is intended to preserve 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. Moreover, it cannot be determined whether “stacking” can succeed for Panhandle’s agricultural and habitat mitigation, because no land has been identified for the proposed mitigation of habitat and agricultural impacts of the Panhandle project.

The DEIR does not address the incompatibility of NBHCP and stacking or the risk and consequences of failing to 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.

MM 4.2.1 states that agricultural protection easement may be “dedication of open/recreational space.” It is inappropriate to mitigate for loss of farmland with open space/recreational land. To mitigate for the loss, the land must be placed in an agricultural use. We would urge you to include a mitigation measure that requires at least some on site mitigation and the use of the land for organic farms serving local needs for fruit and vegetables.

### **Air Quality**

The Panhandle DEIR Air Quality analysis is incomplete. It refers to an air quality plan for the project which is not appended. CEQA requires that all parts of a DEIR be circulated for at least 45 days for public comment. Therefore, the DEIR and project documents, including the missing Air Quality analysis, must be recirculated for at least

45 days. Moreover, though the project is conditioned with air quality mitigation measures, these are measures that apply to projects that are included in the land use base for the air quality plan. The Panhandle PUD is inconsistent with the current federal ozone attainment plan adopted by the Sacramento Metropolitan Air Quality Management District because that plan is based on a land use map that assumes Panhandle remains in agricultural land.

The Sacramento Metropolitan Air Quality Management District is presently preparing an ozone attainment plan to be submitted to state and federal regulatory agencies by June 2007. In order to be consistent with the upcoming air quality plan, the DEIR should be delayed until that plan is adopted and the DEIR should include sufficient mitigation measures to be found consistent with the new air quality plan.

The DEIR Air Quality analysis points out (4-5-10) that the transportation conformity requirement of the federal Clean Air Act:

“ The region’s transportation plan must conform and show that implementation will not harm the region’s chances of attaining the ozone standard. The SIP is tied to a “motor vehicle emissions budget” and thus, transportation planners must ensure that emissions anticipated from plans and improvement programs remain within this budget.”

However, the DEIR fails to identify the interaction between the transportation improvements required for this project and the necessary air quality plan adoption and conformity finding. What transportation mitigation measures and required transportation projects could be at risk if the necessary approvals are not obtained? Nor does the DEIR identify what additional air quality mitigation requirements will be forthcoming with the adoption of the new air quality plan.

### **Alternative Analysis**

The DEIR should quantify the differences between alternatives in impacts rather than classify them arbitrarily as in the same category.

The DEIR at 6.0-21 makes no meaningful distinction between the project alternative and the other alternatives in terms of stormwater run-off and surface water drainage, flood risk, and groundwater quality, although the plans differ substantially in impervious surface.

The DEIR does not distinguish between the transportation maintenance, traffic and transit impacts of the various alternatives although they do differ in the acreage used to serve about the same population.

The DEIR should quantify the impacts on existing neighboring land uses and residents of the alternatives.

The DEIR should quantify the differences between alternatives in cost to municipal services to the population since the project requires a larger service area.

The DEIR should quantify the differences in impact between the alternatives on the biological resource, including nesting and foraging Swainson's Hawks, White Tailed Kites, Burrowing owls and impacts on and adjacent, wildlife corridor along Steelhead Creek and along Hansen Ranch to Placer County.

The DEIR should quantify and compare the alternatives in terms of meeting diverse housing needs. All inclusionary housing is for rent. The DEIR fails to analyze the impacts of the use of rental properties for all inclusionary housing compared with a mix of housing spread over neighborhoods and a requirement for senior housing. The project alternative lacks an institutional designation for senior independent and assisted living as compared with the community proposed plan (so-called "Trujillo" alternative).

### **Biological Resources**

With MM 4-8-2a the DEIR states that compliance with the NBHCP will require "Payment of HCP fees or dedication of land at a ratio of 0.5 to 1." All land requirements should be met with dedication of land, not through payment of fees. Under CEQA, land acquisition requirements for mitigation must be met through land dedications because fee programs to acquire land for habitat mitigation have consistently failed in our region. (Examples are the former SWH mitigation programs of the City of Elk Grove, County of Sacramento, and County of Yolo.) Use of fees to acquire mitigation land is inconsistent with CEQA's requirement that mitigation be financially feasible and capable of being implemented.

The DEIR (Impact 4.8.1) concludes that grassland is not significantly impacted by development of 590 acres of annual grasslands: "The loss of annual grasslands and associated common wildlife is less than significant because this biological community is locally and regionally abundant and losses from this project would not result in grasslands of the region to drop below a self-sustaining level." (p. 4-8-29) The DEIR provides no evidence to support this conclusion. The DEIR at 4-8-29 states that the conclusion is based on:

"The impact assessment was based on the project description for the Panhandle annexation and PUD, information described in the existing setting (including technical biological reports prepared for the project site), and the standards of significance described above."

No technical biological reports are appended to the DEIR. The DEIR should be recirculated with the necessary appended reports.

### **The DEIR Violates CEQA By Failing To Make Necessary Documents Available For Public Review During the Entire 45-Day CEQA Public Comment Period (Financing Plan)**

Public Resources Code § 21091(a) requires that the public review period for a Draft EIR be at least 45 days, which begins when the project documents and DEIR are complete

and Notice of Availability is given. The DEIR is incomplete because neither it nor the project documents include a financing plan to commit necessary and sufficient funding for the mitigation measures in the DEIR, and to demonstrate that proposed mitigation measures are financially feasible.

Instead, there is a "Draft Public Facilities Financing Strategy" which states that a "Panhandle Public Facilities Financing Plan" will be drafted at an unspecified time and adopted when the project is approved. Otherwise, the Draft Public Facilities Financing Strategy" only recites the various financing options which may be selected by City, contains a list of estimated costs of infrastructure, and contains no data or calculations which demonstrate how these costs will be paid. Page 5 of the "Financing Strategy" recites that project-related infrastructure and public facilities required to serve the project are similar to those of nearby projects and do not appear prohibitively high. It then concludes: "As a result, the project should be able to feasibly fund the cost of the required mitigation measures and infrastructure facilities." (*Id.*, p. 5) The DEIR contain no evidence supporting that conclusion.

CEQA requires that mitigation measures be feasible. "Feasible" includes "financially feasible." Measures which are not financially feasible are, by definition, not feasible. The public and responsible and trustee agencies in reviewing the DEIR cannot form an opinion about the feasibility of proposed mitigation measures without a financing plan which demonstrates that there will be funding adequate to pay for the mitigation measures. The DEIR is incomplete because the financing plan is a necessary element to provide mitigation for the project's impacts.

Indeed, the DEIR states that such data will be available to the decision-makers prior to their action, in the "Panhandle Public Facilities Financing Plan". However, CEQA requires that the "Panhandle PUD Public Facilities Financing Plan" also be made available to the public for the requisite 45-day public comment period, so that the public may examine the Financing Plan and form an opinion as to whether the mitigation measures to be financed by the Financing Plan are, in fact, financially feasible. The nonexistent financing plan has significant environmental impacts because it determines whether there will be funding to implement the Mitigation Measures proposed in the DEIR.

CEQA requires an agency to address specific economic considerations related to mitigation measures to determine if they are feasible or infeasible. See Public Resources Code §21081(a)(3); *Federation of Hillside and Canyon Associations v City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1259, 1260.

On point is *Ultramar, Inc. v. South Coast Air Quality Management District* ("Ultramar") (1993) 17 Cal. App. 4th 689, 700 - 701, in which the agency failed to mail out a section of an DEIR to requesting parties. The agency learned of the omission and mailed out a supplemental environmental document, but refused to extend the comment period to provide the full public review period for the supplemental document. The Court of Appeal held that failure to permit public review in the manner required by law, was a *per se* prejudicial abuse of discretion, and that no deviation from CEQA's notice and public review requirements are acceptable.

At minimum, Public Resources Code §21092.2 and CEQA Guideline 15088.5 will require recirculation of the DEIR for the statutory 45-day comment period after public notice of availability of the Finance Plan. *Sutter Sensible Planning v Board of Supervisors* (1981) 122 Cal App 3d 813.

**No Evidence That Traffic Mitigation Measures Are Financially Feasible, or Will Mitigate Impacts to Less Than Significant**

MM 4.4.1 states that certain traffic impacts will be mitigated by measures funded by the Panhandle PUD Finance Plan, which does not exist. There is no evidence in the DEIR or any other project documents that the Panhandle PUD Finance Plan will provide funding sufficient to implement all or any of the mitigation measures and infrastructure improvements needed to mitigate for the traffic impacts of the project.

Mitigation Measures 4.4.2.a, 4.4.2.b, 4.4.2.d, 4.4.2.f, 4.4.2.h, 4.4.7.a, and 4.4.7.b call for financing of traffic mitigation measures by the developer's payment of unspecified "fair share" of the cost of various traffic facilities and infrastructure.

CEQA requires an agency to address specific economic considerations related to mitigation measures to determine if they are feasible or infeasible. See Public Resources Code §21081(a)(3); *Federation of Hillside and Canyon Associations v City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1259, 1260.

"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.) Without review of the Financing Plan in conjunction with the DEIR (as was anticipated by the authors of the DEIR, see "Draft Panhandle Public Facilities Financing Strategy", p. 5), it is impossible to determine whether the promised mitigation measures will be fully implemented or at all. The public needs to be able to review the fee program in conjunction with the Mitigation Measures to determine if there is sufficient funding to pay for the infrastructure improvements relied upon by the Mitigation Measures and proposed Findings. In *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th, 342, 363-365, the court said that the EIR included information about the fees to be paid by the project and said: "Although the existing mitigation fee appears to be a reasonable attempt to have developers pay their proportionate share of the costs of needed highway improvements, and the continued use of such fees undoubtedly would be useful, it cannot reasonably be argued that the funds that the county already has raised or that it reasonably can expect to raise in the future, will be enough to mitigate the effect on traffic that will result from cumulative conditions."

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.*, 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 fee 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, (4) make the fees part of a reasonable enforceable plan or program which is sufficiently tied to actual mitigation of traffic impacts at issue.

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 [by the project to cumulative impacts] will be rendered less than cumulatively considerable." CEQA Guideline 15130(a)(3). The Panhandle DEIR does not identify the facts and analysis supporting its conclusions that contribution of "fair share" will render impacts less than significant. There is no evidence of the amount of money represented by "fair share," no evidence as to how "fair share" will be calculated, no evidence that the amount of "fair share" funding will be adequate to construct the infrastructure which comprise 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 comprise the Mitigation Measures.

### **Hydrology and Water Quality**

The relative costs and risks of the detention basins being located in the southwest corner of the site as opposed to the project alternative location for detention basins are not adequately analyzed in the DEIR. The sheet flow goes in the southwest direction and it will be expensive to pump it north to Country Club, west to the Main Canal, south to the C-1 canal and back east past the Panhandle to Steelhead creek. A detention basin next to Charter School, with culvert under Del Paso and larger pipe (across Pardee) accomplishes the same thing and costs much less, particularly for on-going operations. The project proposed increases flooding potential in the Main Drain by pumping uphill and west and trying to dump all the natural flow from the stubbed Dry & Robla Creek, and all runoff from Valley View to the north instead of south west as it flows naturally.

The DEIR does not address the impacts on the existing North Natomas Community residents in the event of conditions approaching or exceeding the 100 year flood condition with and without the Panhandle development.

- What is the additional risk to the existing North Natomas Community Plan area of the failure of the planned detention basin to contain run-off in high water events?
- For situations requiring emergency evacuation, what is the additional burden posed by development of the Panhandle area? The DEIR does not quantify the additional emergency services and evacuation burden posed by the proposed

project when considered in combination with all other development within the Natomas floodplain.

The DEIR does not address the alternative requested by the Environmental Council of Sacramento and the Natomas Community Association that no annexation for new development be approved until the flood risk is fully assessed and reduced to less than significant. The EIR should include as a mitigation measure that no annexation proceed until SAFCA has completed all necessary levee improvements.

The last section of this letter addresses further concerns with hydrology related specifically to flood risk.

### **Transportation**

A number of issues very important to the existing communities are not adequately addressed in the DEIR.

- The proposed project changes the location of National Drive from that envisioned in the Community Plan. It moves National Drive east, away from the location of most homes, and the new location impacts homes in Valley View Acres. The Panhandle working group agreed that the road should stay where it was in the Community Plan or be moved to the center of the new growth area.
- The DEIR should include noise and air pollution mitigation along east side of National concurrent, or before, development to protect adjacent neighbors from noise and air pollution impacts of the proposed project.
- The DEIR fails to consider the cumulative impact of the expected development north and east of the project area on National Drive in estimating traffic counts and consequent impacts on neighbors.
- The DEIR does not adequately address the noise, nuisance, and safety impacts of the additional roads into Regency Park from the proposed and unexpected school and denser proposed project annexation. It lacks adequate mitigation for these impacts. Please note that the eastern portion of North Natomas is supposed to be less dense because of distance from light rail and employment centers and lack of adequate access to the east and south. A portion of the area immediately west of the site is already denser because the city rezoned a large portion of the once approved and now gone golf course for urban uses.
- The DEIR does not address the growth inducing impacts of proposing two full width roads with bollards that connect to the Avdis urban proposal on the north end of Valley View. They would eventually allow National to connect with Sorrento, and are growth inducing because they bring 2 roads adjacent to a 60 acre development proposed along Steelhead Creek.
- The DEIR does not address the impact of the lack of east-west off street bikeways and the absence of a ramp up the levee side in the proposed

project. These need to be added to mitigate impacts of the additional vehicle travel.

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### **Other Issues**

The DEIR fails to adequately address the following issues which were discussed in detail in the Panhandle Working Group.

- The exclusion of the open space in the eastern part of the Panhandle that was included in the 1994 community plan has a number of impacts not addressed in the DEIR and which are described in the attached “Panhandle Working Group Support Position for Retention of the City Council Approved WAPA/Valley View Acres/Steelhead Creek Open Space Buffer.”
- WAPA set back. The 1986 adopted NNCP EIR included an adopted mitigation measure requiring a 250 foot setback from the WAPA lines. How did the 1986 NNCP EIR envision that this mitigation measure would be funded?
- The acreage figures used in the EIR do not match the acreage figures on the May 1994 community plan map. No amendments have been made since that time. The 10 acre school site doesn't show up in the EIR as it does on the 1994 map, and the city is behaving as if the Quimby Ordinance didn't apply to the urban area. We went over this problem in the working group. Proponents claim that eliminating a portion of the open space buffer is a good thing because it means more parks scattered throughout the plan area. However about 28 acres of parks were required under the City's Quimby Ordinance requirement in addition to the open space buffer. This is akin to having \$50 in bank (Quimby) and \$150 in bank (open space buffer) and having the bank tell you they will put the \$150 in several accounts so you have greater investment variety, but taking away the \$50/Quimby. You now only have \$150 instead of \$200.
- The school site needs an underlying designation of public facility. Otherwise, these sites are appraised at urban values and the districts can't afford them or pay inflated prices. Plus, community plan has a requirement that they revert to urban with no community plan amendment after 5 years. The DEIR fails to analyze the impacts of this requirement. What we have seen in other Natomas neighborhoods is that the school sites are rezoned for profit and educational needs, and consequent transportation demand, change with negative impacts to the community.
- The negative impacts of strip commercial along Del Paso, south of Del Paso, along the north part of Northgate and other locales in combination with strip commercial on this site are not analyzed in the EIR. What are the impacts of the distribution of commercial in and adjacent to the project site for trip generation and vehicle travel demand?
- The location of higher density apartments on Del Paso Road at the edge of the project area raises a number of issues of best fit with adjoining land uses and transit service that are not addressed in the DEIR. In particular, the community

is interested in assessing the impacts of locating the apartments further east (which would be compatible with the community's proposed use of the southwest corner for detention basin.)

## **FLOOD HAZARD FROM POTENTIAL LEVEE FAILURE ON SACRAMENTO AND AMERICAN RIVERS, AND NATOMAS CROSS-CANAL: Revision and Recirculation of DEIR Required**

### **1. Violations of CEQA**

Information provided by the DEIR on potential flood hazard is incomplete and misleading, and lacks the level of detail and specificity required by CEQA. The DEIR fails to disclose to the public the well-documented proven inadequacy of the levees protecting Natomas Basin and the potential for catastrophic deep flooding.

A Recirculated DEIR which truthfully discloses and addresses the deficiencies of the levees surrounding the Basin and the potential effects of deep flooding, including flood depths on the high and low elevations of the project site during a 100-year and 200-year flood from the American or Sacramento Rivers, is required by Public Resources Code 21092.1 and CEQA Guideline 15088.5. Likewise, the type and extent of damage to property, (assuming that it is built out as proposed), displacement of future residents of the project, and potential loss of life, should be disclosed. Such a Recirculated DEIR must also provide the sufficient level of detail and specificity required by CEQA which is sorely lacking in the present DEIR's discussion of the flooding issue

#### **a. The DEIR misrepresents and fails to disclose the full extent of the potential for flooding and the impacts of such flooding**

The DEIR, p. 4.11-2 correctly states that in 1996, the U.S. Army Corps of Engineers determined that levee improvements along the Sacramento and American Rivers, NEMDC (Steelhead Creek), and Natomas Cross Canal "were sufficient to provide a level of protection to the project site that met or exceeded a 100-year return period event."

The DEIR, p. 4.11-9 states that SAFCA "has succeeded in achieving 100-year flood protection in the Natomas Basin." The DEIR, p. 4.11-12, in its discussion of "Flood Control Guiding Policy A", states that 100 year flood protection has been previously obtained. As shown below, those statements are patently false.

The DEIR admits that that upgrading of the levees will be needed to achieve 200-year level of flood protection (DEIR p. 4.11-5), that "risk of flooding is greater than previously assumed" (DEIR p. 4.11-5), that "the current level of flood protection is now in question in some areas," (DEIR p. 4.11-9), that the levees are "at risk of underseepage and erosion hazards during a 100-year storm event" (DEIR p. 4.11-21, -22, and that the risk of underseepage and erosion hazards in a 100-year storm event is "potentially significant." (Impact 4.11.3).

In fact, the DEIR inexcusably fails to disclose that by letter dated July 20, 2006, the U.S. Army Corps of Engineers ("Corps") formally withdrew its 1998 opinion (attached to the July 20, 2006 Corps letter) that the levees protecting the Basin were adequately constructed to withstand the FEMA 100-year flood. (EXHIBIT ONE).

The now-rescinded 1998 Corps opinion was the sole basis for FEMA's decision to show the Basin on the FEMA's Flood Insurance Rate Map ("FIRM") as being outside of the FEMA 100-year flood plain. FEMA's National Flood Insurance Program is primarily an insurance program which relies upon engineering determinations performed by, or reviewed by, the Corps, in its determination of those lands to include in its Flood Insurance Rate Map, ("FIRM").

In a press interview which accompanied the release of the Corps letter of July 20, 2006, a spokesman for the Corps stated that "We agree, the levees today do not meet current certification criteria" (EXHIBIT TWO, Sacramento Bee, "Faith in Levees Officially Downgraded", July 27, 2006).

Lester Snow, Director of the California Department of Water Resources, by letter addressed to Sacramento Mayor Heather Fargo, dated November 21, 2006, (EXHIBIT THREE) 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)

By separate letters dated July 31, 2006, to SAFCA and to FEMA, Les Harder, Deputy Director of the California Department of Water Resources ("DWR") stated that DWR concurred with the Corps opinion; that "additional analyses are underway to develop a strategy for providing FEMA 100-year flood protection"; and that "even under the best scenario, it will take several years to make the necessary improvements." (EXHIBITS FOUR, FIVE)

Mr. Harder's July 31, 2006, letter to SAFCA, p. 2, stated DWR's concurrence with the Corps letter of July 29, 2006, and expressed the urgency of timely FEMA re-mapping of the Basin "to accurately depict the level of increased flood risk" because of the extent of existing and planned development. (EXHIBIT FOUR) In his letter to FEMA, Mr. Harder stated that "it is clear that that portions of the levees protecting the Natomas Basin do not meet the [FEMA] levee certification requirements." (EXHIBIT FIVE.)

The SAFCA "Executive Director's Staff Report for August 2006" to the SAFCA Board states that the Natomas levees do not meet the 100-year FEMA standards for certification, that re-mapping Natomas Basin as a flood zone is not a high priority for FEMA, and that the final FEMA flood zone maps will be completed in 2012 by which

time SAFCA anticipates completing its Natomas Levee Improvement Project. (**EXHIBIT SIX**).

The SAFCA Executive Director's report to the SAFCA Board, dated February 16, 2006, titled "Information - Natomas Levee Evaluation Study", (**EXHIBIT SEVEN**) acknowledged 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)

Does City 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 THREE** p. 1.) If not, please explain why not?

Does City agree with the statements by the Executive Director of SAFCA, supra, that less than 100-year flood protection is "high risk"? (See **EXHIBIT SEVEN**, p. 1) If not, please explain why not.

Does the City 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 believes that the Basin is not at high risk of flooding.

There is a long history of through-seepage and underseepage of the levees protecting the Basin during high water events. The failures of the levees along the Feather and Yuba Rivers in 1986 and 1997 were caused by underseepage, during high water conditions which were well below the tops of the levees. There were significant weaknesses manifested at points along the Sacramento River levee during the 1997 high water event. During the January 1, 2006 high water event, which was much less than the 100-year flood river elevation, there were numerous boils landward of the Sacramento River levee at the RD 1000 Prichard Lake Pump Station, which were remedied by removal of the pump station and filling 800 feet of the North Drainage Canal. Major repairs at that site were authorized by SAFCA and are ongoing.

Well before release of the DEIR in November 2006, geotechnical engineering studies and soil borings performed for the Corps in 2000-2001 (see EXHIBIT EIGHT) circular for the Corps and SAFCA distributed to public meetings, July 2002) and 2005 ("Final Geotechnical Report For Sacramento River East Levee and Natomas Cross Canal South Levee" November 2005, by URS Engineering for the Corps), and the Draft and Final SAFCA Levee Evaluation Report, March 2006 and July 14, 2006, (**EXHIBIT NINE**) and exhaustive geotechnical engineering studies, released in March 2005, (see EXHIBITS TEN, ELEVEN, TWELVE), technical charts omitted but available at SAFCA office) and designated as Appendices of Draft and Final SAFCA Reports, disclosed extensive subsurface soil permeability and vulnerability to serious underseepage in numerous locations along the levees of the Sacramento and American Rivers and the Natomas Cross-Canal protecting the Basin, that failed to meet Corps standards for the 100 and 200-year water surface event and could cause levee collapse during high water events occurring more frequently than the 100-year event (i.e.: the levees did not provide 100-

year flood protection.) The DEIR spoke generally about studies and planned improvements but failed to disclose the identity of these documents or list them as references in the DEIR, except for the Draft SAFCA Draft Levee Evaluation Report.

Exhaustive engineering studies designated as Appendices of SAFCA's Draft and Final Natomas Levee Evaluation Study Reports disclose numerous reaches of levee which do not meet U.S. Army Corps ("ACE") underseepage guidelines for the 100-year Water Surface Elevation (WSE.) See (1) "Problem Identification Report, Sacramento River East Levee Natomas Basin Evaluation," February 1, 2006, **EXHIBIT TEN**, pp. 12, 22, 30, 33, 35, 40, 46, 50, 54-55, 58, 62; "Problem Identification Report, American River North Levee Natomas Basin Evaluation," February 1, 2006, **EXHIBIT ELEVEN**, (failure to meet Corps guidelines for through seepage) pp. 16, 21, 25, 27; and (3) "Problem Identification Report, Natomas Cross Canal Levee Natomas Basin Evaluation," March 14, 2006, **EXHIBIT TWELVE**, pp. 24, 27, 29, 32, 34, 37, 39. The reports recommend construction of deep slurry walls, to depths ranging from 50 to 110 feet deep through and beneath much of the levee system on the Sacramento and American Rivers to attain compliance with Corps standards. A map showing the location of recommended slurry walls is in SAFCA's Draft and Final Natomas Levee Evaluation Study Reports.

Please review **EXHIBIT THIRTEEN**, letter of Jay Punia, General Manager, California State Reclamation Board, September 5, 2006, commenting on City's Greenbriar DEIR, which is applicable to Panhandle and any other project in the Basin. Mr. Punia correctly states that the current FEMA FIRM designation, that Natomas is outside the 100-year flood plain, "is an outdated regulatory designation, which is not supported by the present best available information regarding the integrity of the Natomas levee system." (*Id.*, p 2).

All of the reports and documents cited above, except for the DWR letter dated November 21, 2006, were in City's possession and known to City staff and the project consultant prior to issuance of this DEIR in November 2006. Indeed, our organizations raised these very same issues, and cited the very same documents in our letter to City and LAFCo dated September 5, 2006, commenting on the DEIR for the Greenbriar project, yet City's DEIR for this Panhandle project failed to disclose most of these documents or the information contained therein, and only hinted at the existing flood hazard. A reasonable person can only conclude that City is systematically engaged in a pattern of deliberate deception and concealment of the true condition of the levees protecting the Basin.

It is increasing apparent that the City and Applicant are fast-tracking the Panhandle 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 much or all of the Panhandle project area, is a flood plain 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 Panhandle, as a condition of retaining the community's eligibility for FEMA Flood Insurance.

The DEIR, at pp.4.11-5 and 4.11-23, mistakenly asserts that the necessary levee upgrades "are anticipated to be constructed within the next 2 to 5 years." In fact, SAFCA's own

Natomas Levee Evaluation Study, Final Report, July 14, 2006, "Final Report Summary" states that 2012 is the targeted date of completion, assuming that the first construction contract is executed in 2007. See also Table FR-1 of the "Final Report Summary", *supra*.

Does City disagree with SAFCA's estimate of the date of completion of levee improvements (2012)? If so, please explain why.

Does City contend that SAFCA will be able to achieve 100-year flood protection, under current Corps and FEMA criteria, prior to 2012? If so, please explain why.

Does City contend that the levees protecting the Basin meet the current FEMA standards for 100-year flood protection? If so, please explain in detail how the levees protecting the Basin meet current FEMA and Corps standards for certification as providing 100-year flood protection, and please disclose all documents and engineering reports supporting such a contention. Such discussion should consider all of the documents referenced above which state that portions of the levees do not meet current Corps criteria for 100-year flood protection.

What is the likelihood, expressed in percentage of occurrence of a flood event occurrence equal to, or exceeding, the FEMA 100-year flood event occurring during any one-year period? What is the mathematical likelihood of such an event during a 30-year period? Please provide documentation and calculations which support the answer.

Using current Corps of Engineers hydrologic engineering criteria, please disclose the estimated water surface elevation and flood depths estimated to occur at the highest and lowest present elevations of the Panhandle project during both a 100-year flood event and a 200-year flood event on the Sacramento River, and, alternatively, the American River.

Please describe the anticipated physical impact, upon persons and property, of flooding of the project site in the event of levee failure during estimated 100-year and 200-year flood events.

The DEIR, pg. 4.11-5 erroneously asserts that the Natomas Levee Evaluation Report estimate that the required levee improvements would cost approximately \$270,000,000. The Recirculated DEIR should state that SAFCA's Levee Evaluation Report, July 14, 2006, "Final Report Summary" states that the "fully funded cost of the project, assuming a annual 10% escalation rate, could rise to \$414 million, " assuming that the project starts in 2007 and is completed during 2012.

Please identify the amount and sources of all funding which has been approved, authorized and appropriated, or is actually available now or is committed to being available when needed, to pay for the upgrades necessary to provide FEMA 100-year and 200-year levels of protection. Please identify and provide supporting documentation.

Please disclose and identify anticipated sources of funding which have not yet been approved or committed. Please disclose why City believes that that such funding will be approved?

Please describe what the City has done to fund the future upgrading of the levees protecting the Natomas Basin. How much money has City contributed, or has committed to contribute, to efforts to upgrade the levees, since January 2005?

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

If the City does not intend to comply with his request, please explain why.

**b. Mitigation Measures**

Proposed Mitigation Measure 4.11.3, states that if FEMA decertifies the levees , the applicant shall implement one of the following mitigation measures, to be terminated upon re-certification by FEMA: either (a) raise building pads high enough to remove structures from the 100-year floodplain as identified by FEMA in its decertification, , or; (b) developer would participate in a regional mechanism for funding the upgrade of levees to the FEMA 100-year level of protection. However, neither measure would be applicable to construction started prior to FEMA's de-certification, thereby leaving the residents of those homes vulnerable to deep flooding. The regional funding mechanism hypothesized by MM 4.11.3 does not exist.

These Mitigation Measures obviously fail to mitigate for impacts of flooding as to those structures built prior to FEMA's re-mapping of Natomas Basin as a flood plain. Moreover, the regional funding mechanism hypothesized by MM 4.11.3 even if implemented, provides no mitigation until the levees are upgraded and certified by the Corps as adequate to protect the Basin against the FEMA 100-year flood event, or such greater level of protection that the Corps may deem adequate to provide a safe level of flood protection for an urban area. Mere payment of money to a levee repair fund (if one then exists) as required by MM 4.11.3 provides no flood protection. Flood protection is only provided by upgraded levees.

Does the levee repair fund described in MM 4.11.3 presently exist? If so, please describe.

Until necessary levee upgrades are completed and certified by the Corps as adequate to protect the Basin against the FEMA 100-year flood event, will the City require that Panhandle landowners, developers and their successors-in-interest, employees, and agents, including real estate brokers, provide written disclosure to all prospective buyers, lenders, bond, and insurers of property within Panhandle of (1) the Corps determination that levees surrounding the Basin may fail during high water events which are less than the FEMA 100-year flood; and (2) the anticipated flood depths at

Panhandle, as estimated by the Corps, in the event of levee failure during 100-year FEMA flood event, and also during a 200-year FEMA flood event?

If the City will not require such written disclosures, explain why not.

Will the City provide such written disclosures? If not, please explain why not.

If the City will not require such written disclosures, will the developer applicants provide such disclosures? If not, please explain why not.

Will City require all owners of residential and commercial property in Panhandle to buy and maintain FEMA flood insurance, until the levees are re-certified by the Corps? If not, please explain why.

The letter of Lester Snow, Director of California Department of Water Resources, to Mayor Fargo, November 21, 2006, recommends that the City undertake a number of actions to protect the public against the current high risk of flooding, pending completion of the levee upgrades. (**EXHIBIT THREE**, p. 2).

For each measure listed by Director Snow, please state (1) whether City will implement those measures, and (2) if the City will not implement any of these measures, please explain why not.

**We suggest the following alternatives:**

(a) Consideration of annexation, and development be deferred until levee upgrades are complete, and the Corps has certified that the levees meet the FEMA and Corps of Engineers criteria for 200-year flood protection. If the annexation is approved by LAFCO, it should be subject to the above conditions, which should be enforceable by LAFCO and citizen suits.

(b) If LAFCO approves the annexation without conditioning development upon completion and certification of levee upgrades as meeting the FEMA and Corps criteria for 100 or 200-year flood protection, then LAFCO should require, as conditions of approval, that all structures be built at least 3 feet above the 100-year flood elevation, as determined by the Corps, that flood insurance be required, that City undertake those measures recommended by Lester Snow, Director of California Department of Water Resources, in his letter to Mayor Fargo, dated November 21, 2006 (**EXHIBIT THREE**) and that the City develop an evacuation plan for Natomas Basin, to be implemented in the event of levee breach.

**c. The DEIR failed to consider effect of global warming in its analysis of flood hazards threatening the Natomas Basin**

The DEIR fails to disclose, analyze or consider the possible effect of global warming on the frequency and elevation of high water conditions in the Sacramento or American Rivers, and thus the potential for flooding of Natomas Basin. A Recirculated DEIR should do so.

It is now generally recognized that global warming will, among other things, lead to (1) sea level rise, and (2) generally warmer winters in California. See, for example, California Dept. of Water Resources, "Progress on Incorporating Climate Change Into Planning and Management of California's Water Resources: Technical Memorandum," July 2006. Sufficient modeling data now exists to permit estimates of risk in future years.

The elevation and flow of the Sacramento and American Rivers adjacent to Natomas Basin, are affected by the level of the sea and tidal action, particularly during winter and spring, when the tides are the highest and when the flows of the Sacramento and American Rivers are the greatest. The juxtaposition of high tide and high river flows led to the near-overtopping of the Sacramento River east levee, at Sacramento, in 1987. It is logical to conclude that the predicted rise in sea level, accompanied by a correlating rise in the elevation of the tides, may affect the influence of high tides on the surface elevation and flow of the Sacramento River. A probable consequence would be to increase the river's surface elevation beyond what it is under today's tidal conditions.

Assuming, hypothetically, that winter and spring precipitation remains the same, and that the prediction of generally warmer winters is accurate, then a larger proportion of the winter and spring precipitation on the Sacramento and American River watersheds will be in the form of rainfall, which drains to the Sacramento and American Rivers, and a lesser proportion will be retained as snowpack, which melt more gradually in the spring. This phenomenon has already been observed occurring in recent years, as northern California's winter snowline shifts to higher elevation, and rains more frequently fall onto snowpack during winter.

The scenario of sea level rise and warmer winters during the lifetime of the Panhandle project have potential to lead to increased volume and surface elevation of the 100-year flood event, and more frequent occurrence of what is recognized by the Corps today as the 100-year flood event under present conditions.

Thus, the Recirculated DEIR should base its analysis of flood hazard not only on the present flows of the Sacramento Rivers, but also on the projected future flows and surface elevations during the lifetime of the project which take into account climate change, including the effects of (1) rising sea level, and (2) a higher proportion of winter precipitation being in the form of rainfall, possibly leading to increased rate and volume of runoff during the winter and early spring. Recent scientific studies regarding the effect of global warming on California's future climate and water regime are readily available from the State of California global climate change website.

Climate change in the near future which will affect sea level and flows of the Central Valley rivers is now recognized as something that will happen, and cannot be dismissed as too speculative for analysis and consideration in an EIR for a project which is protected from deep flooding by levees which the Corps has determined do not meet even the FEMA standards for protection against the 100-year flood event.

- d. **Exposure Of City And Possibly LAFCO To Legal Liability For Consequences Of Flooding Of Project Approved With Knowledge That Project Was Exposed To Hazard Of Flooding**

The *Paterno* decision found the State of California liable for damages to persons and property arising from a 1986 levee breach because the State knew that a levee section was defective and did not make repairs. The full scope of governmental legal liability for damages due to flooding have not yet been determined. The City does not address the issue of liability for approving development in areas that are not safe. The City exposes itself to future court or legislative action that will extend liability to local government, such as the City of Sacramento when it exercises its discretion to approve a project in a floodplain with full knowledge that engineers and the Corps have determined that the project site has less than 100-year flood protection. Despite SAFCA's plans for upgrading the levees, which are not yet funded and which cannot be implemented until fully funded, the project site and the entire Natomas Basin, will be remain exposed to unreasonable flood hazard until the levees are upgraded to a level sufficient to protect against flood hazard.

Be assured that if there is a levee breach, and massive damage therefrom, the City will be one of the defendants named in the resulting lawsuits.

The cost of defending litigation and paying awards of damages may significantly impact the environment to the extent that City's ability to perform those functions which would benefit the environment (e.g.: trash collection, parks) may be impeded by the diversion of resources to defending litigation and paying damages. The DEIR should address the potential for such impacts.

LAFCO should also consider that its approval of this annexation, with full knowledge of City's intention to permit residential development of the Panhandle without adequate flood protection, may carry the possibility of exposing LAFCO to potential liability in the event of levee breach and flooding.

**2. Development of the Panhandle Would Violate Sacramento General Plan Section 8, Health and Safety, Goal A, Policy One (Flood Hazards)**

Development on the Panhandle 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." (DEIR p. 4.11-10.)

DEIR p. 4.11-10 states that the project is consistent because "it is currently located in FEMA Zone X, designating areas protected from 100-year flood by levees." As stated above, the Corps, DWR, and SAFCA have determined that Natomas Basin, including the Panhandle, is not protected from flooding at the 100-year level. The current designation of Natomas Basin as being in FEMA Zone X is outdated and is based on a Corps opinion which was formally withdrawn.

Lester Snow, Director of DWR, in his letter dated November 21, 2006, **EXHIBIT THREE**, 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."

The Director of the California Department of Water Resources has stated 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 THREE** p. 1.) The Executive Director of SAFCA, *supra*, has stated that less than 100-year flood protection is "high risk"? (See **EXHIBIT SEVEN**, p. 1) If not, please explain why not.

Does City believe that the expert opinions of the Directors of DWR and SAFCA is 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 Panhandle project site inconsistent with this General Plan policy?

If City believes that new development on the Panhandle project site, prior to upgrading of the levees to 100-yr level of flood protection as determined by current Corps standards, is consistent with General Plan Policy One, Flood Hazards, please explain why.

### **3. Development of the Panhandle Would Violate the North Natomas Community Plan Flood Control Policy Guiding Policy A**

Development on the Panhandle 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." (DEIR p. 4.11-12.)

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, it is now known that the Basin does not have 100-year flood protection, which is known to City. City's assertion in this DEIR that the Basin currently has 100-year flood protection is dishonest.

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.

**4. Flood Hazard for the Basin Has Increased Since 1997 Due to Levee Improvements On the Feather and Yuba Rivers Upstream of Sacramento**

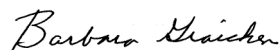
The DEIR, p. 4.11-2, references the "demonstrated ability of the applicable levees to withstand high flows in the Sacramento and American Rivers during the storms of 1997.

The DEIR fails to disclose that the east levee of the Feather River failed in the 1997 storms, thereby causing the diversion of a large volume of water into the Middle American Basin, between Yuba City and the Bear River, and its temporary detention during the remainder of the flood. Had the Feather River levee held, this volume of water would have passed by Sacramento at the height of the 1997 event. Whether the Sacramento River levee would have held if the Feather River levee had not failed in 1997 is unknown. The same situation occurred in the 1986 flood event.

During the past two years, those parts 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. Consequently, it is much less likely that the Feather-Yuba-Bear River levees will fail during a future major storm event. Consequently, 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 much less likely to provide a de fact "detention basin" during future major storm events.

We hope these comments are helpful in clarifying community concerns about the proposed Panhandle project area development.


Sincerely,




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