

1 **WILLIAM D. KOPPER #095405**

Attorney at Law

2 417 E Street

Davis, CA 95616

3 Telephone: (530) 758-0757

Facsimile: (530) 758-2844

4 **JAMES P. PACHL #046318**

Attorney at Law

5 717 K Street, Suite 534

6 Sacramento, CA 95814

Telephone: (916) 446-3978

7 Facsimile: (916) 447-8680

8 Attorneys for Petitioners

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 ENVIRONMENTAL COUNCIL OF
SACRAMENTO, INC., a California Non-Profit,
13 Corporation, FRIENDS OF THE SWAINSON'S
HAWK, INC., a California Non-Profit Public
14 Benefit Corporation, RUDOLPH L. BARGAS,
JACOB C. SNYDER, and CHARLES T. LINK,

15 Petitioners,

16 v.

17 SACRAMENTO LOCAL AGENCY
18 FORMATION COMMISSION, a Political
Subdivision of the State of California, and DOES
19 1 through 10, inclusive,

20 Respondent.

21 _____ /
22 CITY OF SACRAMENTO, a Municipal
Corporation, RIVER WEST INVESTMENTS,
23 INC., a California Corporation, dba, RIVER
WEST DEVELOPMENT, NORTH NATOMAS
575 INVESTORS, LLC, a California Limited
24 Liability Company, AKT DEVELOPMENT, INC.,
a California Corporation, SACRAMENTO
25 COUNTY SERVICE DISTRICT 1,
SACRAMENTO REGIONAL COUNTY
26 SANITATION DISTRICT, and DOES 11 through
20, inclusive,

27 Real Parties in Interest.
28 _____ /

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTION**

RECEIVED

OCT 24 2007

SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

I

INTRODUCTION

1
2
3 1. The Greenbriar Development Project ("the Project") is the proposed annexation by
4 City of Sacramento and urban development of 577 acres of prime farmland located in unincorporated
5 northwestern Sacramento County, adjacent to the Sacramento City limit in the Natomas Basin. The
6 Project site is bounded by Interstate 5 ("I-5") to the south, State Route 70 and 99 ("SR70/99") to the
7 east, Elkhorn Boulevard to the north, and the Loan Tree Canal to the west. The Project site is located
8 west of the City of Sacramento's ("City") North Natomas Community within the Natomas Basin.
9 The Project is planned to have approximately 3,473 residential units with approximately 40 acres
10 of commercial development. The Project is expected to house 8,000 to 9,000 people.

11 2. For the Greenbriar Project to be built, the Sacramento Local Agency Formation
12 Commission must first approve an amendment of the City of Sacramento's Sphere of Influence to
13 include the Project area. A Local Agency Formation Commission is a countywide Commission,
14 required in each California county. The Sacramento Local Agency Formation Commission's goals
15 are to 1) ensure the orderly formation of local governmental agencies; 2) preserve agricultural and
16 open space lands; and 3) discourage sprawl. Local Agency Formation Commission's are required
17 by State Law to make certain findings before approving Sphere of Influence expansions into
18 agricultural and open space lands in order to ensure orderly urban development and discourage urban
19 sprawl. On September 19, 2007, Sacramento Local Agency Formation Commission ("LAFCO")
20 approved the City of Sacramento application to expand its Sphere of Influence to include the
21 proposed Greenbriar Project, made findings on that expansion, and certified a final Environmental
22 Impact Report of the Project. The Environmental Impact Report addressed LAFCO's actions, and
23 also the details of the proposed Greenbriar development itself, even though the City has not yet
24 approved the Greenbriar development Project at the time of filing of this Petition.

25 3. The proposed development is a step backward for urban planning and a step backward
26 for the region. The Project is separated from existing urban development by two freeways, is not
27 within the City's sphere of influence, and is a leap-frog development. The Project will pave over
28 prime agricultural land even though there are thousands of acres of vacant land within the City and

1 its existing Sphere of Influence which is suitable for residential use. It will impact prime farmland
2 to the north of the Project. The Project is also located within a deep flood basin which is recognized
3 as the most dangerous urban flood basin in the nation, second only to New Orleans, and in the
4 environmentally sensitive Natomas Basin. The Project is isolated from other urban development by
5 two large freeways, I-5 and SR70/99. The Project will take productive, prime agricultural land out
6 of production, without mitigating for loss of this agricultural land and without providing agricultural
7 permanent agricultural easements or other restrictions to permanently protect existing agricultural
8 land in the Natomas Basin. The Project is the first step toward developing other undeveloped lands
9 in the Natomas Basin.

10 4. The Project is unsuitable for development in many respects and has significant
11 environmental constraints. The Project area is part of the Natomas Basin Habitat Conservation Plan
12 but is not within the Permit Area allowed to develop under that Plan. The canals and wetland
13 portions of the Project are habitat for the Giant Garter snake. The farmland is foraging habitat for
14 the Swainson's Hawk. Both the Giant Garter Snake and the Swainson's Hawk are endangered
15 species. The Project is in the overflight zone of the Sacramento International Airport, located one
16 mile from the Project site, and the noise levels will be so high that 5-10% of the people who live in
17 the area will wake up nightly from the noise impacts. The number of flights at the Airport is
18 expected to double during the next 10-20 years. The Project will have a significant adverse impact
19 on the generation of greenhouse emissions. The proposed school and housing are too close to both
20 I-5 and SR70/99 and will pose elevated risk of cancer and other respiratory ailments for those who
21 live closest to the freeway or attend the school. Further, the air pollution from the freeways will
22 cause the retardation in the growth of lung tissue for the children who live within 1500 feet of the
23 freeway. The planned school site is only 500 feet from the junction of two freeways. These
24 significant environmental impacts were ignored by both the City of Sacramento and the Sacramento
25 LAFCO. There is currently no public transit that will service the Greenbriar area. As a consequence
26 of the location of the Project and the absence of any immediately available public transit services,
27 the development will cause significant congestion on I-5, SR70/99, and freeway onramps and
28 offramps. The environmental documents for the Project is designed so that the surrounding areas

1 must develop in order to provide infrastructure for the Greenbriar Project. This is especially true of
2 the extension of the DNA light rail line to the Project. In this way, the Project is growth inducing.

3 5. The Sacramento LAFCO ("LAFCO") committed numerous errors in processing the
4 Environmental Impact Report ("EIR") for the Project. LAFCO incorrectly evaluated the traffic
5 impacts to the Project. Petitioners provided a detailed accounting of the errors in the Project's trip
6 generation estimate. The daily trip generation value used in the Second Recirculated Draft EIR
7 ("RDEIR") is 5400 vehicle trips too low. Petitioners' estimates of residential trips matched those
8 used in the original DEIR. In order to reduce the impacts of the Project, the Second RDEIR
9 substantially modified the residential trip generation estimate by providing a speculative reduction
10 in trips related to the proposed light rail project and the elementary school. The Second RDEIR
11 included no basis to reduce trips by 20%. LAFCO placed the burden on the commenters, when it
12 was in fact the burden of LAFCO to prepare an accurate evaluation of the traffic impacts of the
13 Project on surrounding street intersections. Because LAFCO vastly underestimated the trips to be
14 produced by the Project, the Project impacts on surrounding intersections is understated in the EIR.

15 6. LAFCO violated CEQA by using an outdated methodology (the January 1980
16 Circular 212 Methodology) to analyze the Project's impact on intersections. The standard in the
17 profession is the use of the Highway Capacity Manual Procedures ("HCM"). Use of the HCM
18 procedures would show that the intersection of Elkhorn Boulevard/SR 99 northbound ramps would
19 not operate at Level of Service B after the Project in the AM peak hour under baseline conditions,
20 but would operate at Level of Service D. The traffic analysis was flawed because it did not correctly
21 analyze baseline conditions. The EIR was flawed because it assumed that the Riego Road/SR 70/99
22 intersection would have freeway ramps and split grade improvements. In fact, the intersection is an
23 at-grade, signalized intersection. The Project will have likely significant impacts at this intersection,
24 but the EIR failed to analyze this intersection. Further, the increase of 876 vehicles on freeway ramps
25 serving the Project on a daily basis would likely have significant adverse impacts, which LAFCO
26 failed to evaluate.

27 7. Even though the traffic analysis of the Project's Environmental Impact Report greatly
28 underestimated the traffic impacts of the Project, and it nonetheless determined that the Project

1 would cause significant traffic impacts in Sacramento County and the City of Sacramento. The
2 Project will cause significant adverse impacts on Elkhorn Boulevard, the intersection of Elkhorn
3 Boulevard and SR 70/99, I-5 mainline segments, and the onramps and offramps to I-5 in the vicinity
4 of the Project. Instead of providing necessary mitigation, which would be acceptable to other
5 jurisdictions, the EIR postulated that the improvements would have to be made by Caltrans and
6 others, even though no funding has been identified for construction of these needed improvements.
7 The failure of the EIR to require feasible mitigation of the Project's traffic impact, and LAFCO and
8 the City's failure to require feasible mitigation of the Project's traffic impacts, is a violation of the
9 California Environmental Quality Act ("CEQA").

10 8. The EIR incorrectly adopted a standard of significance for the noise impacts of the
11 Project. The EIR adopted a standard of significance that if less than 10% of the people were
12 awakened at night from aircraft overflights, the noise impacts of the aircraft would be less than
13 significant. The EIR further improperly identified the noise impacts related to the Project. The EIR
14 did not consider the nighttime impact of light rail traffic, the cumulative impact of aircraft
15 overflights and freeway noise, and the cumulative impact of freeway noise and light rail traffic. The
16 noise section of the EIR did not comply with law.

17 9. The Project EIR failed to consider the Greenbriar Development Project's significant
18 and unavoidable adverse impact on the generation of greenhouse gases. The Project EIR failed to
19 calculate the generation of greenhouse gases and rejected feasible mitigation measures that would
20 reduce the Project's impact on the generation of greenhouse gases. These mitigation measures would
21 include the requirement of solar electric cells on each house, the adoption of peak load cooling (such
22 as cool roofs) for commercial uses, and the creation of more walking and bicycle paths in the Project
23 plan. CEQA requires that the Environmental Impact Report address feasible mitigation measures
24 to reduce the Project's generation of greenhouse gases, and LAFCO was required to adopt feasible
25 mitigation measures to reduce the generation of greenhouse gases.

26 10. The Greenbriar Development Project EIR failed to adequately address the Project's
27 potential to cause cancer. The State Office of Environmental Health Hazard Assessment reviewed
28 the health risk assessment that was included in the Environmental Impact Report. The Project

1 proposed the citing of residences 209 feet from the freeway instead of following the recommendation
2 in the California Air Resources Board April 2005 document "Air Quality and Land Use Handbook:
3 A Community Health Perspective" that requires residences to be located at least 500 feet from a
4 major highway. The EIR did not address the risk of cardiovascular effects and asthma due to diesel
5 exhaust and other emissions from the freeway, and it did not address the reduction in lung capacity
6 in growing children related to locating housing close to freeways. The EIR inappropriately suggested
7 that diesel emissions will decline over a period of time because diesel trucks will be made cleaner
8 by California law. However, as a result of the North American Free Trade Agreement, there will be
9 a likely presence on Interstate 5 of trucks registered in Mexico, where emissions are unregulated.
10 The health risk assessment was flawed, and as a result the Environmental Impact Report cannot rely
11 on the health risk assessment to establish that the Project will provide a safe level of toxic air
12 contaminants, that will not cause cancer in the Project vicinity.

13 11. The Environmental Impact Report for the Project was flawed because it relies on
14 mitigation measures, which will purportedly be formulated in the future for impacts on wildlife,
15 including endangered species, and habitat. Further, the development of the Project itself does not
16 comply with the Natomas Basin Habitat Conservation Plan ("NBHCP"). The Project is located
17 within the Natomas Basin Habitat Conservation Plan area; however, it is outside the City's Incidental
18 Take Permit ("ITP") area in the Natomas Basin area of Sacramento County. The U.S. Fish and
19 Wildlife Service, California Department of Fish and Game, and Swainson's Hawk Technical
20 Advisory Committee have determined that location of new development, and specifically Greenbriar,
21 within the Natomas Basin outside the existing NBHCP Permit Areas is likely to have an adverse
22 effect on the Operating Conservation Program of the NBHCP. The Final Environmental Impact
23 Report's (FEIR) analysis of impacts on Swainson's Hawk foraging habitat under represents impacted
24 foraging habitat by only considering the habitat value based upon one growing season, and does not
25 consider the landscape impacts of the Project nor depict the higher habitat values expected to occur
26 on site over subsequent growing seasons. The EIR fails to recognize the current count standard of
27 1 to 1 mitigation impacts on Swainson's Hawk foraging habitat. The Project EIR also does not
28 adequately evaluate the impact of the Project on the Giant Garter snake. The Project EIR does not

1 consider the Project's impact on the NBHCP, and its conservation program, does not correctly
2 evaluate the need for mitigation habitat, and improperly includes a future undetermined mitigation
3 plan that cannot be evaluated at the time of certification of the EIR because it does not yet exist.
4 LAFCO erred by certifying the EIR and approving the SOI expansion before the U.S. Fish and
5 Wildlife Service and California Department of Fish and Game had determined the appropriate
6 mitigation program for the Project and specified appropriate mitigation measures.

7 12. The Environmental Impact Report was inadequate because it did not analyze the
8 availability of water supplies to the Project as required by law. In the public facilities section of the
9 EIR, the EIR evaluated the water supply for the Project only on the basis of the City of Sacramento
10 water contracts. However, the EIR did not evaluate the City's shortage of potable water based upon
11 the need for an additional Water Treatment Plant on the Sacramento River. The Project EIR did not
12 consider that the Project was dependent upon the development of another Water Treatment Plant in
13 the City. The EIR piecemealed environmental review of water issues. Further, the EIR does not
14 properly evaluate the availability of sewage treatment in the City of Sacramento for the Project.

15 II

16 FACTUAL BACKGROUND

17 13. On November 4, 2005, the City of Sacramento ("City") submitted an application to
18 LAFCO for an amendment of its Sphere of Influence ("SOI") and resulting amendments to the
19 Sphere of Influence of the Sacramento Regional County Sanitation District ("SRCSD") and County
20 Sanitation District No. 1 ("CSD1"). The application included additional development entitlements
21 subject to approval by the City, including rezoning, General Plan amendments, Master Tentative
22 Parcel Map, Tentative Subdivision Map, Plan Unit Development, and Development Agreement. The
23 application also included a request for reorganization (Annexation and Attachments) to be
24 considered by LAFCO at a later date, should the SOI amendments and other certain entitlements be
25 approved.

26 14. The City of Sacramento's Sphere of Influence was first adopted on October 21, 1981.
27 Since that time, there have been few adjustments to the City's Sphere of Influence and few
28 annexations. Since 1985, there have been 12 annexations, containing approximately 797 acres of

1 land, to the City of Sacramento.

2 15. In the application for the Sphere of Influence Amendment, the City stated that “the
3 Sphere of Influence shall include those parcels adjacent to the City limit whose development could
4 have significant visual, traffic, service and environmental impacts on the City of Sacramento so that
5 the City may influence the ultimate development of those parcels; and also the Sphere of Influence
6 Amendment boundary shall include those areas that can be annexed to the City within the next 5-15
7 year period to meet its projected growth trends and development patterns. The City stated in the
8 application that municipal services could be extended to the Greenbriar property and that current
9 residents would not be adversely impacted.

10 16. As of September, 2005, there were approximately 14,000 acres of low and medium
11 density parcels of vacant land suitable for residential development available within the City and
12 City’s existing Sphere of Influence (“SOI”). However, the City justified the Greenbriar Sphere of
13 Influence Amendment by contending, without substantial evidence, that the existing parcels were
14 filling-up and that the City would have the need to look to sites outside the SOI in order to
15 accommodate projected growth. The City provided no evidence to support its claim that the
16 Greenbriar Project is needed to accommodate projected growth, and no information regarding vacant
17 land or potential infill sites within the City or its existing SOI today which is suitable for residential
18 development. Petitioners are informed and believe that there are at least 9,000-10,000 acres of
19 vacant land within the City and its existing SOI today which is suitable for residential development.
20 The City further relies upon outdated population projections that the City’s population will increase
21 by 200,000 by 2030; even though updated population projections by the State of California, released
22 July 9, 2007, and known to the City, LAFCO and the Sacramento Area Council of Governments
23 prior to approval of the Project, show that the previous projection of population growth for the
24 Sacramento region, relied upon by the City to justify this Project, is overstated by 30%.

25 17. An Environmental Impact Report was necessary to review the City’s request for a
26 Sphere of Influence amendment. On November 1, 2005, the City and LAFCO entered into a
27 Memorandum of Understanding by which the two entities agreed to process a single EIR, as co-lead
28 agencies, to evaluate the environmental consequences of the SOI amendment, reorganization,

1 annexation, and related development entitlements. LAFCO was the lead agency for the
2 Environmental Impact Report for the Sphere of Influence amendments, and the City is the lead
3 agency for the reorganization and development approvals.

4 18. LAFCO released a Notice of Preparation for a draft Environmental Impact Report on
5 July 28, 2005, and also released on August 16, 2005, a Recirculated Notice of Preparation.

6 19. LAFCO prepared a Draft EIR and circulated it for public review and comment for the
7 period from July 19, 2006, to September 5, 2006. Petitioners and others commented on the Draft
8 Environmental Impact Report. As a result of the comments that were received, LAFCO prepared
9 certain revisions of the Draft EIR and prepared a Recirculated Draft EIR that was released for public
10 comment on November 14, 2006, through January 2, 2007. Likewise, Petitioners commented on the
11 Recirculated Draft EIR. Based upon comments LAFCO received on the Recirculated Draft EIR,
12 LAFCO released a Second Recirculated Draft EIR that was prepared and published on April 10,
13 2007. Petitioners once again commented on the Second Recirculated Draft EIR.

14 20. LAFCO leased the final Environmental Impact Report on April 15, 2007. On
15 September 19, 2007, LAFCO conducted a public hearing on the Greenbriar Project, including: 1)
16 City of Sacramento's Sphere of Influence Amendment, 2) Sacramento Regional County Sanitation
17 District's Sphere of Influence Amendment, 3) County Sanitation District No. 1's Sphere of Influence
18 Amendment, and 4) Certification of the Final Environmental Impact Report for the Project. At the
19 hearing on September 19, 2007, LAFCO considered whether the annexation was consistent with the
20 Municipal Service Review, and that the proposed future annexation would provide the lowest cost
21 and highest quality of urban services for the effected population. LAFCO also considered the
22 conversion of 518 acres of important farmland to urban use, and whether the mitigation measures
23 would be sufficient to mitigate for the loss of farmland. After the public hearing closed, the LAFCO
24 Commissioners took the following actions:

25 a. Adopted Resolution No. LAFC 1345 - - a resolution of the Sacramento Local
26 Agency Formation Commission certifying the Final Environmental Impact Report for the Sphere of
27 Influence Amendments for the City of Sacramento, the Sacramento Regional County Sanitation
28 District, and County Sanitation District No. 1. (State Clearinghouse No. 2005062144) (LAFC 12-

1 05)

2 b. Adopted Resolution No. LAFC 1346 -- a resolution of the Sacramento Local
3 Agency Formation Commission adopting Findings of Fact and a statement of overriding
4 considerations for the Sphere of Influence Amendments for the City of Sacramento, the Sacramento
5 Regional County Sanitation District, and County Sanitation District No. 1. (LAFC 12-05)

6 c. Adopted Resolution No. LAFC 1347 -- a resolution of the Sacramento Local
7 Agency Formation Commission adopting a Mitigation Monitoring and Reporting Program for the
8 Sphere of Influence Amendments for the City of Sacramento, the Sacramento Regional County
9 Sanitation District, and County Sanitation District No. 1. (LAFC 12-05)

10 d. Adopted Resolution No. LAFC 1348 -- a resolution of the Sacramento Local
11 Agency Formation Commission 1) making written determinations for the Municipal Services
12 Review; and 2) approving the Sphere of Influence Amendments for the City of Sacramento, the
13 Sacramento County Sanitation District, and County Sanitation District No. 1. (LAFC 12-05)

14 **III**

15 **PARTIES**

16 21. Petitioner, Environmental Council of Sacramento, Inc. ("ECOS"), is a nonprofit
17 California corporation dedicated to environmental protection in the Sacramento region. ECOS
18 supports coordinated land use and transportation planning that discourages urban sprawl and
19 encourages preservation and enhancement of the ecology of Sacramento's open spaces, including
20 farmland and the reduction of pollution in Sacramento's air, water, and land. One of ECOS'
21 priorities is enforcing the laws that protect the environment, including California Environmental
22 Quality Act, the Clean Air Act, the Clean Water Act, and the Endangered Species Act, and the
23 Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

24 22. Friends of The Swainson's Hawk, Inc., is a California Non-Profit Public Benefit
25 Corporation. The Friends of Swainson's Hawk was formed in 1994 when several Sacramento bird
26 watchers realized that this species, listed as threatened under the California Endangered Species Act,
27 would likely get paved out of the region if citizens did not advocate to protect the bird's habitat. The
28 Friends of Swainson's Hawk works to ensure the State, Counties, and Cities implement legal

1 | protections for the Swainson's Hawk. Further, Friends of Swainson's Hawk educates the public
2 | about the importance of the species to the Sacramento area and what needs to be done to protect the
3 | Swainson's Hawk habitat. Friends of The Swainson's Hawk has an interest in permanent
4 | preservation of agricultural lands in the Natomas Basin and elsewhere in the region because
5 | Swainson's Hawk's use agricultural lands intensively and reliance on mitigation lands, alone to
6 | protect Swainson's Hawk would not ensure the continued survival of the species in this region.

7 | 23. Rudolph L. Bargas is an individual who owns property, resides, practices his
8 | profession, participates in community affairs, serves the public, and travels within the City and
9 | County of Sacramento. He is dedicated to the environmental quality of the Sacramento area and is
10 | concerned about the environmental impacts of the Greenbriar Development Project.

11 | 24. Jacob C. Snyder is an individual who owns property, resides, practices his profession,
12 | participates in community affairs, serves the public, and travels within the City and County of
13 | Sacramento. He is dedicated to the environmental quality of the Sacramento area and is concerned
14 | about the environmental impacts of the Greenbriar Development Project.

15 | 25. Charles T. Link is an individual who owns property, resides, practices his profession,
16 | participates in community affairs, serves the public, and travels within the City and County of
17 | Sacramento. He is dedicated to the environmental quality of the Sacramento area and is concerned
18 | about the environmental impacts of the Greenbriar Development Project.

19 | 26. The Respondent in this action, Sacramento Local Agency Formation Commission is
20 | a Political Subdivision of the State of California charged by law with the responsibility for approving
21 | or disapproving Sphere of Influence Amendments, local government reorganizations, and local
22 | government annexations. Respondent, LAFCO, obtains its authority from the Coretese-Knox-
23 | Hertzberg Act of 2000, California Government Code §56000, et seq.

24 | 27. The following organizations are the Real Parties in Interest who are the applicants to
25 | Sacramento LAFCO and received associated approvals. The following entities are the recipients of
26 | an approval as defined by Public Resources Code §21167.6.5. The City of Sacramento is a
27 | California Municipal Corporation and received an approval of its application for a Sphere of
28 | Influence Amendment for the City of Sacramento, Sacramento Regional County Sanitation District

1 Sphere of Influence Amendment, and County Sanitation District No. 1 Amendment. Real Party
2 River West Investments, Inc., is a California Corporation (dba River West Development) and is the
3 owner of property or the representative of the owner of property associated with the Sphere of
4 Influence Amendment. Real Party North Natomas 575 Investors, LLC, is a California Limited
5 Liability Company and is the recipient of the Sphere of Influence approvals or the owner or
6 representative of the owner of the real property where the Greenbriar Project will be located. Real
7 Party AKT Development, Inc., is a California Corporation and is the owner of property or the
8 representative of the owner of property associated with the Sphere of Influence Amendment. Real
9 Party Sacramento County Service District 1 is a Special District under California Law. Real Party
10 Sacramento Regional County Sanitation District is a Special District under California Law.

11 28. Petitioners are presently ignorant of the identities of those real parties in interest sued
12 under fictitious names Does 1-20, but Petitioners are informed and believe that each such party is
13 jointly and severely amenable, along with the other named real parties to the relief sought in this
14 Petition.

15 IV

16 JURISDICTION AND VENUE

17 29. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code
18 of Civil Procedure §1094.5, and Public Resources Code §21168. In the alternative, this Court has
19 jurisdiction pursuant to Code of Civil Procedure §1085 and Public Resources Code §21168.5.

20 30. Pursuant to Code of Civil Procedure §394(a), venue is proper in Sacramento County
21 Superior Court because the Respondent, Sacramento LAFCO, is situated in Sacramento County.

22 V

23 CONDITIONS PRECEDENT, EXHAUSTION OF ADMINISTRATIVE 24 REMEDIES, BENEFICIAL INTEREST, AND IRREPARABLE 25 HARM WITHOUT ADEQUATE LEGAL REMEDY

26 31. On September 19, 2007, Sacramento LAFCO purportedly certified the Project's Final
27 CEQA environmental documents, and approved the Project. Notice of Determination was filed on
28 September 26, 2007.

1 Petitioners are entitled to an award of attorney fees under Code of Civil Procedure §1021.5, as well
2 as §800 of the Government Code. (See *Galante Vineyards v. Monterey Peninsula Water*
3 *Management District* (1997) 60 Cal.App.4th 1109, 1127-28.)

4 **VIII**

5 **FIRST CAUSE OF ACTION**
6 **(CEQA VIOLATIONS)**

7 40. The allegations in the preceding paragraphs are fully incorporated herein by this
8 reference.

9 41. CEQA was violated in a number of ways, as set forth hereafter. LAFCO committed
10 a prejudicial abuse of discretion and failed to proceed in a manner required by law by relying on an
11 EIR that fails to meet the requirements of CEQA for disclosure, analysis, and/or mitigation of
12 significant project impacts as required by law. Its conclusions regarding the environmental impacts
13 of the Project are not supported by substantial evidence. The EIR and adopted Mitigation Measures
14 fail to provide adequate mitigation measures that avoid, minimize, rectify, reduce, or compensate
15 for the significant environmental impacts of the Proposed Action. The EIR fails to adequately
16 consider and evaluate all potentially feasible measures to mitigate the significant impacts of the
17 Project. The comments on the EIR contain numerous suggestions for additional or alternative
18 mitigations that were not evaluated as to feasibility in the Final EIR and were not adopted. When
19 mitigation measures and alternatives to a project are not adopted, the CEQA findings must identify
20 specific economic, legal, social, technological and other considerations that make infeasible the
21 adoption of mitigation measures or alternatives. All CEQA findings must be supported by
22 substantial evidence in the record and must disclose the analytical route by which approval of the
23 project is justified. The findings regarding the impacts of the Project, including Mitigation
24 Measures, and alternatives relied upon by Respondents' approval of the Proposed Action are not
25 supported by substantial evidence in the record and the links between evidence and conclusions are
26 not satisfactorily provided. In addition to lacking substantial evidentiary support, the findings
27 constitute a post hoc rationalization for Respondents decision.

28 /

1 Specific examples include, but are not limited to, the following:

2 a. The Project EIR did not adequately evaluate the Project's traffic impacts
3 because the traffic section of the EIR did not correctly apply the Highway Capacity Manual to derive
4 intersection delay estimates. The EIR traffic analysis failed to apply standard procedures, and was
5 based upon formulas and procedures with no substantiation.

6 b. The Project EIR failed to correctly analyze the Project impact on signalized
7 intersections in Sacramento County, by applying the obsolete Circular 212 Methodology.

8 c. The Project EIR traffic analysis was inadequate because it failed to calculate
9 the Level of Service ("LOS") for individual movements at intersections. Instead of using the
10 Standard Highway Capacity Manual ("HCM") procedures, the DEIR aggregated the intersection
11 movements to reduce the Project impacts. This approach underestimated the Project impacts, such
12 as at the Elkhorn Boulevard/SR 70/99 intersection.

13 d. The Project EIR misapplies the Highway Capacity Manual methodology to
14 determine the Project impacts on roadway segments. As a result of misapplication of the HCM
15 methodology, the Project EIR underestimates the Project's impact on roadway segments.

16 e. The traffic analysis is flawed because it assumes that Project traffic will be
17 dissipated to the west on Elkhorn Boulevard. This analysis makes no sense since Elkhorn Boulevard
18 will not lead anywhere until Metro Airport Project is built. The Project traffic analysis then assumes
19 that after Metro Airport is built that the number of trips on Elkhorn Boulevard to the west will
20 decline. This makes no sense. The trip distribution for baseline conditions is illogical and
21 unrealistic.

22 f. The Project EIR is inadequate because it does not include additional freeway
23 segments and intersections to the north on State Route 70/99. The Project is likely to have an impact
24 on the signalized intersection of Riego Road/SR 70/99. The EIR mistakenly assumes that if the
25 freeway segments are operating acceptably, the other facilities will as well. There is no basis for this
26 assumption.

27 g. The Project EIR traffic analysis was flawed because it underestimated the
28 number of vehicle trips to be generated by the Project. The original estimate in the DEIR was valid,

1 but in the Second RDEIR the trip generation was reduced based upon an unrealistic light rail transit
2 discount and elementary school discount. The correct estimate is likely to be almost 5400 daily trips
3 higher than assumed in the Second RDEIR, and it is very likely that additional traffic impacts would
4 be found based upon a correct estimate.

5 h. The DEIR traffic analysis underestimated the trip generation from the Project,
6 and as a result failed to evaluate 11 potentially affected intersections that should have been
7 considered in the EIR traffic analysis. The authors of the EIR were required to evaluate the 11
8 intersections in the surrounding area.

9 i. The EIR failed to correctly evaluate the Project's impacts on freeway onramps
10 and offramps.

11 j. The EIR failed to adopt feasible mitigation measures for the Project's impacts
12 on the freeway mainline and onramps and offramps. The Project could provide funding for Caltrans
13 and County agency improvements to these facilities.

14 k. The State of California Department of Transportation, a trustee and
15 responsible agency, requested a mitigation agreement so that the Project would pay a calculated fair
16 share of mitigation for the Project's impacts on freeway interchanges and mainline sections. The
17 EIR includes no evidence that this feasible mitigation measure was recommended or approved.

18 l. The EIR does not adopt mitigation measures for cumulative Project impacts
19 on traffic. To support a finding that an impact will in fact be mitigated, the mitigation fees must be
20 a component of a reasonable, enforceable mitigation program that is tied to mitigation of the
21 identified impact. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173.)
22 The Project was required to implement feasible mitigation measures and to develop mitigation
23 programs for its impacts in Sacramento County on the state freeway system. The Project failed to
24 do so.

25 m. The EIR was deficient in that it failed to address the requirements of Appendix
26 F of the CEQA Guidelines, and instead stated that the Guidelines were surplusage. The EIR failed
27 to consider feasible energy mitigation measures for the Project.

28 /

1 n. The Environmental Impact Report fails to adequately consider the impact of
2 global warming on the availability of water supply. The Environmental Impact Report concludes,
3 without any basis for such a conclusion, that the impact of global warming on water supply will be
4 less than significant. The evidence is to the contrary. As global warming causes the snow melt to
5 occur earlier and earlier in the Sierra Nevada Range, there will be less water available for urban
6 diversions.

7 o. The Environmental Impact Report acknowledges that the Project will have
8 a significant and unavoidable impact on global warming. The Environmental Impact Report fails
9 to include feasible mitigation measures for global warming. Feasible mitigation measures would
10 include mandatory planting of shade trees on the east and west side of dwellings, mandatory shading
11 of streets with trees, mandatory solar energy systems (including solar water heaters) for all homes,
12 and limiting the use of incandescent light bulbs in all buildings. These feasible mitigation measures
13 and other feasible mitigation measures were not adopted by the Environmental Impact Report or the
14 County for the Project.

15 p. The Environmental Impact Report ignores the added air pollution impacts
16 related to atomized jet fuel that will regularly be discharged over Greenbriar during aircraft takeoffs,
17 flyovers, and landings. The EIR does not consider the air pollution impacts when jet fuel must be
18 dumped.

19 q. The EIR does not correctly analyze the toxic air contaminant ("TAC") impacts
20 of the Project. LAFCO found the Environmental Impact Report adequate, even though the
21 Sacramento Regional Air Quality Management District testified that the Health Risk Assessment for
22 the Project was flawed and the Project was likely to have cancer causing impacts that were not
23 evaluated in the EIR.

24 r. LAFCO violated CEQA by certifying the EIR because the EIR did not
25 correctly consider toxic air contaminants and apply a correct standard of significance. The California
26 Air Resources Board April 2005 document "Air Quality and Land Use Handbook: A Community
27 Health Perspective" requires that residences be located at least 500 feet from a major highway to
28 prevent cancer risk. The Project EIR failed to consider the California Air Resources Board research

1 as a standard of significance for TAC impacts.

2 s. The air pollution section of the Environmental Impact Report was inadequate
3 because it did not address the risk for cardiovascular affects and asthma due to diesel exhaust and
4 other emissions close to the freeway. Further, the Project EIR did not consider the risk of the
5 reduction of lung capacity in young children living within 1500 feet of a freeway. The Project EIR
6 found that the construction of houses within 209 feet of a freeway would be acceptable. The EIRs
7 analysis of health effects related to construction of housing next to a freeway was inadequate as a
8 matter of law.

9 t. The Project EIR failed to consider recent literature on particulate matter and
10 adverse health effects, including asthma in children and adults. The EIR failed to consider the
11 increased risk of heart attacks in adults exposed to traffic related air pollutants.

12 u. The Project EIR noise study was flawed. The Project EIR used an incorrect
13 standard of significance to judge the impacts of the Sacramento Airport flights on the population that
14 will be living in the Greenbriar Development. The Project EIR applied the standard of significance
15 that if 10% or less of the population was awakened at night by aircraft flyovers, the noise impact
16 would not be significant. This standard of significance was in error.

17 v. The noise study in the Project EIR was inadequate because it did not consider
18 the cumulative impacts of noise from aircraft flyover and freeway traffic noise. Further, the noise
19 study did not consider the cumulative impacts of noise from aircraft flyovers and light rail, which
20 has the potential to awaken people at night.

21 w. The Project noise study was inadequate because it underestimated the noise
22 levels in the Project area and the impact of noise on the quality of life within the Greenbriar
23 Development.

24 x. Evaluation of alternatives improperly relies on unsupported speculation that
25 the Project will induce federal funding for construction of light rail to the airport, and that the project
26 will be served by light rail.

27 y. The Project EIR was inadequate because it failed to consider appropriate
28 mitigation measures for flood impacts, which would reduce to less than significant the exposure of

1 persons and property to flood hazard. No evidence supported the EIR's finding that it was infeasible
2 to require a greater level of flood protection than provided by the mitigation measures. The EIR fails
3 to examine the impact of potential flooding of the Project upon persons and property on the Project
4 site.

5 z. The Project increases exposure of humans to flood hazard and fails to
6 adequately disclose and assess impacts of flood exposure on humans and property on Project site -
7 likely flood depths and damage to persons and property), as to both 100-year flood and 200-year
8 flood events.

9 aa. Finding that completion of levee projects which would provide flood
10 protection against the 100-year flood would reduce impacts of potential flood hazard to less than
11 significant are not supported by substantial evidence.

12 bb. The EIR fails to accurately or adequately assess significant onsite impacts to
13 unique natural resource ecosystems, because the EIR does not accurately or adequately describe such
14 ecosystems in the first instance. The EIR has failed to adequately describe the ecosystems necessary
15 for the support of the giant garter snake, Swainson's Hawk, and other threatened and endangered or
16 special status species.

17 cc. Due to the EIR's inaccurate and inadequate description of the unique natural
18 ecosystems that form the existing environmental setting, the EIR's analysis and conclusions
19 regarding offsite mitigations are also inadequate and unsupported by substantial evidence. The EIR
20 considers offsite mitigation areas based on the EIR's "catch-all" open space designation for such
21 resources. These offsite mitigation areas, however, even if acquired and protected, will not clearly
22 reduce or avoid the Project's significant adverse impacts, because there is no evidence that these
23 areas actually contain the same combination, distribution, and biological function of the unique
24 natural resource ecosystems that presently exist at the Project site.

25 dd. The Environmental Impact Report provides no assurance, based on LAFCO's
26 findings and statement of overriding considerations, that the offsite mitigation areas will ever
27 actually be acquired or dedicated for open space purposes. Therefore, any claim that the Project's
28 onsite impacts will be mitigated through offsite mitigation is unreliable, and fails to satisfy CEQA's

1 mitigation requirement.

2 ee. LAFCO's "mitigation strategy, relies upon an undetermined and unapproved
3 habitat conservation plan which will purportedly be drafted in the future. Respondent LAFCO's
4 reliance on a future, undefined habitat conservation plan as a means to reduce or avoid the Project
5 significant adverse onsite impacts on unique natural resource ecosystems fails to satisfy CEQA's
6 requirements that mitigation measures must be identified and incorporated into the Project before
7 Project approval, and constitutes an illegal deferral of mitigation.

8 ff. LAFCO failed to conduct appropriate seasonal surveys for special status
9 species for an accurate analysis of the Project impacts on the existing environment.

10 gg. LAFCO failed to adequately mitigate for the loss of unique onsite natural
11 resource ecosystems.

12 hh. LAFCO failed to conduct appropriate seasonal survey for Swainson's Hawk,
13 thus the EIR understates the presence of Swainson's Hawk on and near the Project site.

14 ii. LAFCO failed to mitigate the Project's significant impacts on Swainson's
15 Hawk by retaining those land uses that make it suitable for Swainson's Hawk foraging and nesting
16 habitat, or protecting the suitable offsite habitat within reasonable foraging distances of known
17 Swainson's Hawk nest sites.

18 jj. LAFCO failed to evaluate expert criticism by the United States Fish and
19 Wildlife Trustee Agency and the State Department of Fish and Game Trustee Agency over the
20 "mitigation strategy, that allows the destruction of large habitat areas to be offset by smaller
21 unsuitable areas of habitat.

22 kk. The EIR fails to address the Project's impact on the Natomas Basin Habitat
23 Conservation Plan. The Project is located in the NBHCP area. The US Fish and Wildlife Service
24 and the State Department of Fish and Game have stated that the Project area is located within the
25 NBHCP but outside the City's Incidental Take Permit. The wildlife agencies have expressed
26 concern that the Project will adversely impact the giant garter snake and Swainson's Hawk and other
27 species covered under the NBHCP. The wildlife agencies offer the opinion that the FEIR does not
28 provide adequate mitigation measures to minimize significant effects to Swainson's Hawk to below

1 a significant level. The EIR's conclusion that the Project adequately mitigates its impact on
2 Swainson's Hawk and Giant Garter Snake, both listed as threatened species, is not supported by
3 substantial evidence.

4 ll. LAFCO illegally deferred the development, analysis and adoption of specific
5 long-term management, monitoring, and adaptive management strategies for either offsite or onsite
6 lands, and reference to and reliance on a not yet existent conservation plan. This deferral does not
7 adequately mitigate for the unique biological resources destroyed by the Project.

8 mm. LAFCO failed to evaluate offsite enhancement of riparian habitat to reduce
9 the Project's significant adverse impacts on onsite riparian habitat.

10 nn. LAFCO failed to evaluate adequately alternative Project designs that includes
11 retention of the areas of wetlands onsite and Swainson's Hawk foraging habitat.

12 oo. The EIR fails to adequately evaluate the availability of sewage treatment
13 facilities for the Project.

14 pp. The EIR fails to evaluate the availability of water supply for the Project, and
15 specifically the need for an additional Sacramento River Diversion to provide Project water. The
16 availability of water for the Project depends upon when the Project will be constructed. However,
17 the Project fails to provide an adequate timeline for construction.

18 qq. The EIR is inadequate because it does not adequately evaluate the impacts of
19 a failure to provide adequate buffers adjacent to urban areas. The EIR fails to adequately address
20 the need for wildlife corridors and the significant impact of the Project on wildlife corridors. The
21 EIR fails to meet any standards as identified in the literature that support conclusions regarding the
22 suitability of habitat and the retention of functional habitat corridors. The EIR fails as an
23 informational document for this reason.

24 rr. The FEIR understates Project impacts to vegetation and wildlife, substantially
25 overstates the value of the proposed mitigation measures, and fails to provide appropriate and
26 potentially feasible mitigation measures. The responses to comments are conclusory and
27 unsupported by factual information and lack reasoned analysis. The FEIR fails to provide scientific
28 documentation to support conclusions or refute scientific data regarding the Project's impact on

1 biological resources. The EIR is inadequate for these reasons.

2 ss. The Project EIR does not adequately address the impact of the Project on
3 groundwater resources and wells in the surrounding community under multiple dry year conditions.
4 The EIR is inadequate because it does not provide this information.

5 tt. The EIR does not adequately address the environmental effects of the
6 Sacramento River Diversion on biological resources.

7 uu. The EIR failed to discuss adequately the inconsistencies between the project
8 and the Sacramento County General Plan and applicable community and specific plans.

9 vv. The EIR fails to adequately discuss the consistency between the Project and
10 Sacramento LAFCO's policies, standards and procedures.

11 ww. The EIR fails to discuss the Project's consistency with the North Natomas
12 Community Plan. The EIR fails to address the issue whether the North Natomas Community Plan
13 should be built-out prior to consideration of the Greenbriar Project.

14 xx. The EIR fails to adequately consider the consistency between the Project and
15 the Natomas Joint Vision MOU. The EIR fails to adequately consider the consistency between the
16 Project and the findings, policies, and recommendations of the "Air Quality and Land Use
17 Handbook" of the State of California Air Resources Board.

18 yy. The EIR is inadequate because it ignores credible, uncontroverted evidence,
19 testimony and information based upon objective data, which established a "reasonable possibility",
20 of potentially significant traffic impact of the Project that was not evaluated or mitigated.

21 zz. The EIR failed to investigate, analyze, evaluate, disclose or advise decision
22 makers and the public about potentially significant cumulative, as well as site specific, impacts fully,
23 adequately and in good faith. This includes site specific as well as cumulative impacts on (1) health
24 and safety arising out of dangerous traffic conditions and air pollution; (2) sensitive biological
25 resources stemming from filling in wetlands; and (3) aesthetic impacts of the Project.

26 aaa. The EIR failed to conduct an adequate initial study. The initial study that was
27 merely a "proforma exercise, involving no real investigation" in regard to site specific as well as
28 cumulative impacts.

1 bbb. The authors of the EIR did not use their best efforts to find and disclose all
2 that reasonably could be disclosed, and terminated the analysis of potentially significant impacts
3 without "thorough investigation". This included failing to update traffic data, failing to properly
4 collect traffic data, and failing to correctly analyze the traffic problems associated with the Project.

5 ccc. LAFCO impermissibly shifted, or attempted to shift the primary duty to
6 comply with CEQA's requirements by, *inter alia*, placing the burden of obtaining scientific studies
7 and other evidence of potentially significant impacts on the public, thus evading critical
8 responsibilities under CEQA, while failing to strictly enforce the legal duties imposed by CEQA.

9 ddd. The EIR failed to identify, analyze, evaluate, disclose or advise decision
10 makers and the public about critical thresholds for the health and safety of the people residing,
11 working or traveling through the Project area, and failing to take all coordinated actions necessary
12 to prevent such thresholds from being reached.

13 eee. LAFCO Certified a final Environmental Impact Report (FEIR) that is
14 procedurally defective because it does not properly answer public comments and does not address
15 the public comments in an understandable manner.

16 fff. LAFCO certified an FEIR that was substantively defective because it did not
17 address feasible mitigation measures.

18 ggg. LAFCO included an inadequate cumulative impact analysis by, *inter alia*,
19 failing to search for and include impacts from related Projects under LAFCO's or the City's prior
20 or contemporaneous environmental review, as well as failing to use reasonable efforts to discover
21 and disclose impacts from related Projects under the administrative jurisdiction of other public
22 agencies.

23 hhh. LAFCO failed to perform a proper analysis of alternative Projects or
24 alternative locations for the Projects. The EIR provided only a cursory evaluation of other suitable
25 locations in the vicinity and did not identify any of the numerous sites within the City and its existing
26 Sphere of Influence that would be significantly better from an access, noise, or neighborhood
27 compatibility perspective, and which could have avoided the Project's impacts to prime agricultural
28 land, wildlife land endangered species and their habitat, and the impacts of noise from the nearby

1 Airport and low-flying aircraft, toxic air contaminants from adjacent major freeways, lack of any
2 public transit, growth-inducing impacts, cumulative impacts, and exposure to deep flooding.

3 iii. The EIR authors did not perform an in-depth analyses of environmental effects
4 giving rise to mandatory findings of significance, including traffic impacts that could be dangerous
5 to the health and safety of neighbors and also the destruction of important habitat.

6 jjj. The EIR failed to adequately address the growth-inducing impact of the
7 Project.

8 kkk. LAFCO adopted a statement of overriding considerations without providing
9 a factual basis to support such findings, and without revealing the analytical route between evidence
10 and conclusion.

11 lll. LAFCO made findings to support the EIR process without substantial
12 evidence and the record to support them, and without revealing the analytical route between evidence
13 and conclusions.

14 mmm. Finding that farmland mitigation is infeasible, finding that creation of habitat
15 preserves will also mitigate for loss of prime farmland not supported by substantial evidence No
16 substantial evidence supports the conclusion of the EIR and Mitigation Measures assumes that
17 habitat lands will be managed for agriculture.

18 nnn. The Project EIR fails to adequately consider mitigation for the loss of
19 agricultural land, and to provide adequate mitigation measures to replace agricultural land that will
20 be lost due to the Project.

21 ooo. LAFCO engaged in "agency misconduct" that includes all the foregoing acts,
22 omissions and violations, individually and cumulatively, particularly the failure and refusal to
23 consider expert testimony, scientific studies and other evidence, as well as information based on
24 objective data, accompanied by relevant legal authority, submitted prior to final approval of the
25 Project.

26 ppp. Mitigation measure which relies on the Finance Plan for implementation are
27 speculative and thus infeasible due to speculative financing.

28 /

1 b. Policy IV.A.2.b. requires that the Master Service Element demonstrate that
2 adequate services will be provided within the time frame needed by the inhabitants within the
3 proposed boundary. The Greenbriar Municipal Services Review fails to do so.

4 c. The financing mechanisms relied upon by the Municipal Services Review,
5 proposed CEQA Mitigation Measures, and Revised Financing Plan, assume that the City will retain
6 all municipal revenues generated by development at Greenbriar and do not mention sharing of tax
7 revenue with County pursuant to the Joint Vision MOU. There is no Joint Vision Master Tax
8 Sharing agreement. County states that it will not agree to remove Greenbriar from the Joint Vision,
9 and wants a revenue sharing agreement. By failing to consider the revenue and financing constraints
10 that may result from Joint Vision revenue sharing, the MSR is in violation of Government Code
11 §56430(a)(3), which requires that an MSR identify financing constraints. LAFCO cannot determine
12 the adequacy of funding to support municipal services until there is either (a) a City/County
13 agreement regarding Joint Vision revenue-sharing, and revised MSR and Financing Plan which
14 demonstrate how adequate municipal services will be financed despite sharing of Greenbriar's
15 revenue with County; or (b) a waiver of revenue-sharing by County.

16 d. The MSR's finding that SRCSD and CSD-1 have sewer capacity to adequately
17 serve Greenbriar is based only on "personal communication from Michael Myers," and his very short
18 letter dated July 3, 2007, (FEIR App F), which Mr. Meyers qualifies with the cryptic phrase "based
19 on information to date." No data is provided by SRCSD, CSD-1, or Mr. Myers' letter of July 3,
20 2007, which would show that sewer capacity will be available within five or ten years. The MSR
21 correctly identifies proposed SRCSD projects which will someday increase capacity, but no
22 completion dates are stated. No data is presented by SRCSD which shows that its present sewer
23 expansion project includes Greenbriar development in its baseline, nor capacity to accommodate
24 Greenbriar.

25 e. The EIR and MSR fail to disclose that City is seeking FEMA A99 designation
26 for Natomas Basin, which would allow unlimited development in this deep flood basin while
27 awaiting levee upgrade, with no requirement that new structures be elevated above the base (100-
28 year) FEMA-designated floodplain. The City is thus actively seek permission to expose additional

1 new development, and its residents to the hazards of deep flooding without disclosing its intention
2 to the public in the EIR and MSR.

3 f. LAFCO has failed to meet the requirement of Government Code § 56300(a)
4 that by January 1, 2002, all LAFCO's shall establish policies that "encourage and provide efficient
5 urban development patterns with appropriate consideration of preserving open space and agricultural
6 lands within those patterns." Government Code §56300(a) independently provides that LAFCO
7 exercise its powers in a manner that encourages and provides planned, well-ordered, efficient urban
8 development patterns with appropriate consideration of preserving open space and agricultural lands
9 within those patterns. "Open space" is defined by Sections 56060 and 65560 as any area of land or
10 water which is essentially unimproved. This definition does not encompass artificial detention
11 basins, improved urban parks, and freeway buffers. The proposed SOI Amendments violate these
12 standards.

13 g. Section 56301 states that "among the purposes of a commission are
14 discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently
15 providing government services." Section 56377 states that in considering proposals which could
16 convert open space in to non-open space uses, the "commission shall consider . . . the following
17 policies and priorities; (a) development shall be guided away from existing prime agricultural lands
18 towards areas containing non-prime agricultural lands" . . . and "(b) development of existing vacant
19 lands within the existing jurisdiction or SOI shall be encouraged before any proposal is approved
20 which would lead to development of open space lands which are outside of the existing jurisdiction
21 or the SOI or jurisdiction of the local agency." LAFCO Policy IV.E.1.d states that LAFCo will
22 approve a change of organization only if it finds that the proposal will lead to planned, orderly, and
23 efficient development, and that certain criteria are met, including LAFCO Policy IV.E.1.d. , which
24 requires a finding that insufficient vacant non-prime lands exist within the SOI that are planned,
25 accessible, and developable for the same general type of proposal. Most of Greenbriar is prime
26 farmland. Substantial evidence would not support a LAFCo finding that there is insufficient
27 nonprime vacant land within the current SOI which could accommodate the type of development
28 contemplated at Greenbriar.

1 45. Petitioners reserve the right to modify, delete from or add to the list of Planning &
2 Zoning Law violations after the administrative record for the Project has been fully and adequately
3 compiled, inspected, prepared, certified, delivered and analyzed.

4 X

5 **THIRD CAUSE OF ACTION**
6 **(COMPLAINT FOR INJUNCTION)**

7 46. Petitioners incorporated paragraphs 1 through 44 of this Petition and Complaint.

8 47. Pursuant to Section 526 of the Code of Civil Procedure, Petitioners seek injunctive
9 relief to enjoin the action of LAFCO due to its failure to comply with the California Environmental
10 Quality Act and the Coretese-Knox-Heartzberg Local Government Reorganization Act of 2000.

11 WHEREFORE, Petitioners pray for the following relief:

12 1. Injunctive relief *pendende lite* if and when such relief is applied for.

13 2. The issuance of a peremptory writ mandating LAFCO to vacate certification
14 of the CEQA environmental documentation, including the final EIR, set aside approval of the
15 Project, and refrain from taking any other action as the Court deems appropriate under Public
16 Resources Code §21168.9.

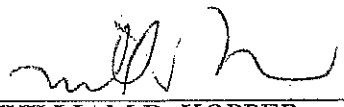
17 3. For an order setting aside LAFCO's approval of LAFCO Resolution No.
18 LAFC 1345, LAFCO Resolution No. LAFC 1346, LAFCO adoption of Resolution No. LAFC 1347,
19 and LAFCO adoption of Resolution No. LAFC 1348.

20 4. An award of reasonable attorneys fees under §1021.5 of the Code of Civil
21 Procedure or §800 of the Government Code.

22 5. Costs incurred in this action.

23 6. Such other and further relief as the Court deems just and proper.

24
25
26 DATED: 10/22/07

27 
28 WILLIAM D. KOPPER
Attorney for Petitioners

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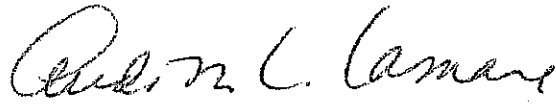
VERIFICATION

I, JUDITH L. LAMARE, am President of the Friends of the Swainson's Hawk, Inc., one of the Petitioners in this action.

All of the facts that have been alleged in this Petition and Complaint are true of my own personal knowledge, except for those matters I allege on information and belief, and I believe those matters to be true.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California.

DATED: October 22, 2007



JUDITH L. LAMARE
President
Friends of the Swainson's Hawk, Inc.

William D. Kopper

Attorney at Law
417 E Street
Davis, CA 95616
(530) 758-0757
Fax (530) 758-2844

Paralegal
Kristin Rauh

October 18, 2007

Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814

RE: Greenbriar Development Project

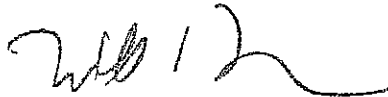
Dear Commissioners:

I am writing on behalf of my clients in the above captioned matter, Environmental Council of Sacramento, Inc., Friends of The Swainson's Hawk, Inc., Rudolph L. Bargas, Jacob C. Snyder, and Charles T. Link. I'm advising you that an action is being filed against Sacramento LAFCO for a Writ of Mandate for violation of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et. seq.). Additionally, a cause of action is included for violation of the Planning & Zoning Laws. A copy of the verified petition is enclosed.

We are also enclosing a pleading entitled Petitioners' Request for Compilation of Administrative Record.

Thank you for your attention to this matter, and if there are any questions please do not hesitate to have your Counsel contact us.

Sincerely,



WILLIAM D. KOPPER

WDK:kgr
enclosures

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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Yolo. I am over the age of 18 years and not a party to the within above-entitled action; my business address is **LAW OFFICE OF WILLIAM D. KOPPER**, 417 E Street, Davis, CA, 95616.

On October 22, 2007, I served the following documents:

LETTER TO SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

on the persons listed on the mailing list by placing a true copy thereof in a sealed envelope and served same as follows:

XX

BY MAIL: I caused such envelope to be deposited in the mail at Davis, CA. I am familiar with this company's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mailbox in the City of Davis, California after the close of the day's business.

BY FEDERAL EXPRESS: I caused such envelope to be deposited in a Federal Express depository at Davis, California. I am readily familiar with the firm's practice for collection and processing of correspondence for transmittal by Federal Express. It is deposited with Federal Express on that same day in the ordinary course of business.

BY PERSONAL SERVICE: I hand-delivered a copy of said documents to the interested party at the address set forth on the mailing list.

BY FACSIMILE: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth on the mailing list.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on October 22, 2007, at Davis, California.


KRISTIN RAUH

MAILING LIST

Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814