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Chair and Members
Sacramento City Planning Commission
915 I Street
Sacramento, Ca. 95814

Re: M05-031/P05-077 Northgate 880/Panhandle

Dear Joseph Yee, Chair, and Members of the Commission,

I represent Sierra Club, ECOS - The Environmental Council of Sacramento and Friends of the Swainson's Hawk. We filed extensive comments on the DEIR. We learned about the hearing earlier this week and are requesting more time to be able to review the FEIR and comment in detail. Staff did not mail notices of availability of the FEIR, nor the FEIR, to us. Staff also advises that it did not send notice of this hearing to us, although it appears that a notice of hearing but not notice of availability of the FEIR was sent to ECOS. We understand that other parties received copies of the FEIR on Saturday May 19, which leaves much too little time for review of an FEIR for a project with controversial issues.

We object to the approval of the project as presented.

1. Certification of EIR. CEQA Guidelines § 15025(b) and (c) prohibit certification of an EIR by the Planning Commission in projects where the Planning Commission sits as an advisory body to make a recommendation on the project to a decision-making body (Board of Supervisors).

CEQA Guideline § 15025 (b)(1) states:

"(b) The **decision-making body** of a public agency **shall NOT delegate** the following functions:

(1) Reviewing and considering a Final EIR or approving a Negative Declaration prior to approving a project."

CEQA Guideline § 15025 (c) states:

"(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form."

Guideline 15025, like many of the CEQA Guidelines, is followed by Discussion by the drafters intended to provide interpretation of the Guideline (c) says (attached.):

"Subsection (c) reflects an administrative interpretation **which applies the requirements of CEQA to advisory bodies. Such bodies** need not and **may not certify an EIR**, but they should consider the effects of a project in making their decisions."

Here the Commission is only advisory to the Council on most aspects of the project approval, including key elements such as application for annexation and amendment of the General Plan. The decisions proposed for the Commission to approve cannot be implemented without the Council approval of all of the other elements of the staff recommendation.

2) Definition of Flood Hazard Safety Measures. The FEIR and staff report recommend that the project mitigate placing new houses in a flood hazard area by compliance with those conditions that will be imposed by FEMA which are predicted to be in the AE Zone, AR Zone and/or A99 Zone. However, the FEIR and staff recommendation fail to disclose what levels of safety are required by each FEMA zone. A 99 zone, for instance, requires no protections at all. CEQA requires information like this to be disclosed to the public and decision makers so that informed opinions based on fact can be developed before making decisions about approvals.

The environmental community and community associations in Natomas have asked the City to adopt a moratorium on further development entitlements in the Natomas Basin until the levees are repaired. This proposed project approval and accompanying EIR fail to adequately disclose the full consequences of improving more development now, and the EIR does not respond adequately to the request for a moratorium on growth approvals in the face of very high uncertainty about future flood protection.

3) Open Space Buffer. The SACOG Blueprint principles do not justify eliminating the open space buffer from the community plan as claimed by staff. The EIR fails to respond to our comments on the importance of maintaining the open space buffer as originally planned. The Staff recommendation refers to Smart Growth Principles that do not address transitions between urban uses and rural and natural conservation areas. Moreover, the EIR alternative that includes the Open Space Buffer on the east side of the project area has higher density land uses and is very compatible with the Blueprint principles.

4) Finance Plans. **As we pointed out in the DEIR, the Finance Plan should be circulated for a 45 day review period. That has not been done.** Moreover, the mitigation program now refers to two financing plans, including a future finance plan for all park, trails, open space/parkway or other open space areas:

Finance Plan: The Applicant shall provide a Finance Plan for the project prior to final map approval that includes the development of all designated park facilities, trails, open space/parkway or other open space areas anticipated to be maintained by the City of Sacramento Department of Parks and Recreation. The Plan shall include all improvements costs associated with the designated park facilities, trails, open space/parkway or other open space areas along with ongoing maintenance and operation costs for these facilities in perpetuity.

The public has a right to review of any Finance Plan as an integral feature of the mitigation program. The public and decision makers cannot form an opinion on the feasibility of the trails, open space and parks without an opportunity to review and comment upon the financing plan prior to project approval. To postpone the financing plan until after project approval is a violation of CEQA.

5. Agricultural Land Impacts Not Mitigated. The project has significant direct and cumulative impacts on preservation of agricultural lands. Mitigation Measure 4.2.1 proposes to "stack" mitigation of loss of agricultural land onto the mitigation requirement established by the Natomas Basin Habitat Conservation Plan for protection of threatened species.

Mitigation Measure 4.2.1 (From MMP). The Applicant shall protect one acre of existing farmland of equal or higher quality for each acre of Prime Farmland or Farmland of Statewide Importance that would be converted to non-agricultural uses in the Panhandle PUD. This protection may consist of the establishment of farmland easements or other appropriate mechanisms. The farmland to be preserved shall be located within the County. This mitigation measure may be satisfied by compliance with other mitigation requirements involving the permanent conservation of agricultural lands and habitat.

This impact is significant and unavoidable.

As we have stated previously in comments on the DEIR, it is not appropriate to use habitat lands to mitigate for agricultural impacts.

"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."

Very Truly Yours,



JAMES P. PACHL, Attorney

TEXT OF CEQA GUIDELINE SECTION 15025

15025. Delegation of Responsibilities

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

- (1) Determining whether a project is exempt.
- (2) Conducting an Initial Study and deciding whether to prepare a draft EIR or Negative Declaration.
- (3) Preparing a Negative Declaration or EIR.
- (4) Determining that a Negative Declaration has been completed within a period of 180 days.
- (5) Preparing responses to comments on environmental documents.
- (6) Filing of notices.

(b) The decision-making body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or Negative Declaration in draft or final form.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21082, 21100.2 and 21151.5, Public Resources Code; *Kleist v. City of Glendale*, (1976) 56 Cal. App. 3d 770.

Discussion: This section is a recodification of former Section 15055 with one additional feature. The section is necessary in order to identify functions in the CEQA process that a decision-making body can delegate to other parts of the Lead Agency. The agency can operate more efficiently when many functions are delegated to the staff rather than requiring the decision-making body to perform all the functions.

Subsection (b) codifies the holding in *Kleist v. City of Glendale* by identifying the functions that cannot be delegated. The functions of considering the environmental document and making findings in response to significant effects identified in a final EIR are fundamental to the CEQA process. These steps bring together the environmental evaluation and the decision on the project. This section is intended to assure that the environmental analysis of a project is brought to bear on the actual decision on the project. The section also serves to guide agencies away from practices that have been ruled invalid.

Subsection (c) reflects an administrative interpretation which applies the requirements of CEQA to advisory bodies. Such bodies need not and **may not** certify an EIR, but they should consider the effects of a project in making their recommendations. This section also suggests that advisory bodies may consider a draft EIR.
(Underlining added for emphasis/ jpp)