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March 9, 2018

*Via Hand Delivered  
And Electronic Mail  
Donald.Lockhart@SacLAFCo.org*

Donald J. Lockhart  
Executive Director  
Sacramento County Local Agency Formation Commission  
1112 I Street, Suite 100  
Sacramento, CA 95814

**Re: REQUEST FOR RECONSIDERATAION of Sacramento County  
Local Agency Formation Commission's approval of Amendment of  
Elk Grove Sphere of Influence and Final Environmental Impact  
Report, February 7, 2018 (LAFCo # 07-15)**

Dear Mr. Lockhart:

Pursuant to Government Code, section 56985 and the Sacramento County Local Agency Formation Commission's ("LAFCo) Policies II.B and V.J.1, the Sierra Club, Environmental Council of Sacramento, Habitat 2020, and Friends of the Swainson's Hawk (collectively referred to as "Petitioners") hereby request that LAFCo reconsider its approval of a landowner application for an SOI Amendment for the City of Elk Grove on February 7, 2018.<sup>1</sup> Government Code section 56985(a) provides that a request for reconsideration shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. In this matter, Petitioners request that the Resolution be modified to deny the application. This request for reconsideration is based upon the following additional information discussed below.

**A. PUBLIC COMMENTS NOT PROVIDED TO COMMISSIONERS**

Materials submitted by Petitioners on November 27, 2017 for the scheduled hearing on this item for December 6, 2017, which was postponed, were not made available to the Commissioners either on December 6, nor included in the online public comment website for the February 7, 2018 hearing on the matter. Additional materials

<sup>1</sup> A timely request for reconsideration tolls the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request. (Gov't Code, § 56985(d).)

submitted by Petitioners directly challenging the Executive Director's Report and submitted February 5 also were not posted on LAFCo's website of materials for that meeting, and may not have been distributed to the Commission.

- a. Letter dated February 5, 2018 from Friends of Swainson's Hawk. (See Attachment 1.)
- b. Letter dated February 4, 2018 from Friends of Swainson's Hawk. (Attachment 2.)
- c. Memorandum dated November 27, 2017, with Attachments, from ECOS and Habitat 2020. (Attachment 3.)
- d. Letter dated February 6, 2018 from Sean Wirth, Conservation Chair, Mother Lode Chapter of Sierra Club. (Attachment 4.)

**B. THE APPLICANT AND THE EXECUTIVE DIRECTOR PROVED FALSE AND MISLEADING STATEMENTS TO THE COMMISSIONERS**

At the Commission's February 7, 2018 meeting, the Executive Director and Applicant made several statements to the Commissioners that were misleading or not true. Petitioners were not able to respond at the hearing due to very limited time for public comment and the format of the hearing process. Petitioners have since reviewed the video record of the proceeding, posted on LAFCo's website, and list them below, correlated with the index of minutes and hours shown on the video:

- a. Executive Officer Donald Lockhart stated in reference to new transportation facilities planned in the area that "transportation infrastructure can be modified to serve this area." (0 hr. 19 minutes). This statement while not entirely false, fails to recognize impediments to adding access to the Southeast Connector to serve the SOI area. LAFCo staff did not disclose that the Settlement Agreement between the Capitol Southeast Connector Joint Powers Agency ("JPA") and the Environmental Council of Sacramento and the provisions of the Connector Final Environmental Impact Report ("EIR") limit access to the Connector in the project area. Also, that access to the Connector road by new development outside of the current USB, would violate the Metropolitan Transportation Plan ("MTP") was not mentioned. Nor did the Executive Director or anyone else discuss the SOI inconsistency with the Connector Final EIR and other JPA planning documents since the SOI approval is inconsistent with the MTP and the Connector must maintain consistency with that plan and avoid growth inducement outside the current Urban Services Boundary. (See Connector Final EIR Mitigation Monitoring Reporting Plan, Mitigation Measures POP1 & POP2.) See discussion of the Connector below.
- b. Applicant Representative Brian Cooley also pointed to the importance of the Connector going "through" the project area. (0 hour 36 minutes.) He

failed to acknowledge that under the terms of the MTP, the Connector could not serve areas not presently approved for development in the land use plans for the jurisdictions served by the Connector.

- c. The Executive Officer said that the Sacramento County Water Agency ("SCWA") had stated that it had the means and the capacity to provide water supply infrastructure but lacked the authority to do so. (0 hr. 21 minutes.) In fact, SCWA stated emphatically that it had already allocated all available surface water to the Zone 40 service area (all within the Urban Service Boundary ("USB")). (See letter dated March 6, 2017 from Mike Huot, Executive Director to Commission.) The Executive Officer failed to disclose this letter to Commissioners. (See Final EIR at p. 2-51 ("At this time SCWA's water supply portfolio is *fully allocated* in the current Zone 40 service area.") Moreover, the letter of Sacramento Regional County Sanitation District dated February 15, 2017, states that "Regional San currently does *not have any planned facilities that could provide recycled water* to the proposed project or its vicinity." (Final EIR at p. 2-10.)
- d. The Executive Officer stated unequivocally that the City of Elk Grove would either have to adopt the South Sacramento Habitat Conservation Plan (SSHCP) or an equivalent plan of its own that would at minimum meet every standard of the SSHCP. (0 hr. 24 minutes.) He referenced both the MMRP and the Conditions of Approval. In fact the project documents *do not say this*. The Executive Officers Report states only that the City may fulfill the requirements of this condition "by demonstrating participation in the South Sacramento Habitat Conservation Plan ("SSHCP") or preparation of its own habitat strategy." (Executive Officer's Report at p. 94.) There is no requirement that a habitat strategy prepared by the City meet the standards of the SSHCP.
- e. The Applicant described the agricultural resource on the project area. He showed a Powerpoint page that stated "City of Elk Grove Requires Mitigation for Every Acre of Farmland", and he verbally stated that the project would mitigate 1:1 for loss of farmland. (0 hr. 45 minutes.) The Project MMRP (Mitigation Measure 3.2-1; Executive Officer's Report pg. 71) states clearly that the project will mitigate 1:1 only for *loss of Prime, Unique and Farmland of Statewide Significance*. There will be no mitigation for loss of farmland of local significance, which is over 50% of the SOIA area. (See Executive Officer's Report at p. 8.) This is one of Petitioners' major issues, which Staff and Applicant ignored repeatedly, and misled Commissioners about during the hearing.

**C. COMMISSIONER GREENWOOD'S STATEMENTS ABOUT WATER SUPPLY AND IMPACTS TO GROUNDWATER WERE INCONSISTENT WITH THE EIR, THE EVIDENCE PRESENTED IN THE RECORD, AND THE FINDINGS THAT LAFCO ADOPTED.**

The Final EIR found that groundwater depletion is an impact of the project approval that cannot be fully mitigated. (See Recirculated Draft EIR Section 3.10, Hydrology and Water Quality, Impact 3.10-2: Depletion of groundwater supplies, "significant and unavoidable impact." Recirculated Draft EIR at p. 3.10-27.)

In his statements at the hearing about his vote on the Project after the close of public comment but prior to the vote, Commissioner Greenwood identified his expertise in water based upon his experiences at the Carmichael Water District, the Regional Water Agency, and Water Forum. Commissioner Greenwood then stated that he disagreed with project opponents regarding water issues. He specifically stated that there is no groundwater issue. He also strongly implied that surface water is available despite the letter of Mike Huot, Executive Director of the SCWA to the Commission dated March 6, 2017. (Final EIR at p. 2-51.) SCWA's letter stated: "At this time SCWA's water supply portfolio is *fully allocated* in the current Zone 40 service area," which does not encompass the SOIA area because it is outside of the current Urban Service Boundary. Commissioner Greenwood did not specifically reference the constraints of the Zone 40 water allocation, and nothing in record indicates that he has any expertise in Zone 40. As Commissioner Greenwood's statements directly contradict the record, and because of the previously noted inconsistencies and lack of information included in the presentation by the Applicant and Executive Officer a follow-up hearing is warranted.

**D. COMMISSIONERS INAPPROPRIATELY BASED THEIR APPROVAL ON ALLEGED BENEFITS TO OR FOR THE JPA CAPITOL SOUTHEAST CONNECTOR PROJECT**

After the close of the public hearing and public comment on February 7, 2018, at least two Commissioners that voted for the Project stated prior to their respective votes that their decision in part rested upon alleged benefits of SOIA approval to or for the proposed JPA Capitol Southeast Connector project.

This is a very unique opportunity in my mind because of the location of this project in the path of growth, not in a floodplain, situated close to the JPA Connector where they may be positioned for funding that could help to bring good things to life. It is an economic driver, there are a lot of opportunities there. . . . Having the JPA connector will give us relief and this is an opportunity for Elk Grove to capitalize on some funding opportunities and growth around that connector." (Supervisor Sue Frost at 3:44 of the hearing.)

No leapfrogging for one thing - I see orderly growth. There is going to be a Northeast Connector. My part of the County did not do a Connector

north and south and we're suffering from that. . . . traffic in my area is a mess and it will only get worse. We have to handle the traffic in this county. The northeast connector is part of (managing growth). This is right at the junction of that and it makes sense. Just over 1100 acres. . . . Jobs. . . . There will be concerted effort to create more jobs, a logical place again because of transportation. (Commissioner Ron Greenwood at 3:26 of the hearing.)

Petitioners did not have the opportunity to comment upon this assertion at the hearing because the public hearing had closed when Commissioners Frost and Greenwood stated these reasons to approve the SOIA. Petitioners did not comment earlier on this because none of the project documents or EIR suggested that this would serve as a basis to approve the SOIA nor suggested that approval of the SOIA would somehow benefit or facilitate the Connector project. The Commissioners did not disclose the alleged benefits to or for the Connector.

Contrary to the Commissioners' statements, approval of the SOIA will make the Connector more costly because the approval of the SOIA greatly increases the speculative value of land within the SOI from agricultural to probable future urban development, as well as other land along Kammerer Road, which is outside of the SOIA area. Some of the land within the SOI and on neighboring properties along Kammerer Road will need to be purchased by the Connector JPA for right of way for the Connector.

**E. APPROVAL OF THE SOIA CONFLICTS WITH THE METROPOLITAN TRANSPORTATION PLAN AND THE PLANNED CAPITOL SOUTHEAST CONNECTOR**

In enacting LAFCO's governing legislation, the Legislature recognized the importance of promoting orderly development and in balancing development with the sometimes competing state interests of discouraging sprawl, preserving open space and prime agricultural lands, and efficiently extending government services. (Gov't Code §56001; LAFCo Policy I.C.1. and -2.) LAFCO's goal is to encourage the formation and related extension of governmental agencies and to prevent duplication of services. See *San Bernardino Water Valley Conservation District v. Local Agency Formation Commission* (2009) 173 CA4th 190, 194; *Friends of Mt. Diablo v. County of Contra Costa* (1977) 72 CA3d 1006, 1011; *Del Paso Recreation & Park District v. Board of Supervisors* (1973) 33 CA3d 483, 490; *City of Ceres v. City of Modesto* (1969) 274 CA2d 545, 554.) LAFCo Policy also directs the Commission to deny proposals that would result in significant adverse impacts on other agencies serving the affected area. (LAFCo Policy V.I.9 ("The LAFCo will deny proposals that would result in significant unmitigable adverse effects upon other service recipients or other agencies serving the affected area unless the approval is conditioned to avoid such impacts."))

Approval of the SOIA conflicts with the Metropolitan Transportation Plan and the planned Capitol Southeast Connector, which is inconsistent with LAFCo's statutory charges to encourage orderly development. (See Gov't Code § 56001; LAFCo Policy

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V.I.9.) The Southeast Connector is a proposed limited access expressway that would run along Kammerer Road from I-5 to Highway 99, then along Grantline Road to White Rock Road to Latrobe Road in El Dorado County, connecting with Highway 50. Generally, the north side of the Connector borders areas designated for urban development, and the south side is agricultural not intended for urban development. The Mitigation Measures for the Connector approval requires that the Connector design “[A]cknowledge that the Connector Project is in the Metropolitan Transportation Plan and further support the . . . Metropolitan Transportation Plan. . . [and] [S]trategically apply access control and capacity characteristics to preserve and enhance regional functionality while discouraging growth in areas not designated for growth. . . .” (Connector Final EIR, Mitigation Measure POP-1.) The Connector approval also requires that the Connector be “designed and constructed to serve the demand projected in the MTP and adopted local plans . . .” [with access limited] to existing primary facilities and new facilities included in the MTP.” (*Id.*, Mitigation Measure POP-2.) It also requires that “New access to the connector from areas not designated for growth in the general plan should not be permitted.” (Connector EIR Mitigation Monitoring Reporting Plan at pp. 32, 33.) (A copy of the Connector EIR Mitigation Monitoring Reporting Plan is attached to this letter as Attachment 5.)

The Final EIR of the Capitol Southeast Connector, states that it will design directional interchanges to “limit extension of roadways beyond the Sacramento County Urban Service Boundary. (Capitol Southeast Connector at p. 2-17.) On February 26, 2018, after LAFCo’s approval of the SOIA, the Capitol Southeast Connector JPA released a Draft Mitigated Negative Declaration for Segments One and Two of the proposed Southeast Connector running along Kammerer Road between Hwy 99 and I-5. While the Mitigated Negative Declaration shows a number of proposed roadways intersecting with the north side of Kammerer Road, it shows only Bruceville Road and Franklin Boulevard extending south of Kammerer Road, neither of which pass through the SOIA area. Consistent with the Connector MMRP POP-2 and -3, the diagram of Segments One and Two show no provision for access by future roadways serving the SOIA area.

The Connector JPA further committed itself to avoidance of growth south of the City of Elk Grove in its Settlement Agreement between ECOS and the Capitol Southeast Connector Authority, January 2012, *Environmental Council of Sacramento v. Capital Southeast Connector Joint Powers Authority*, Sacramento County Superior Court, Case No. 34-2012-80001107, whereby the JPA agreed to limit points of access to the Connector “to accommodate only then existing and currently planned land uses,” existing on the date of the Settlement Agreement. (See Settlement Agreement, Exhibit A, ¶ 1(a); a copy of the Settlement Agreement is attached to this letter as Attachment 6.)

It is important to remember that federal funding for transportation facilities is constrained by 1) the project must be part of a federally approved metropolitan transportation plan for the region and 2) the project must be consistent with (in conformity with) the federally approved air quality plan for the region. In this case, the

Southeast Connector is part of the MTP and conforms to the air quality plan because it is access restricted and its adoption includes Final EIR mitigation measures to ensure that it is not growth-inducing on lands not now entitled, that is, outside the USB.

LAFCo's approval of the Kammerer 99 SOIA adjacent to the Southeast Connector, despite Sacramento Area Council of Government's explicit warning that the SOIA is inconsistent with the MTP (SOI Final EIR at p. 3-4), now signals to the federal government that local government has broken its promises in the MTP, that the Southeast Connector indeed has been growth-inducing even before it is funded and built, and that local elected officials have deliberately enabled the City of Elk Grove and the developer/landowners to begin planning for urbanization on the south side of the Connector. This could and should discourage federal funds from being allocated for the Segments One and Two of the Connector along Kammerer Rd between I-5 and Highway 99.

Therefore LAFCo Policy V.I.9 requires that LAFCo deny the SOIA because approval would result in significant adverse impacts on the MTP and on the approved Connector design and on the feasibility of commitments made by the Capitol Southeast Connector JPA in the Connector EIR and its settlement agreement with ECOS (above). (LAFCo Policy V.I.9.)

**F. LAFCo FAILED TO USE THE CORTESE KNOX HERTZBERGER DEFINITION OF PRIME AGRICULTURAL LANDS**

Upon review of the Final EIR, it is uncertain whether LAFCo used the Cortese Knox Hertzberger definition of prime agricultural land in its analysis and findings about impacts of the project on prime agricultural lands. (See Gov't Code, § 56064.) Under Cortese Knox "Prime agricultural land means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- (b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- (c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Thus, the Cortese Knox definition of prime ag land refers to soil types and specifically does not include irrigation as a component in determining whether land is classified as prime agricultural land.

LAFCo's Final EIR's assessment of the agricultural lands uses the California Department of Conservation mapping, but makes no reference to the Cortese Knox Hertzberger definition of prime agricultural land. The Final EIR states: "According to the Sacramento County Important Farmland map, published by the California Division of Land Resource Protection (DOC 2014c), approximately 105 acres of land within the SOIA Area is designated as Prime Farmland, 405 acres of land within the SOIA Area is designated as Farmland of Statewide Importance, and approximately 627 acres of land is designated as Farmland of Local Importance (Exhibit 3.2-1). In addition, active agricultural fields are located surrounding the project site are designated as Prime Farmland, Farmland of Statewide Importance, and Farmland of Local Importance." (Final EIR at p. 3.2-3 (Agricultural Resources).)<sup>2</sup>

Thus, it is unclear whether the Final EIR and thus LAFCo's decision properly identified all of the prime agricultural land as defined by LAFCo's governing statute. If LAFCo did rely upon the Cortese Knox definition for prime ag land then that should be identified in the Final EIR's assessment and the Commission's Findings. If LAFCo's Final EIR and/or Findings did not properly rely upon the Cortese Knox definition for

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<sup>2</sup> Also, the County General Plan relies upon the Department of Conservation's classification for prime ag land. The General Plan states: "The California Department of Conservation utilizes a classification system that combines technical soil ratings and current land uses to determine important farmland categories throughout the State. The Prime Farmland category describes farmland with the best combination of physical and chemical features able to sustain long-term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date." (County of Sacramento General Plan Agricultural Element Amended September 26, 2017 at p. 6.)



prime ag land then LAFCo must revise the assessment of prime ag lands. As such, this request for reconsideration must be granted in order to allow for the revised analysis.

**G. THE PRESENTATION TO THE COMMISSION INADEQUATELY PRESENTED THE SIGNIFICANT AND UNAVOIDABLE IMPACTS OF THE ACTION**

The oral presentation on February 7, 2018, by the EIR preparer to LAFCo Commissioners was very brief and failed to disclose that the EIR found 22 significant and unavoidable impacts. These are not trivial impacts. They include:

- Agricultural Resources, Impact 3.2-1, Direct loss of agricultural land, including Prime Farmland, Unique Farmland, or Farmland of Statewide Importance or Farmland under Williamson Act Contract and Impact 3.2-2: Indirect loss of adjacent agricultural land, including Prime Farmland, Unique Farmland, or Farmland of Local Importance or Lands Under Williamson Act Contract;
- Air Quality, Impacts 3.3-23, 3.3-24, 3.3-25 violate or contribute significantly to an air quality violation;
- Biological Resources, Impact 3.4-2: Special-status raptors and other nesting raptors;
- Energy, Impact 3.6-1, Energy efficiency and Impact 3.6-2, New or expanded electrical, alternative energy and natural gas utilities;
- Hydrology and Water Quality, Impact 3.10-2: Depletion of groundwater supplies;
- Land Use, Population, Housing, Employment, Environmental Justice, and Unincorporated Disadvantaged Communities, Impact 3.11-4: Consistency with the SACOG 2036 Metropolitan Transportation Plan/Sustainable Communities Strategy, Impact 3.11-5, Conversion of open space, Impact 3.11-6: Induce population growth;
- Public Services and Recreation, Impact 3.13-1, Increased demand on fire protection and emergency medical services and Impact 3.13-2, Increased demand for law enforcement services;
- Transportation, Impact 3.14-1, Conflict with an applicable transportation plan, ordinance, policy, or congestion management program;
- Utilities and Service Systems, Impact 3.15-1: Increased demand for water supplies and water system facilities and Impact 3.15-2, Increased demand for wastewater collection, conveyance, and treatment facilities.

There are also significant and unavoidable cumulative impacts to the following: Agricultural Resources, Biological Resources, Energy, Hydrology and Water Quality, Land Use and Planning / Population / Housing, Public Services and Recreation, Transportation and Traffic, Utilities and Service System.


This is an unusually large number of unmitigated impacts, requiring that a Statement of Overriding Considerations be adopted by Commissioners. The Resolution gave short shrift to the unmitigated impacts. Attachment A to the Resolution "CEQA Findings of Fact and Statement of Overriding Considerations of the Kammerer Road/Highway 99 Sphere of Influence Amendment Environmental Impact Report," contains over 70 pages of findings about impacts and the extent to which mitigation measures will reduce their impacts. Within the 70 pages of text regarding impacts that are mitigated can be found the identification of significant and unavoidable impacts that cannot and will not be mitigated. The fact that these impacts are buried in the Findings may help explain why at least one Commissioner seemed to be convinced that all the impacts of the project would be fully mitigated. The purpose of a Statement of Override is to be sure that decision makers are fully cognizant of the impacts that cannot be mitigated.

**H. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE STATEMENT OF OVERRIDING CONSIDERATIONS**

A statement of overriding considerations must be supported by substantial evidence in the record. (CEQA Guidelines, § 15093(b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 199 Cal.App.4<sup>th</sup> 316, 357; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212, 1223.) In this matter, the Findings of Fact and A Statement of Overriding Considerations states that the "region-wide or statewide environmental benefits of the project outweigh the unavoidable adverse environmental impacts." (Resolution 2018-02-0207-07-15). No evidence is presented in the record to support this finding and determination.

Based upon the foregoing, Environmental Council of Sacramento and Sierra Club request that the LAFCo Commissioners reconsider their approval of the Elk Grove SOIA and deny LAFCo the application.

Sincerely,

  
Donald B. Mooney  
Attorney for Environmental Council  
of Sacramento and Sierra Club

Attachments

cc: Clients