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March 31, 2017

Sacramento LAFCo
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Attention: Don Lockhart
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Please send all notices & correspondence to:
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Comments of the Friends of the Swainson's Hawk on the Draft Environmental Impact Report for the Kammerer Road/Highway 99 Proposed Sphere of Influence Amendment [LAFC # 07-15]

Dear Mr. Lockhart:

The Application to LAFCo proposes to expand Elk Grove's Sphere of Influence ("SOI") by approximately 1,156 acres onto land presently zoned and used for agriculture and also used by wildlife for habitat. It conflicts with on-going state and local planning for conservation and mitigation programs to offset the impacts of already-approved urban development and major infrastructure to serve existing urban areas.

There is enough vacant land within the region's existing Cities, including Elk Grove, the County Urban Policy Area and the County Urban Service Boundary ("USB") to meet the region's urban land use demands for decades. The proposed SOI expansion is not justified by any credible planning or economic analysis. The DEIR points out that the proposed SOI expansion is not consistent with twenty year regional growth planning by SACOG. SACOG's Metropolitan Transportation Plan/Sustainable Communities Strategy covers the period 2012 through 2036 and federal expenditures and actions are required to be consistent with this Plan. The DEIR fails to point out this nexus and the difficulties with obtaining federal permits for development inconsistent with the MTP/SCS.

Friends of the Swainson's Hawk (FOSH) and others have identified significant, large gaps and misrepresentations in the DEIR that require correction and recirculation under CEQA. FOSH asks that notices of availability of documents and hearings pertaining to this proposal be sent to Friends of the Swainson's Hawk at its postal and email addresses shown above.

The NOA for the DEIR stated that the last day for submitting comments on the DEIR is March 31, 2017, which is the Cesar Chavez Holiday on which LAFCo offices are closed. Pursuant to Code of Civil Procedure 12(a) and 13, the last day for submitting comments is extended to the first business day after the March 31 holiday, which is Monday April 3.

DEIR Lacks Adequate Relevant Information and Contains Misleading and Factually Incorrect Information

The DEIR fails as an information document; it does not provide LAFCo commissioners, staff, and the public with an accurate baseline and assessment of the impacts of the SOI approval on open space and agricultural preservation and orderly growth and development as required by the Cortese Knox Hertzberger statute that defines LAFCo's role and responsibility under state law.

During Elk Grove's previous application to LAFCo for an expanded SOI (2011-2013), we submitted or commissioned to be submitted, comment letters that addressed the environmental impacts of an SOI for City of Elk Grove south of the current City boundary. This boundary is the County's Urban Services Boundary and many of our previous comments and data are relevant to the current SOIA. We are resubmitting letters by Shawn Smallwood, Consulting Biologist, and Don Mooney, Attorney, that are relevant to review of the current DEIR. The DEIR for reasons explained below, does not meet the legal standards identified in the Mooney letter of November 21, 2011. We also incorporate and support the comments by ECOS/Habitat 2020.

No demonstration of need for an SOI expansion; there are thousands of acres of undeveloped vacant land within the City limits available for new development.

The City of Elk Grove previously submitted an application for a 7,819-acre SOI expansion which included the area of the current proposal. The City withdrew its application in 2013 after hearings at which a majority of LAFCo Commissioners indicated their intent to disapprove the SOI. A major concern was Elk Grove's failure to show a need for an SOI expansion because there were then thousands of acres of undeveloped vacant land within the City limits available for new development.

Little has changed since then. There remain apparently at least 3000 acres of vacant grassland within the City that is zoned for development but remains undeveloped despite record low interest rates, landowners eager for development, and a City government actively seeking new development. These areas include the 1200-acre Southeast Policy Area, the majority of 1900-acre Laguna Ridge Specific Plan, 200-acre Sterling Meadows, East Elk Grove Specific Plan, Elk Grove Triangle Special Plan, vacant industrial-zoned land east of Highway 99 along Grantline, and other vacant lands. Lent Ranch consists of the half-completed shell of a failed mall where construction ceased years ago, acres of grassland, and the Kaiser Permanente Medical Offices alongside Highway 99. There is a casino proposal for part of the Lent Ranch site which has drawn considerable opposition from community residents and competing gambling interests, and its future is very uncertain. New development actually constructed in Elk Grove since 2013 has been minimal relative to the amount of vacant land within the City limits available for new development.

Government Code § 56377(b) clearly directs LAFCo to prefer development of existing vacant or nonprime agricultural land within the existing jurisdiction of local agency before any proposal is approved which would allow or lead to development of open space lands for non-open space uses which is outside of existing SOI or existing jurisdiction of local land use agency. The DEIR

fails to establish the factual basis necessary for LAFCo to approve the SOI expansion by its failure to show that there is insufficient vacant land within the City to accommodate Elk Grove's reasonably foreseeable development needs. Government Code §56377(a) charges LAFCo with guiding development away from open space and prime agricultural land uses unless such action would not promote planned orderly, and efficient development. Section 56377(b) charges LAFCo with encouraging development of existing vacant or nonprime agricultural lands with the existing jurisdiction of a local agency before any proposal is approved which would allow for or lead to the development of existing open space lands for non-agricultural uses which are outside of the existing jurisdiction.

A Recirculated DEIR for the proposed SOI must disclose all vacant undeveloped land within the City limits so that LAFCo can make an informed decision about the City's probable need for annexation and development within the proposed SOI expansion.

Please disclose all presently vacant undeveloped land within the City limits, the acreage, location and land use designations of all vacant lands, and construction starts that have stalled or been abandoned. A Recirculated DEIR should also include a map of Elk Grove showing all undeveloped and vacant lands.

The DEIR must disclose (1) the environmental impacts of LAFCo approval of the proposed SOI and new development that would be the reasonably foreseeable consequence of an SOI approval while substantial areas of developable land within Elk Grove remain undeveloped, and (2) the consistency or inconsistency with Government Code §§ 56001, 56300(a) and 56377(a) and (b) and LAFCo policies, of the proposed approval of the proposed SOI while large areas of Elk Grove remain undeveloped and vacant. See list of vacant areas, *supra*.

The DEIR fails to disclose the areas of vacant land within the City. ATTACHED are readily available Google Earth graphics showing large undeveloped areas within the City of Elk Grove and elsewhere in south and east Sacramento County within areas already designated for urbanization.

There has been no change of circumstance that would call for LAFCo to approve part of a proposed SOI expansion that LAFCo Commissioners rejected in 2013.

Inaccurate presentation of existing law governing the decision.

Definition of Sphere of Influence

California Government Code Section 56076 defines "Sphere of influence" which "means a plan for the probable physical boundaries and service area of a local agency, as determined by the commission." As a practical matter, the Sphere of Influence of a City would be a plan for the probable location, approved by LAFCo, of future annexation and development by the City.

The assertion of DEIR Section 2.5 that the purpose of an SOI is "holding capacity" to consider future opportunities for development is inaccurate and contrary to Government Code Section 56076, *supra*, which defines "Sphere of Influence". The DEIR errs in considering vacant land that is zoned for urban use to be equivalent to developed land, and thereby fails to provide an accurate baseline for the assessment of impacts of the project. A mere project approval or zoning of vacant land within the City for future development is not "development" unless the

project is physically constructed – a number of projects and urban entitlements in this region have been approved, sometimes years ago, that have not been and may never be constructed. The DEIR, pg. 3-11-26, misleads in equating paper zoning of vacant land for future development as actual development.

LAFCo Lacks Statutorily Required Policies to Review SOI Applications

California Government Code Section 56300 states that “(a) It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.” The Sacramento LAFCo has never adopted policies and procedures to address how it will consider Sphere of Influence applications consistent with the statutory charges described above (Government Code §§56301 and §56377). In November, 2006, after a sustained effort to develop such policies, the staff withdrew its proposal and in March 2007, dropped all future consideration of new policies.

The DEIR on pages 1-2 acknowledges that LAFCo has the statutorily required policies and procedures for annexations but fails to acknowledge that the Sphere of Influence application is being considered in the absence of statutorily required policies to implement the statute re standards and policies for SOI approvals.

The DEIR fails to consider that absent the statutorily required policies and procedures for SOI consideration (Government Code Sections 56301, 56377), the Sacramento LAFCo is in violation of the Cortese-Knox-Hertzburg and should not be considering any SOIA that would involve planning a city’s future boundary to encompass what is now unincorporated open space and agricultural land.

The DEIR Misrepresents the Scope of LAFCo’s Responsibility Under Government Code §56001.

The DEIR, p. 1-2, incompletely states LAFCo’s statutory responsibilities under Section 56001 as follows:

“• Encourage orderly growth and development patterns (Section 56001).”

In fact Government Code §56001 goes on to state that:

“The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests in discouraging urban sprawl, preserving open-space and prime agricultural lands . . .” (*Emp. added.*)

The DEIR Misrepresents the Scope of LAFCo’s Responsibility and Authority Conferred by Government Code §56377.

The DEIR, p. 1-3, states that LAFCo’s statutory responsibilities under Section 56377 are as follows:

“• Guide development away from open space and prime agricultural land uses unless such action would not promote planned, orderly, and efficient development (Section 56377).”

This is a correct paraphrase of §56377(a), but fails to disclose LAFCo’s stronger charge under §56377(b), as follows:

“Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside the existing sphere of influence of the local agency.” (Government Code §56377(b).) (*emphasis added*)

Approval by LAFCo of an SOI, without first identifying and considering the vacant developable acres within the Elk Grove City limit that remain undeveloped, would be the opposite of LAFCo’s responsibility under §56377(b). Yet the DEIR fails to identify the vacant lands within the City.

As a County-wide agency, LAFCo must also consider the thousands of acres of undeveloped but developable acres within other Cities in the County, (City of Sacramento, Rancho Cordova, Folsom, Galt), including projects that have been partially or fully permitted but remain uncompleted due to lack of market or financial viability. The DEIR does not provide this information.

The DEIR does disclose that SACOG’s projected need for future development during SACOG’s 2016 MTP/SCS planning period does not include the SOI area. (DEIR 3.11-2, referencing SACOG’S 2016 MTP/SCS.)

Inconsistencies with Government Code §§ 56001, 56300(a), 56377(a) and (b)

The Legislature has charged LAFCos with encouraging orderly growth and development, discouraging urban sprawl, and preserving open space and prime agricultural lands. (Government Code §§ 56001). LAFCos shall adopt policies that encourage and provide well-ordered and efficient urban development patterns with appropriate consideration for preserving open space and agricultural lands. (Government Code §56300(a)). See LAFCo Policy Manual, pg. 3.

The DEIR violates CEQA by failing to even acknowledge the existence of Section 56377(b), which is directly applicable to the present situation, and fails to address the environmental impacts of the obvious inconsistencies between Section 56377 and the proposed SOI expansion.

There is further discussion of the inconsistency analysis in this letter in the section addressing the Agricultural Resources portion of the DEIR.

The proposed SOI expansion would be inconsistent with LAFCo General Policy H-1

LAFCO General Policy H-1 states that there is a need for service if the growth rate and density pattern indicate that the area will be developed for urban use within five years. There is no evidence that there will be urban development within the proposed SOI expansion within five years or at any other time.

The DEIR's claim that the proposed SOI expansion would be consistent with LAFCo Policy V (Specific Standards) I-5 is false (DEIR 3.11-26)

LAFCo Policy V(Specific Standards) I-5 requires that “an applicant for an amendment to an SOI must demonstrate a projected need or lack of service.” The DEIR’s assertion that the proposed SOI amendment would be consistent because all land within Elk Grove has been entitled is false. Land use designations and entitlement are no more than pieces of paper that do not create a need for service. Need for services exists where development exists or is reasonably anticipated in the near term. There are apparently at least 3000 acres or more of undeveloped vacant land entitled for new development within the City, but no evidence that these lands will be developed in the near future despite record low interest rates and landowners and City government eager for new development that has failed to materialize. It is not known when, if ever, the undeveloped land entitled for development within Elk Grove will be developed. There is no need for services or new development within the proposed SOI expansion area in the foreseeable future.

The DEIR's claim that the proposed SOI expansion would be consistent with LAFCo Policy V (Specific Standards) I-9 is false (DEIR 3.11-26)

LAFCo Policy V (Specific Standards) I-9 states that LAFCo will deny proposals that would result in significant unmitigated adverse impacts upon other service recipients or agencies serving the affected area unless approval is conditioned to avoid such impacts.

Sacramento County has sought to preserve viable commercial agriculture and to avoid leapfrog development, by imposing an Urban Service Boundary beyond which County will not approve new urban development. The proposed SOI expansion area is entirely outside of the County Urban Service Boundary. It would take agricultural land out of production by (1) eventual urban development and (2) discourage commercial agriculture within the SOI area even while the land remained undeveloped. Farmers of land within an SOI area have no incentive to maintain or improve agricultural infrastructure on land which they hope will be developed or sold to a developer. Declaring an SOI usually leads to land speculation within the SOI area that often results in new ownership by investors (speculators) having no interest in farming. The expectation of eventual development incentivizes landowners within an SOI to remove trees and other wildlife habitat features in an effort to avoid wildlife and endangered species mitigation when (if) the land develops and to make it more attractive to developers.

Approval of the SOI expansion would adversely impact the implementation of the pending South Sacramento County Habitat Conservation Plan by removing the area from consideration for habitat land acquisition needed to mitigate for the environmental impacts of new development by other jurisdictions, while creating competing demand for habitat land to mitigate for Elk Grove’s prospective development in the proposed SOI expansion area. (Elk Grove withdrew as a participant.) The agencies serviced by the pending South Sacramento County HCP include

Sacramento County, the Connector JPA, and the Cities of Rancho Cordova and Galt. This impact is discussed in more detail elsewhere in this letter, and in comment letters submitted by Habitat 2020 and Environmental Council of Sacramento.

The DEIR's claim that the proposed SOI expansion is consistent with LAFCo Policy III (General Standards) 7 is speculative and unsupported (DEIR 3.11-24)

LAFCo Policy III. 7 states that LAFCo will favorably consider applications which improve the balance between jobs and housing.

However the DEIR's assertion that the proposed SOI would be consistent with LAFCo Policy III.7 because it would improve the jobs-housing balance, is unsupported and speculative.

LAFCo has no authority to determine land use of the SOI area once it is annexed to the City of Elk Grove, and it is too speculative to predict what Elk Grove and the landowners will do with the land once it is annexed into the City. Elk Grove's history of allowing developers to determine land use has created the existing jobs-housing imbalance and provides no assurance that Elk Grove would actually zone for employment centers if landowners instead wanted more lucrative residential development.

The DEIR repeatedly states that the SOI is needed to produce better jobs-housing balance. In fact virtually all of the undeveloped land within the Elk Grove City limits is suitable for employment centers and housing. The Elk Grove City Council can easily facilitate the desired jobs-housing balance by designating or redesignating sufficient presently-vacant lands within the City for employment centers. Unfortunately, the City has allowed its development designations to be driven by landowners who wanted their lands to be designated for housing, which has prove to be more profitable than reserving land for future employment centers. There is no evidence that expanding the urban footprint of City of Elk Grove will result in greater attraction to employers to locate in the city.

The 1200-acre vacant Southeast Policy Area is in an ideal location for employment centers, next to Highway 99 and Grantline Road, and potentially accessible to I-5 by a planned extension of Kammerer Road to I-5. Unfortunately the City Council chose to designate only 400 acres for employment centers, out of 1200 acres. An SOI expansion cannot be justified as a make-up for poor land-use planning by City government. There is substantial vacant land east of Highway 99 on Grantline that is zoned for industrial use, but there appears to be no demand.

Conflict with County General Plan and Policies Not Disclosed.

The DEIR is ambivalent or incorrect in discussing the conflict between the project and County policies. It states that the SOIA may be inconsistent with County policies ("may" since no zoning changes will be made) (Impact 3.11-2), but continues throughout the document to state that since zoning changes do not occur until after annexation, there will be no conflict. This is sophistry and a sham analysis, because an SOI is by law a precursor to possible annexation and extension of urban services (zoning for new development) and has no other purpose

In particular the SOIA proposal directly conflicts with and contradicts the Sacramento County General Plan Agricultural Element (November, 2011) policies to "Protect important farmlands

from conversion and encroachment and conserve agricultural resources.” (Sacramento County General Plan, p. 5-12).

The DEIR is misleading and lacks clarity on the profound conflict between the SOIA and County General Plan and policies. The DEIR discussion of consistency with local policies fails to make clear that since 1993, the County of Sacramento has had General Policies (Urban Service Boundary) to retain the SOIA area in agriculture and has planned urban services and biological resource conservation accordingly. Approval of the SOIA would render the County’s General Plan policies for this area ineffective, because planning for development could then proceed.

Biological Resources Analysis Faulty

Wildlife Nursery Sites, Movement Corridors, Migratory Routes.

On page 3.4-27, the DEIR claims that no wildlife nursery sites or wildlife movement corridors or migratory routes have been identified in the SOIA area. The EIR did not assess impacts on “stop-over” habitat for migrating birds. The removal of “stop-over” habitat for migrating birds can “interfere substantially with the movement of resident or migratory wildlife species.” It is the duty of the DEIR preparers to assess whether these resources are found. The DEIR made no attempt to identify or characterize wildlife movement corridors or wildlife nursery sites in the study area.

It is quite obvious that the intense nesting of Swainson’s Hawks in the area itself qualifies it as a nursery site. It is also an area used by migrating Swainson’s Hawks for foraging during both nesting and migration seasons. The SOIA area is intensely used by wintering raptors and other migrating wildlife. The DEIR is deficient in not describing and understanding the biological value of the area to resident and seasonal wildlife populations.

Moreover, the area has been protected by the County General Plan since 1993 as a biological conservation area linked to wildlife preserves to the west and south. The present urban services boundary was drawn for reasons stated in the General Plan. This DEIR fails to examine the reasons why the present urban boundary exists.

Assessment of Impacts on Swainson’s Hawk

We agree with the DEIR finding (pp. 3.4-34-35) that the SOI approval would have significant and unavoidable impacts on the Swainson’s Hawk (SWH) population in Sacramento County. We are particularly concerned about Elk Grove's proposed urban expansion because Elk Grove is located within a dense and significant nesting area for the SWH, listed as threatened under the California Endangered Species Act. Nesting sites both within the City and the proposed SOI area are dependent upon the foraging habitat in the proposed SOIA. The loss of foraging and nesting habitat will be significant.

The EIR analysis should recognize that the density of nesting in the Elk Grove area is among the highest densities recorded for the species. Reducing the range of a state listed species by allowing development in an area of dense successful reproduction is in direct conflict with the California Endangered Species Act.

The SOI will lead to “take” of Swainson’s Hawks. The success of SWH reproductive activity

and survival of SWH young is directly dependent upon availability of food supply (small rodents) which is reasonably available to nesting SWH during the breeding and nesting season. Destruction of foraging habitat (low-growing vegetation which harbors small rodents) by development eliminates this food supply and forces SWH to travel greater distances to find prey, resulting in less food for the nest and a greater likelihood of nest failure and nestling mortality.”

Potential direct and cumulative impacts on the species range and reproductive activity should be identified, including but not limited to the following:

- a) potential impacts on reproductive activity in nesting sites within the City of Elk Grove, including loss of current nesting sites in vacant areas with entitlements;
- b) potential impacts on reproductive activity in nesting sites within the SOI area;
- c) potential impacts on reproductive activity of other nesting sites within 2 - 5 miles;
- d) potential impacts on survivability of fledged juveniles from these nesting sites;
- e) potential impacts on the adequacy of nourishment of SWH needed to provide the strength and energy required to survive the annual SWH Fall migration. Undernourished SWH, especially undernourished first-year birds, are unlikely to survive the rigors of long-distance migration to central Mexico and southward.
- f) cumulative impacts of SOIA and other reasonably foreseeable projects that would eliminate SWH foraging and nesting habitat, as part of the EIR discussion of cumulative impacts. These would include but are not limited to the proposed California Water Fix/Eco Restore, which proposes to convert large areas of agricultural land in Yolo County and the Yolo Bypass, which is SWH foraging habitat, with managed marshes for fish habitat, eventual build-out of Rancho Cordova and of the Florin-Vineyard area, all of which are SWH foraging habitat, and predicted sea-level rise which will inundate low-lying area west of Elk Grove which are currently agricultural land that serve as SWH foraging habitat. “

Failure to Identify the Project and Adjacent Area Populations of Nesting Swainson’s Hawks and to Make Adequate Assessment of the Impacts of the Project on this Population

California Department of Fish and Wildlife published in 1994 what has become the primary guide to how to assess impacts on Swainson’s Hawks (*Staff Report Regarding Mitigation for Impacts to Swainson’s Hawks (Buteo swainsoni) in the Central Valley of California.*)

Environmental assessment of impacts on Swainson’s hawks typically begins with identifying all the active nesting sites within 10 miles of the project site. This DEIR (p. 3.4-30) looks within a five mile radius and quotes an expert as saying there are approximately 75 nesting pairs present. The references to the document lack key studies such as Estep, James, *Distribution, Abundance, and Habitat Associations of Swainson’s Hawk*, Results of 2006 census level surveys in South Sacramento County; Estep, J., *Monitoring Swainson’s Hawk (Buteo swainsoni) Nesting Activity in South Sacramento County Results of 2008 Surveys.* (2009)

The DEIR cannot properly assess the impact of the project and its significance if it has not identified the size and characteristics of the nesting populations of Swainson's Hawk in and within ten miles of the project site. The City of Elk Grove has commissioned several relevant recent studies of Swainson's Hawk nesting. The South Sacramento County Habitat Conservation Planning team has also assembled and analyzed all available data. We have submitted to LAFCo on two occasions a copy of the South Sacramento Habitat Conservation Plan map entitled "Range of Swainson's Hawk in the SSHCP Plan Area," a copy of Estep's 2006 South County nesting sites map, and a map showing nesting sites identified by Department of Fish and Game and labeled 2005 and 2009 survey nesting sites

The DEIR shows no evidence that preparers requested all available data from CDFW on the SOI area or consulted CDFW about the activities of Swainson's Hawk in and within ten miles of the project area.

Our consultant Melinda Dorin Bradbury has identified the following from the existing data, (See two reports submitted by her, accompanying this letter):

- "There are approximately 12 nest territories reported in the section of the County south of the City limit, east of I-5 and west of 99 to Eschinger Road, in the proposed SOI;
- There are approximately 18 nest territories reported in the section of the County east of 99 and north of the Cosumnes River.
- There are approximately ten active nesting territories in the City between State Route 99 on the east and Bruceville Road on the west, immediately north (within one mile) of the SOI area.
- There are two active nesting territories on Grant Line Road east of State Route 99.
- There were many nesting territories along the Cosumnes River and just south that would have the potential to forage north or south of the river depending on available habitat. Those birds would be impacted by loss of foraging habitat north of the Cosumnes River.
- There are several nesting territories in and near the Franklin area part of the SOI.
- Seventy-four percent of the nesting sites in South County (south of Elk Grove City boundary) were concentrated within the interior portion of the study area between approximately I-5 and Clay Station Road on the east side. (Estep, 2007)
- In this area the "territory density is lower than in Yolo County, but is high compared with other portions of the species' range and indicates the value of the agricultural habitats within this region to Swainson's hawks and the importance of the 'core' Central Valley population." (Estep, 2007)
- The SOI area is primarily the best forage type for Swainson's Hawks – Irrigated cropland/irrigated pasture."

Vineyards should be considered potential foraging habitat in assessing impacts of loss. Loss of vineyard to urbanization is a loss of potential higher quality habitat as well. Even vineyards have limited use for foraging small rodents. ("We hypothesize that the relatively high frequency of foraging in vineyards by Swainson's Hawks may be a reflection of the high local nesting density of Swainson's Hawks in a study area where dominant land use is viticulture. Being an opportunistic species [England et al. 1997], Swainson's Hawks may be expected to utilize sub-optimal foraging habitats based on availability and proximity to established nest sites [Newton 1979, Manly et al. 2002]." *Foraging by Swainson's Hawks in a Vineyard-Dominated Landscape*

Author(s): Craig A. Swolgaard, Kent A. Reeves, Douglas A. Bell Source: Journal of Raptor Research, 42(3):188-196. 2008. Published By: The Raptor Research Foundation)

Numerous studies indicate that the availability of thousands of acres of contiguous high quality foraging habitat consisting largely of irrigated crop land and irrigated pasture, underlies the remarkable number of nesting territories and the density of nesting territories in and near the SOI area.

Given the close proximity of many of the nesting sites inside the City limits to the SOI area, there is reason to believe that the loss of the SOI foraging habitat will impact the viability of nesting and the degree of nesting success for nest sites within at least two miles of the SOI as well as those within the proposed SOI area.

The DEIR fails to analyze the impact on the species of removal of this high quality foraging habitat and nesting habitat. It recommends a one to one mitigation ratio be required without addressing the issue of the impact of this mitigation ratio on available foraging for the pairs using this area and those migrating through, of removal of key foraging habitat remaining.

The DEIR erroneously assumes that suitable mitigation land will be available for mitigation. It fails to acknowledge that the availability of privately-owned land containing foraging habitat for mitigation is not assured.

Foraging Habitat Identification and Quantification.

The DFW staff report (1994) recommends assessment of the amount and quality of foraging habitat based on agricultural crop patterns in the project area. This DEIR apparently uses a county formula based on zoning that we assert is improperly applied here. Moreover, the DEIR errs in saying that the entire area is zoned AG-80. The Agricultural Element of the DEIR says it is zoned AG- 20. We reject zoning as an appropriate way to assess amount and quality of foraging habitat since it has nothing to do with actual use and cannot be used to establish a baseline.

At page 3.4-30, the DEIR says the loss of foraging habitat will be 750 acres. At p. 3.4-29 the DEIR says there are 1150 acres of foraging habitat and on p. 3.4-30, the DEIR says there are 750 acres of foraging habitat. The DEIR must clearly and consistently identify and quantify the impacts and the mitigation.

Mitigation Alternative. The DEIR fails to consider an alternative that would guarantee mitigation land by requiring any land developed in the SOIA to be mitigated in the SOIA next to existing nesting sites, thus assuring that no more than one half of the SOIA area is developed and that mitigation lands are located in proximity to nesting sites in the SOIA area. Obviously a mitigation plan like this would require planning and buffers that would ensure low risk of edge effects.

Nesting Habitat Mitigation. The DEIR identified little loss of nesting habitat (though we know nesting territories have been documented on site and adjacent properties) and how it can be mitigated. We suggest that the tree mitigation be amended to include all documented

Swainson's Hawk nesting trees to be defined as heritage trees, to be protected, and to be mitigated when loss occurs. This DEIR identifies no mitigation for loss of nesting sites.

Likelihood of Take of Swainson's Hawks as a Result of SOI Approval; EIR provides no assessment or mitigation for take of listed species; no requirement for Incidental Take Permit take permit per Fish and Game Code § 2081.

As noted above, but largely ignored in the DEIR, the SOI area is nesting and foraging habitat for approximately 12 Swainson's Hawk pairs. The urbanization of over 1,100 acres of foraging habitat in very close proximity to this many nesting sites will inevitably lead to loss of chicks (inadequate forage to sustain nesting success) and the abandonment of traditional nesting sites. Projects within the SOI area will also have direct impacts on nesting sites inside the City which will lead to abandonment of nesting, mortality to young and greater risk to fledglings.

Initially, there will be impacts due to landowner anticipation of selling property for urban use. There may be destruction of known nesting site trees to "enhance" marketability of properties for urban use. While there is no incentive to destroy nesting sites when land is used for farming or grazing (and some incentive to retain nesting trees because raptors prey on agricultural pests), once the landowner expects to urbanize the land, a Swainson's Hawk nesting site simply poses more potential economic costs to development because of additional mitigation responsibilities. Foraging values on the farm and range lands in the SOI may also become depressed due to landowner changes in agricultural practices, such as reduced grazing and reduced irrigation, or simply no longer farming.

In addition, due to the agricultural mitigation measures proposed in this DEIR, landowners will be at an economic advantage to cease irrigation of lands so that they are not required to mitigate for farmland loss upon development. The SOI DEIR does not identify, analyze or mitigate for these and other impacts of designating 1,156 acres of farmland for future urbanization that currently serves as mostly high quality Swainson's Hawk foraging habitat.

The SOI is a significant step in the urbanization process, without which annexation cannot be done. The impact on the Swainson's hawk species in Sacramento County and in the City of Elk Grove from urbanization in the SOI will be significant since the loss of foraging habitat and impacts on nesting sites will reduce the number of nesting pairs in the County, result in direct mortality of chicks during the urbanization process, and have cumulative and indirect impacts. The EIR should require that an incidental take permit under Fish and Game Code Section 2081 prior to approval of any annexation following an SOI approval.

The likelihood of "incidental take" of Swainson's Hawks due to the SOI is very high; in addition, an indirect effect of development will be the extirpation of nesting in the area and a reduction in the range of the Swainson's Hawk in California. Yet the DEIR does not acknowledge the potential for "take", and the reduction in range, result in the necessity for a "take" permit from California Department of Fish and Wildlife under Section 2081 of the Fish and Wildlife Code. It is quite important that LAFCo conduct a public review of the environmental consequences of "take" and that it require a "take" permit be issued before any SOI is approved. Otherwise the impact of this important consequence of SOI approval will not be known and evaluated by decision makers prior to approval of the expanded urban area.

Likelihood that Mitigation Program Will Fail: Availability of Suitable Habitat at affordable price to Mitigate for Loss of Foraging Habitat in the SOI Area – Impacts Not Identified in the DEIR

Among others, the California Department of Fish and Wildlife (CDFW) has questioned whether there is suitable land available to render feasible the mitigation for the impacts of urbanizing south of the present Elk Grove city boundary. The impacts to the statewide population of Swainson's Hawks could be significant. On March 25, 2010, CDFW wrote to the liaison for the South Sacramento Habitat Conservation Plan (c: Peter Brundage, LAFCo) about ensuring "adequate cropland and irrigated pasture-grassland reserve lands to accommodate the Swainson's hawks adequate persistence over time in the Plan Area." A copy of this CDFW letter was submitted to LAFCo by FOSH at a November 2011 hearing. The letter said in part:

"Within the Plan Area, the highest densities of nesting Swainson's hawks occur within and adjacent to cover types identified in the Draft Plan as cropland and irrigated pasture-grassland in the western portion of the Plan Area (Zones 4, 5, 8, 9, 11, 12). The DFG believes that these cover types are essential to the continued persistence of the hawk within their California breeding range and any conservation strategy for this species should place high value on these cover types." (emp. added)

The DEIR completely ignores this critical issue affecting a key biological resource of the SOI area and adjacent lands in the City and the County. The impact of proceeding with the SOI is that there will not be adequate mitigation land to mitigate for impacts on Swainson's Hawk for the already approved development in the City and County, as well as for the SOI area.

LAFCo should consider the suitability of available mitigation lands before assuming that mitigation land will be readily available to offset impacts of urbanizing the SOI area. Recent research reviewed below indicates that much of the land west of I-5 is not suitable mitigation land for Swainson's Hawks and the analysis necessary to quantify the amount of available land that is suitable is not publicly available. A study commissioned by the City of Elk Grove included analysis of the habitat and nesting patterns within the Delta Zone of the South Sacramento County study area as compared with a representative area in the interior (between I-5 and 99, South of Elk Grove and north of Galt) and the area east of 99 (within the Eastern Foothill Zone of the South Sacramento County Study Area). Each area contained 36 square miles. A comparison of the SOI project area with these survey areas will demonstrate that the project area is within the foraging habitat to a significantly higher number of pairs, and has a larger expanse of good quality foraging habitat, with better reproductive results. The impacts to the species by approving the SOI cannot be adequately mitigated in the Delta Zone where nesting is less dense, nesting habitat is less abundant, and unsuitable habitat (orchards and vineyards) is common. [Estep Environmental Consulting, Monitoring Swainson's Hawk (*Buteo swainsoni*) Nesting Activity in South Sacramento County, Results of 2008 Surveys (February, 2009) pp. 10- 14, 20.]

In addition, lands west of I-5 are more likely to be below sea level and lack the necessary guarantee that they will be available in perpetuity for foraging habitat for Swainson's Hawks and other raptors.

One indirect impact is that once the SOIA is approved, suitable mitigation lands for Swainson's hawk impacts will become higher priced, and less available. Approval of the SOIA will increase demand for mitigation land. In time, properties inside the current urban limit that are approved for development but require Swainson's Hawk mitigation, will not be able to find suitable foraging habitat mitigation at an affordable price.

The Natomas Joint Vision area is a classic example, where land prices skyrocketed to ridiculous heights after the adoption of the 2002 MOU for the Joint Vision for Natomas. The owners of much of the land in the Sacramento County area of Natomas Basin, outside of the City ceased farming after the City adopted the Joint Vision for Natomas MOU, which is not even an SOI, but merely a non-binding statement of intent to urbanize some of that area at some unknown future date.

Questionable Foraging Habitat Mitigation Program and Ratio

The DEIR says that the City's Swainson's Hawk mitigation program requires protection of existing habitat, but fails to provide even a minimal description of that program, which calls for one acre of habitat preserved for each acre of SWH habitat removed. A mitigation program for loss of foraging habitat in the SOIA must be assessed based on the baseline and the direct and cumulative impact, not on a formula developed 20 years ago with the assumption that land south of the present City of Elk Grove would remain in agriculture, protected by the County General Plan policies, including the Urban Services Boundary. The existing City program did not undergo any CEQA review of its effectiveness to mitigate for impacts to Swainson's Hawk in the SOI area.

Moreover, City programs are subject to change by a majority vote of the City Council. LAFCo has no assurance that programs will not change. Therefore the assumption that continuing existing City programs (which are not described) is not supported by substantial evidence.

The impact analysis says that the future development in the SOI area "would comply with the City's conditions," but fails to describe those conditions, thereby violating CEQA. Please describe the City's "conditions." We note that some of the City's requirements at present are not reflected in the DEIR mitigation measure. Attached is Elk Grove Code Chapter 16.130 SWAINSON'S HAWK IMPACT MITIGATION FEES which describes Elk Grove's current program. The existing requirements include that CDFW approve the location of the mitigation land and the conservation easement. There are additional requirements not reflected in the mitigation measures in the DEIR.

Likelihood that Mitigation Program Will Fail – City of Elk Grove Record.

Attached is an evaluation of the City and County Swainson's Hawk Mitigation programs under CEQA prepared by Melinda Bradbury, Environmental Consultant to Friends of the Swainson's Hawk. This report demonstrates that past performance by the City in meeting the requirements of its own mitigation program has been marred by lack of compliance with its own standards and highlights the need for oversight by state and federal wildlife regulatory agencies. The Council has and can approve alternate mitigation measures that do not meet the standard set in their ordinance. The City went considerably in arrears on its mitigation obligations and though corrections have been made, by 2010 the City of Elk Grove had developed 102 projects covering

4,190.43 acres with 1,310 acres of mitigation land permanently preserved. Most of the deficit in mitigation was caused by the collection of fees that were inadequate to purchase mitigation land promised in project approval.

What enforcement authority does LAFCo have to ensure that the City carries out mitigation as required by the DEIR after annexation occurs?

Giant Garter Snake 3.4.6 Impacts and Mitigation

LAFCo should specifically consult with USFWS and CDFW on the suitability of this mitigation measure and receive their concurrence before adopting it. It allows the impact analysis and mitigation for projects to be segmented from the impact analysis and mitigation for the drainage plan that serves the projects. This strikes us as inconsistent with CEQA's prohibitions against project segmentation and failure to consider cumulative impacts. Given the regional habitat conservation planning underway, ESA consultation should be required prior to annexation application.

Unlawful Deferral of Mitigation Violates CEQA

CEQA Guideline 15126.4(a)(1)(B) states that "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specific way."

Notably, the DEIR contains NO performance standard for mitigation of impacts on wildlife. A key performance standard would be to require the approval of wildlife regulatory agencies including incidental take permits for all listed species as a condition of annexation. Please explain why the DEIR fails to require state and federal incidental take permits as a performance standard. Other similar lands in South County are subject to US Endangered Species Act compliance and are included in a regional habitat conservation plan. Why should this SOI not be subject to these compliance standards?

Cumulative Impacts. There will be significant direct and indirect cumulative impacts on Swainson's Hawks from the adoption by LAFCo of the SOI proposed by Elk Grove. The cumulative biological impacts are virtually ignored in this DEIR. This project in combination with other known projects in the range of key wildlife species such as the Swainson's Hawk and Sandhill Crane will have cumulatively significant impacts in reducing the populations and the range of the populations in California. Please describe this impact and discuss whether there could be feasible mitigation.

Issue of Impact of the SOI Approval on the South County Habitat Conservation Plan and the Feasibility of Mitigation for Other Projects, Already Approved, within the Urban Area, and the Take Permit for Freeport Regional Water Project.

Among the cumulative impacts is the impact on availability of suitable mitigation land for already approved land conversion in South County. The EIR should identify available suitable habitat in close proximity to the project area, over and above the amount of such habitat needed to mitigate for already approved development in Elk Grove and the County of Sacramento. It should address the issue of willing sellers, land inventory and price of mitigation land. It should

consider the impacts on the species of the scenario in which available mitigation land is captured by development at the edge, leaving already approved development sites further inside the urban area with no suitable mitigation land available. It should address the issue of SOI approval creating mitigation land scarcity and consequently driving mitigation land prices up for all development in the South Sacramento County area.

In addition, the DEIR, by creating an alternative mitigation path for the SOIA area that does not require state and federal wildlife regulatory agency approval and permitting for Elk Grove, significantly undermines the development and adoption of a SSCHCP regional conservation plan on which millions of dollars have already been spent to ensure quality and compliance with state and federal guidance.

LAFCo needs to evaluate the impact of an SOIA approval on the Freeport Regional Water Project Section 7 Take Permit. That permit required a regional habitat conservation plan or equivalent compliance with US ESA for all development served by the Freeport Regional Water Project and related infrastructure. Elk Grove is a beneficiary of this project. Will the approval of the SOIA which changes the expected footprints of development and conservation, respectively, trigger a reconsultation on the Section 7 permit for development in Zone 40? Will approval of future development threaten the bond repayment schedule —dependent on development fees — for Zone 40 infrastructure in Elk Grove and/or elsewhere in Zone 40? How will the SOIA comply with the terms of that agreement (attached)? The EIR should address impacts on the FRWD take permit. These issues should be disclosed and resolved before an SOIA can be approved.

Conflict with County General Plan and Policies protecting special status species. On November 2, 2011, FOSH submitted to LAFCo pages of the County General Plan stating County policies that were in the General Plan to protect special status species in the Sacramento County, including the SOI area (attached). This SOI approval would conflict with those policies. This issue was not addressed in the DEIR. These policies indicate that the County’s environmental analysis in 1993 anticipated significant impacts on wildlife, including the Swainson’s hawk species in Sacramento County, if development were to extend beyond the current urban line into the proposed SOI area. The same conclusion is in the current County General Plan Update. The urban limit line remains unchanged in the current General Plan update. The DEIR should address this conflict.

Hydrology and Water Quality

The DEIR at page 3.10-23 notes that the SOI area will likely be served by the Sacramento County Water Agency:

Future development within the SOIA Area would increase demands for water supply. The SOIA area is adjacent to the southwestern boundary of Sacramento County Water Agency's (SCWA) Zone 40. Therefore, it is most likely that water service would be provided by SCWA (Exhibit 3.10-1). SCWA would need to annex the SOIA Area into its service area. The SOIA Area is not within SCWA's Zone 40 2030 Study Area and water supply demands to the SOIA Area were not accounted for in the Zone 41 UWMP or Zone 40 Water Supply Master Plan. The SCWA Zone 40 Water Supply Master Plan has developed water supply demand factors for the 2030 Study Area based on acreages of land uses. Based on California crop information and estimated amount of water applied to each crop type, the SOIA Area is estimate to use over 597 million gallons of water a year under current conditions (Table 3.10-1).

This impact does seem to merit discussion under standards discussed on pp.3-10.12 and 3-10.13 regarding SB 221 and the *Vineyard* decision. The DEIR correctly identifies a significant and unavoidable impact on depletion of groundwater supply (and lack of feasible mitigation measures) but doesn't spell out the harm to the environment that can occur through approval of the SOIA and deferral of mitigation to the annexation stage.

The DEIR does not discuss (pp. 3.15-1 to 3.15-5) how the surface water allocations are conditioned by the US Fish and Wildlife Service Section 7 consultation on the Freeport Regional Water Project. Elk Grove is a beneficiary of this permit and must comply with its provisions.

Agricultural Resources Section

The DEIRs baseline description of the agricultural resource is confusing and contradictory. DEIR Graphic 3.2.1 and text at 3.2.2 don't seem to support each other. The text at 3.2.3, "Important Farmland", states that the SOI area includes 105 acres of Prime Agricultural Land, 405 acres of Farmland of Statewide Importance and 627 acres of Farmland of Local Importance. This is a total of 1,137 acres of farmland to be permitted for urban uses in the 1,156 acre SOI. The graphic however seems to show a mix of Prime, Unique and Local Farmland. (DEIR 3.2-19, Impact 3.2.1 confirms that the impact of the SOI is on 510 acres of farmland that is Prime, Unique or of Statewide Importance.) However, the DEIR statement of farmland classifications appears to be in conflict with the County of Sacramento General Plan (Agricultural Element, p. 11) map of Agricultural Lands, which does not show 627 acres of Farmland of Local Importance in the SOIA area. Please explain the discrepancy between the EIR and County General Plan designations of farmland in the SOIA area.

As stated below, we dispute that loss of Farmland of Local Importance is not significant. The SOI would also affect neighboring Prime Agricultural farmland of unspecified acreage.

On page 3.2-20, the DEIR proposes mitigation of Prime, Unique and Statewide Importance Farmland at 1:1. The DEIR does not state how many acres of farmland will be mitigated at 1:1. It appears that the intent is to mitigate for less than half of the loss of farmland. No explanation is provided why this conclusion is reached. The EIR should quantify clearly how many acres of mitigation are required and what lands must be mitigated.

On page 3.2-18, the DEIR states that the SOI approval will not create a conflict with current zoning for agricultural use because it would not change zoning designations. We dispute this finding. The SOIA if adopted presents a direct conflict with existing zoning for agricultural use because it designates the area to be planned for urban use and annexation into the City of Elk

Grove. Directly and indirectly, as stated earlier, it will undermine the continued use of the area as farmland.

No analysis is presented in the DEIR to demonstrate that adequate suitable agricultural land exists in the County to allow purchase of mitigation land at 1:1, at an affordable price, for the conversion of Prime, Unique and Statewide Significant farmland that could occur as a result of the SOIA approval. The mitigation measure is speculative. Moreover we believe that Elk Grove is obligated to mitigate for any loss farmland of local importance due to Sacramento County policy to protect it.

How will LAFCo ensure that suitable agricultural mitigation will be acquired?

Failure to Mitigate for Loss of Farmland of Local Importance. Impact 3.2.1 fails to recognize loss of locally important farmland as an impact. The DEIR does not acknowledge that the County of Sacramento General Plan AG-1 though AG-6 policies adopted November, 2011 aimed at agricultural preservation in the county. The County would not accept an application to develop the SOIA area due to these policies. It also requires locally important farmlands located outside the USB (Urban Services Boundary), (i.e. in the SOIA) to be mitigated at a ratio of 1:1 for projects converting more than 50 acres of farmland. **The DEIR impact assessment and mitigation measures are inconsistent with the County General Plan and agricultural preservation policies.**

LAFCo's statutory responsibility requires a careful analysis of agricultural resources impacts and a quantitative description of the mitigation. The DEIR fails to perform these tasks. It also fails to address the temporal impacts on agricultural uses of patchwork urbanization over an extended and unknown period of time. It does not address the impacts of land speculation following an SOI approval on farming costs and viability.

Other Agricultural Resource Impacts Issues

Permitting an SOI with unknown timing, location and phasing of development can hardly be consistent with LAFCo's statutory charge of "encouraging orderly growth and development." It will destabilize a stable agricultural economy by introducing uncertainty about future land use and it will discourage future investment in agriculture in the SOI area and likely in adjacent areas. The infrastructure supporting the agricultural economy will be diminished as economies of scale are lost. Approval of the SOI must consider impacts of the SOI on farmland and the farm economy and not simply wave these away with requiring vague mitigation measures down the line (deferred mitigation).

The DEIR acknowledges significant and unavoidable indirect impacts in Impact 3.2.2 and proposes Mitigation Measure 3.2.2 to reduce potential conflicts. Mitigation Measure 3.2.2 would require City of Elk Grove at the time of annexation to prepare an Agricultural Land Use Compatibility Plan. The proposed mitigation is speculative, deferred and fails to address the impacts that will occur between the adoption of the SOIA and the application for annexation. It lacks performance criteria.

The DEIR fails to adequately assess the flooding impacts of stormwater drainage on neighboring agricultural lands south of the SOIA from the intended urbanization of the SOIA area. Farmers deserve to know now what will be done to buffer and prevent flooding of their farmlands if the

SOIA area is to be urbanized. Again the County General Plan Agricultural Element policies prohibit increase in the level or intensity of flooding of intensively farmed land.

Mitigation Measure 3.10-3 (Prepare a Drainage Master Plan) in no way demonstrates impacts can be reduced to less than significant. It defers until annexation an analysis of the costs and impacts of the drainage system. These key elements of an urbanization plan should be disclosed before the decision to urbanize. The costs of drainage infrastructure could make the urbanization infeasible, and this potential should be explored before LAFCo allows an SOIA.

Cumulative Impacts.

The EIR fails to address the cumulative impacts over time of permanent loss of agricultural resources in the region if the SOIA and similar proposals are implemented despite the California Cortese Knox Hertzberg statutory charge to LAFCo's to preserve agricultural land.

The DEIR lacks a cumulative assessment of the impact on agricultural land resources of the approval of the SOI and the implementation of the California Water Fix and Eco Restore. The Eco Restore project seeks to restore 30,000 acres (12,000 ha) over a five years at a cost of \$300 million, funded with state bond money and other sources. While both the SOI and the California Water Fix/Eco Restore are broad brush planning documents, there are clear land use changes consequent to their approval that would diminish agricultural resources and impact the agricultural economy.

Elk Grove's Objection to Mitigation for Loss of Farmland.

Note that Elk Grove's policy that agricultural land cannot be mitigated without creating new farmland was litigated in *South County Citizens for Responsible Growth et al. v. City of Elk Grove et.al* (2001); the Appeals court upheld the trial court finding that this Elk Grove policy is inconsistent with CEQA. CEQA requires mitigation of loss of farmland to less than significant or if that is not possible, to the extent feasible. In February, 2006, Elk Grove received an easement to farmland to mitigate 1:1 for loss of farmland from the development of Lent Ranch Mall. The easement (p. 2) refers to Resolution No. 2004-200, approved on August 4, 2004, which imposes on the Lent Ranch Marketplace project the requirement to mitigate the loss of agricultural land through the conservation in perpetuity of an equal amount of land. Nonetheless, as regards future annexation in the SOI area, the Elk Grove General Plan policy stating that it will not mitigate for loss of farmland is troubling. How will LAFCo enforce mitigation measures if Elk Grove reverts to its existing policy after annexation.

Mitigation 3.2.1 is unenforceable because LAFCo has no authority or mechanism to enforce this mitigation measure once Elk Grove has annexed the SOI area. LAFCo has no authority to prevent Elk Grove from amending its policy to greatly reduce the agricultural protection requirement. No evidence is presented to show that mitigation lands would be available at an affordable price.

Alternative Feasible Mitigation. Mitigation Measure 3.2.2 as stated above is inadequate. It would make more sense for LAFCo to require, prior to SOIA approval, a farmland mitigation program and plan be prepared and submitted to LAFCo for approval, after public review and comment, which demonstrates that the future annexation can mitigate for all loss of farmland, and includes mechanisms for LAFCo or public enforcement, and guarantees that the mitigation measure will be implemented.

Other Issues: Mitigation 3.2.1 allows mitigation on inappropriate sites.

“The total acres of land conserved will be based on the total on-site agriculture acreage converted to urban uses. Conserved agriculture areas may include areas on the project site, lands secured for permanent habitat enhancement (e.g., giant garter snake habitat, Swainson’s hawk habitat), or additional land identified by the City.”

There are a number of reasons why on-site agricultural land uses are not compatible with urban uses and should not be included as agricultural land mitigation for loss of large landscape agricultural uses in place today unless specific findings are required to be made that the preserved on site agricultural lands will not be bounded on more than 2 sides by urbanization and that buffers between urban and farm uses will not be counted as preserved agricultural lands in calculating mitigation for agricultural land loss. We do not think it is consistent with LAFCo’s charge or the County of Sacramento policy to allow on-site agricultural uses to be subtracted from farmland loss before mitigation and/or to be counted as farmland loss mitigation. This should be struck from the mitigation measure if it is adopted. Agricultural land preservation may also be incompatible with habitat preservation unless carefully planned to complement each other. Specific conservation easements must be required for layering of mitigation lands in this way.

LAFCo decision-makers cannot fairly evaluate the environmental impact of the SOI on agriculture and on its statutory charge to conserve agricultural land given the incomplete and misleading analysis in this DEIR. Measures requiring mitigation at the project stage do not adequately address the direct and indirect consequences of approving an SOI.

A Recirculated EIR must discuss and disclose potential detrimental effects of prematurely committing more land to urbanization than can be absorbed.

Given SACOG’s 2016 MTP/SCS and for the reasons stated above, there is a reasonable likelihood that approval of the SOI expansion, in combination with the existence of thousands of acres of undeveloped but developable land within the City, as well as thousands of acres of undeveloped land presently designated for urban development in nearby cities, notably nearby Rancho Cordova and the County Urban Policy Area, would result in the premature commitment of more land to urbanization than can be possibly be absorbed in the foreseeable or distant future. The EIR fails to address the reasonably foreseeable environmental consequences of such a scenario, which is not unlikely.

A Recirculated DEIR must analyze and disclose the environmental impacts of such a scenario, including cumulative impacts.

Sacramento County staff, in response to proposals to greatly expand the County Urban Policy Area in its General Plan Update, addressed that issue in a staff report, 10/13/10, submitted with our comments on the DEIR for Elk Grove’s previous attempt at a SOI expansion, which recommended against the oversized expansion of the County Urban Policy Area. The County staff listed potential undesirable outcomes as follows, which are fully applicable to the present Elk Grove situation:

1. Leapfrog development pressure;

2. Imbalance in focus between revitalizing the existing mature communities creating and serving new neighborhoods;
3. Unintended consequences to the partially built-out planned communities and if newer areas out-compete for buyers;
4. Inefficient extension of infrastructure and public services resulting in higher operating costs.
5. Pressure to approve uses that provide near term economic benefits to the developer over a long-term economically sustainable mix of land uses;
6. Impacts to the proposed SSCHCP and to the Connector expressway;
7. Difficulty in meeting State mandates related to climate change initiatives.

A copy of the Sacramento County County's staff report (Agenda for 10/13/10, 2030 General Plan Update - Adoption Hearings) with relevant pages 6 - 11, was submitted as part of our DEIR comments on the previous Elk Grove SOI proposal, and is in LAFCo's files.

A Recirculated DEIR must consider the likelihood of occurrence of each of these potential scenarios and the potential environmental consequences, including the physical effects of potential urban decay that may result from prematurely committing more land to urbanization than can be absorbed. Such analysis should take into consideration that once approved, the SOI allows multiple patchwork of annexation proposals driven by individual landowner development agendas.

Reliance on 2003 Elk Grove General Plan and EIR Inappropriate.

Any reliance by LAFCo on the 2003 Elk Grove General Plan and EIR adoption to address the environmental impacts of the SOI would be inappropriate. The 2003 EIR on the General Plan is now out of date and was not prepared with the purpose of advising LAFCo regarding its important statutory responsibilities regarding open space and agricultural land preservation. Moreover, California Department of Fish and Wildlife did not agree with the biological assessment in that document (see California Department of Fish and Game letter to City of Elk Grove on review of Elk Grove General Plan, September 17, 2003).

Please keep us informed regarding future public review of the proposed application, and public hearings. We prefer to receive email notification of public review documents and hearings at swainsonshawk@sbcglobal.net.

Thank you for this opportunity to comment.



Judith Lamare, Ph.D. Co-Chair,



James P. Pachl, Co-Chair

REFERENCES Submitted Separately

Google Earth images of Elk Grove and regional context

Map of Swainson's Hawk range, South Sacramento County Habitat Conservation Plan Draft

Not submitted for habitat protection reasons: Map of Swainson's Hawk nesting sites, *Distribution, Abundance, and Habitat Associations of Swainson's Hawk*. Results of 2006 census level surveys in South Sacramento County; Estep, James, *The Distribution, Abundance, and Habitat Associations of the Swainson's Hawk (Buteo swainsoni) in the City of Elk Grove, California*. Census level surveys within City limits in 2008; Estep, J., *Monitoring Swainson's Hawk (Buteo swainsoni) Nesting Activity in South Sacramento County Results of 2008 Surveys*. (2009)

California Department of Fish and Game, Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California (Nov. 8, 1994)

California Department of Fish and Game letter of March 25, 2010, to Michele McCormick, copy to Eric Tattersall, and Peter Brundage

California Department of Fish and Game letter to City of Elk Grove review of Elk Grove General Plan, September 17, 2003.

County of Sacramento General Plan Policies re Conservation of Wildlife Species

City of Elk Grove, Ordinance SWAINSON'S HAWK IMPACT MITIGATION

Sacramento County County's staff report (Agenda for 10/13/10, 2030 General Plan Update Adoption Hearings) with relevant pages 6 – 11

Melinda Bradbury, Memo to Jude Lamare, Jim Pahl, 3/15/2010, "Assessing Elk Grove SOI expansion on historical Swainson's Hawk locations and comparing to the information provided in the Gibson and Skordal letters developed for the City of Elk Grove" and Resume submitted to support memorandum.

Melinda Bradbury, A Review of the City of Elk Grove and South Sacramento County Swainson's Hawk Mitigation Programs, January 25, 2011

Resumes of Melinda Bradbury and Shawn Smallwood

K. Shawn Smallwood, Ph.D., Comment on City of Elk Grove Sphere of Influence EIR", November 21, 2011, resume submitted to support comment letter.

Don Mooney, Comment letter on the Elk Grove SOI DEIR, November 21, 2011

U. S. Department of the Interior, Fish and Wildlife Service, Memorandum December 10, 2004, "Formal and Early Section 7 Endangered Species Consultation on the Freeport Regional Water Project, California" (especially pp. 77, 78, 82, 83.)

County of Sacramento, Memorandum of Agreement with the United States Fish and Wildlife Service, June 23, 2004