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Attention: Don Lockhart  
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**Comments of the Friends of the Swainson's Hawk** on the Recirculated 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. We commented March 31, 2017 on the Draft Environmental Impact Report (LAFC # 07-15). We concur with and endorse the Comments submitted by the Environmental Council of Sacramento on the DEIR and the REIR. Most of those comments are still relevant. This letter addresses only changes made by the Recirculated EIR.

### **Role of California Department of Fish and Wildlife (CDFW) in Biological Resources Mitigation Measures**

In several mitigation measures for impacts to Biological Resources, the measures refer to "coordination" with California Department of Fish and Wildlife. This term is undefined. Without an explicit definition of "coordination", it is not possible to determine if the mitigation measure has been implemented. The measure is not capable of implementation. At minimum, the measure should require the written consent of CDFW to the implementation of the proposed mitigation measures requiring "coordination."

### **Mitigation Measure 3.4-2c: Prepare and Implement a Swainson's Hawk Foraging Habitat Mitigation Plan**

The MM 3.4-2c is flawed. It mandates a fragmented, project by project mitigation of lost foraging habitat in the SOIA area, allowing unknown, multiple conservation operators, locations to be determined, uncertain number of mitigation acres, and lacks effective performance criteria

and guarantees. There are no opportunities for adaptive management in the mitigation program, opportunities that exist in the more comprehensive and planned habitat conservation program in the SSHCP.

MM 3.4-2c should require the City of Elk Grove to acquire a minimum 750 acre preserve on the model of their Delta Breeze preserve, in advance of completing any annexation within the SOIA, and make this land available exclusively to mitigate for the first 750 acres of development in the SOIA. It should prohibit projects of less than 40 acres from eligibility for annexation unless they are mitigated in a prior Elk Grove preservation of a minimum 750 acre preserve. After development of 750 acres in the SOIA, Elk Grove should be required by LAFCo to acquire and preserve a second preserve sufficient to mitigate for the remaining SOIA annexations and development.

The fact that the mitigation measure allows project by project mitigation for annexation, rather than an overall SOIA mitigation plan for the area, demonstrates that the anticipated urban development may not be planned and orderly development. It may proceed in uncoordinated pieces with unknown consequences for the ultimate mitigation of lost and compromised Swainson's Hawk habitat in the plan area.

The MM 3.4-2c should clearly state the number of foraging habitat acres in the project area and explain how that number was calculated and the justification for it. It should also clearly state how the loss of the large landscape agricultural area will be mitigated to retain the value of contiguous foraging habitat adjacent to known nesting habitat. We believe that number is 1156 acres if mitigation is to be consistent with County policies and the SSHCP.

The MM 3.4-2c (Kammerer Road/Highway 99 SOIA Recirculated EIR AECOM Sacramento LAFCo [LAFC#07-15] 3.4-35 Biological Resources) states:

Before the approval of grading and improvement plans or before any ground-disturbing activities, whichever occurs first, preserve suitable Swainson's hawk foraging habitat to ensure 1:1 mitigation for Swainson's hawk foraging habitat value lost as a result of the project. ~~Because the SOIA Area is currently zoned Ag-80, it is deemed to provide 100 percent foraging habitat value and the entire acreage must therefore be compensated at a 1:1 ratio.~~ Loss of foraging habitat resulting from possible future off-site improvements shall be compensated by preserving suitable Swainson's hawk foraging habitat to ensure 1:1 replacement of habitat value, based on zoning of the affected land, lost as a result of the project. The suitability of preservation habitat shall be determined by the City after ~~consultation~~ coordination with CDFW and a qualified biologist and shall be located within the geographical foraging area of the local nesting population as determined acceptable to CDFW.

Please note that the phrase "based on zoning of the affected land" should be stricken; the assessment can be made best by CDFW.

We strongly object to the reference to "**replacement of habitat value**" since that involves qualitative judgment of "habitat value" for which no standard performance criteria exist. The mitigation measure should ensure that 1156 acres of high quality mitigation are required to offset the direct loss of foraging habitat on project site, and provide number of acres likely to be impacted in offsite improvements. In addition, the REIR should have accounted for mitigation to offset indirect and cumulative impacts of the SOIA approval. MM 3.4-2c by mitigating 1:1 for the project site only contributes to a program that

preserves half of the baseline habitat available to the species. This conservation hardly compensates for direct impacts and therefore could not compensate for indirect and cumulative impacts as claimed.

To explain further the issue, consider that on page 3.4-30, the REIR states:

“suitable foraging habitat. . . consists of alfalfa, disked fields, fallow fields, dry-land pasture, beets, tomatoes, irrigated pasture, grains, other row crops, and uncultivated grasslands (Estep 1989, Estep pers. comm. 2007, Estep 2009a, Estep 2009b).” It also refers to “the loss of 750 acres of foraging habitat from the SOIA Area, and potentially more acreage at off-site improvement areas . . . .”

This paragraph implies that the REIR expects MM 3.4-2c to result in mitigation only for part of the SOIA acres converted to urban use. However, on p. 3.4-30, the REIR also states (in contradiction):

“Converting land in the SOIA Area from agricultural to urban land uses would result in removal of approximately 1,150 acres of cropland that provides suitable foraging habitat for Swainson’s hawk, white-tailed kite, northern harrier, and burrowing owl. Swainson’s hawk is listed as threatened under CESA, white-tailed kite is a fully protected species, and northern harrier and burrowing owl are California species of special concern.” AND

“Although some of the SOIA Area is currently planted in vineyards that are not considered suitable foraging habitat for Swainson’s hawk, the entire SOIA Area is currently zoned AG-80 and is therefore assumed to provide 100 percent foraging habitat value according to the Sacramento County Department of Environmental Review and Assessment. The draft SSHCP (Sacramento County et al. 2017a) modeled the SOIA Area as high-value foraging habitat for Swainson’s hawk, and also as foraging habitat for white-tailed kite.”

We would add that the Sacramento County Department of Environmental Review and Assessment/California Department of Fish and Wildlife Swainson’s Hawk mitigation program is unique and the tradeoffs in the program demand that the SOIA mitigate for full habitat value under this program to be consistent with the assumptions of the program adopted for this area by the County.

Both the County Swainson’s Hawk Mitigation Program and the South Sacramento Habitat Conservation Plan would require mitigation for the entire SOIA area of over 1100 acres. This is a large landscape agricultural area, adjacent to other large landscape agricultural areas that provide raptor foraging habitat and nesting habitat. Even if the annexation included only vineyards, the conversion to urban uses would have a profound effect on the foraging values of other properties in the SOIA and nearby. As noted in our DEIR comments, scientific evidence submitted shows that Swainson’s Hawks do use vineyards for foraging. Moreover, if the vineyards are not converted to urban use, those acres remain available for conversion to SOIA foraging habitat in future.

Every other mitigation program in Sacramento County restricts habitat mitigation land for Swainson’s Hawk impacts to locations in Sacramento County. The City of Elk Grove ordinance does this. The proposed REIR measure does not. These programs and the South Sacramento Habitat Conservation Plan have other criteria on the location and suitability of mitigation land for this purpose. MM 3.4-2c establishes no firm criteria for suitable mitigation land such as excluding lands below sea level (as the SSHCP does) or requiring CDFW approval of the mitigation property. The only qualification is “shall be located within the geographical foraging area of the local nesting population as determined acceptable to CDFW.” This is hardly a recipe for replacing the lost habitat with permanent protection of like habitat and is inconsistent with the County and City of Elk Grove policies.

As pointed out elsewhere, MM 3.4-2c impacts the South Sacramento Habitat Conservation Plan implementation by removing suitable mitigation land from availability (the SOIA) in PPU#6 while at the same time competing for suitable, available mitigation land in this location for mitigation of impacts of

already approved development inside the USB. The REIR erred on p. 3.4-41 in concluding that 103,000 acres are available for mitigating impacts on the SOIA farmlands. The appropriate comparison is within the PPU#6 only. (See ECOS Comment letter 9/11/17.)

The REIR doesn't attempt to ensure that conflict between the SOIA natural resources mitigation and the SSHCP program be reduced. LAFCo could require that South Sacramento Conservation Agency approve the SOIA mitigation program or adopt the area into the SSHCP prior to approval of any annexation.

The REIR makes no attempt to consider a higher mitigation ratio (such as not "layering" farmland mitigation and Swainson's Hawk mitigation for the SOIA). Because it is outside the USB, the SOIA needs to go above and beyond the mitigation ratios and expectations set for development of lands within the USB. In setting those mitigation requirements, the County assumed that County policies would protect the natural resources outside the USB. The SOIA, if approved, would change that and set precedent for further urban expansion in lands long protected by County policies for agriculture and wildlife uses. LAFCo needs to fill that gap with additional mitigation measures or deny approval.

We recommend any mitigation be carried out within the SOIA area to minimize the impact on the SSHCP and limit other negative impacts of the SOIA. This would result in conversion of at least some vineyard area to foraging habitat, with a potential net improvement in foraging habitat available in this area with the project compared to no project. Buffers and other policies protecting agriculture in the SOIA area would be needed. This approach could be combined with the reduced size alternative for annexation, allowing applicants to share development rights and mitigation obligations in a self-mitigated plan.

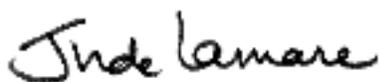
### **Impact 3.4-9 Conflicts with provisions of an adopted habitat conservation plan.**

As noted above, additional mitigation is feasible and needed to offset the negative impact of the SOIA on the availability of suitable habitat land in PPU#6 and the feasibility of acquisition of necessary mitigation within the South County.

One of the many benefits of regionally planned habitat conservation is that key stakeholders reach agreement about the ultimate cumulative impacts of growth and how to offset them with conservation. A separate Elk Grove program introduces more uncertainty and potential conflict, including bidding wars that ultimately send land values artificially high (hurting the public interest). The separate Elk Grove program prevents the level of certainty for wildlife mitigation that a regional conservation program is designed to achieve.

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](mailto:swainsonshawk@sbcglobal.net).

Thank you for this opportunity to comment.



Judith Lamare, Ph.D. Co-Chair,



James P. Pachl, Co-Chair

C: Tanya Sheya, CDFW