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RE: Comment on City of Elk Grove Proposed Sphere of Influence Amendment Draft Environmental Impact Report [LAFC # 09-10] SCH No. 2010092076

Dear Mr. Lockhart:

This office represents the Friends of Swainson's Hawk ("FOSH"), which has an interest in the above-referenced City of Elk Grove Proposed Sphere of Influence Amendment Draft Environmental Impact Report ("Project"). As explained below, the draft Environmental Impact Report ("DEIR") does not comply with the requirements of the California Environmental Quality Act ("CEQA") (Public Resources Code § 2100 et seq.; *see also*, CEQA Guidelines § 15165.)[1] FOHS objects to the City's Sphere of Influence Amendment as the Draft EIR fails to comply with CEQA. These comments focus on the CEQA requirements.

I. Legal Standards

A. The California Environmental Quality Act

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). (See, e.g., Pub. Resources Code § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. Bay Air Quality Management District* (1992) 9 Cal.App.4th

[1] The CEQA Guidelines (the "Guidelines") are found at California Code of Regulations, title 14, section 15000 et seq. Courts have found the Guidelines to be binding on public agencies. (See, e.g., *City of Santa Ana* v. *City of Garden Grove* (1979) 100 Cal.App.3d 521, 528-29.) The Guidelines must be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of their language." (*San Franciscans for Reasonable Growth* v. *City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74.)

644, 652.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. ["Guidelines"] § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1354 ["*Berkeley Jets*"]; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

"The environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny.." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910; citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) This interpretation remains the benchmark for judicial interpretation of CEQA. (*Laurel Heights Improvement Association v. Regents of the University of California ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390, quoting *Bozung* v. *Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274.) As the *Laurel Heights I* court noted, "[i]t is, of course, too late to argue for a grudging, miserly reading of CEQA." (*Laurel Heights I, supra*, 47 Cal.3d at p. 390.) CEQA's fundamental goals are to foster informed decision-making and to fully inform the public about the project and its impacts. (CEQA Guidelines, § 15003.)

An EIR must provide public agencies and the public in general with detailed information about the effect that a project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to such a project. (Pub. Resources Code, § 21061.) CEQA Guidelines section 15126.2, requires that the Final EIR identify the significant environmental impacts of the project, including direct and indirect impacts. CEQA Guidelines section 15126.4 requires that the Final EIR describe all feasible measures that can minimize significant adverse impacts of the project. CEQA does not allow an agency to defer analysis of impacts and mitigation measures. (CEQA Guidelines, § 15126.4(a)(1)(B).)

Informed decision making and public participation are fundamental cornerstones of the CEQA process. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights I, supra*, 47 Cal.3d 376.) With this primary purpose of CEQA in mind, the California Supreme Court has stated that "[t]he environmental impact

report ("EIR") is the primary means of achieving the Legislature's considered declaration that it is the policy of this State to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State" (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1229 [emphasis added].)

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Jets, supra*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (Guidelines §15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (Pub. Resources Code § 21081; Guidelines § 15092(b)(2)(A) & (B).)

B. Deferral of analysis and/or formulation of mitigation measures violates the requirements of CEQA

CEQA disallows deferring the formulation of mitigation measures to post-approval studies. (Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.) An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." (*Sundstrom, supra,* 202 Cal.App.3d at 308; see also *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 [mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible"].) A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 [finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available].) This approach helps "insure the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.)

Moreover, as discussed below, by deferring the development of specific mitigation measures, LAFCO has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the *Sundstrom* court:

An EIR "[is] subject to review by the public and interested agencies.

> This requirement of "public and agency review" has been called "the strongest assurance of the adequacy of the EIR." The final EIR must respond with specificity to the "significant environmental points raised in the review and consultation process." . . . Here, the hydrological studies envisioned by the use permit would be exempt from this process of public and governmental scrutiny. (*Sundstrom, supra,* 202 Cal.App.3d at 308.)

As noted below, LAFCO has proposed mitigation measures in such a way as to preclude public scrutiny.

C. Mitigation measures must be enforceable and effective

"Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design." (Guidelines § 15126.4(a)(2).)

In *Gentry v. City of Murrieta* the court of appeal explained that CEQA's normal requirement that mitigation be adopted prior to project approval may be met if an agency prepares a draft EIR that (1) analyzes the "whole" of the project; (2) identifies and disclosed with particularity the project's potentially significant impacts; (3) establishes measurable performance standards that will clearly reduce all of the identified impacts to less-than-significant levels; and (4) describes a range of particularized mitigation measures that, when taken in combination, are able to meet the specified performance standards. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395, comparing and contrasting *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 with *Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d 296.) The *Gentry* court further explained that promises by a lead agency to implement future recommendations that other agencies might make after project approval is not sufficient to find that a proposed project's potentially significant effects have been mitigated to less-than-significant levels. (*Id.*)

I. Specific Comments on the Draft EIR's Failure to Comply With CEQA

A. The Draft EIR Fails to Mitigate Impacts to Agricultural Resources

The requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures, and whether they will substantially lessen the significant environmental effects of the project. (Pub. Resources, Code, §§ 21002, 21081(a)(3); *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1790.) The requirement is not abated simply because the measures will not lessen the effects to below a level of significance. Accordingly, a statement of overriding considerations does not exempt a project from mitigation if there are feasible

measures that would reduce substantially, albeit not eliminate, the significant environmental effects of the project.

Mitigation may include "[c]ompensating for the impact by replacing or providing substitute resources or environments." (Guidelines, § 15370(e).) Conservation easements are an appropriate and desirable means of protecting agricultural lands against conversion to urban use. (Pub. Resources Code, §§ 10201-10202.) The Legislature has determined that the preservation of the limited supply of agricultural land is necessary for the maintenance of California's agricultural economy and the state's economy. (Gov't Code, § 51220.)[2] In 1979, the Legislature provided for the enforceability of conservation easements. (See Civ. Code, §§ 815-816.) The Legislature found and declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California." (Civ. Code, § 815.) The Agricultural Land Stewardship Program Act of 1995 establishes a state program to promote the establishment of agricultural easements. (Pub. Resources Code, § 10200 et seq.)[3]

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[2] The Williamson Act provides that:

> (a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation. [¶] ... [¶] (c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents. [¶] (d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.... (Gov't Code, § 51220.)

[3] The Legislature found and declared that:

> (b) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve land for the production of food and fiber, especially agricultural land around urban areas. [¶] (c) Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. Conserving

The Legislature also declared the intent, among other things, to "(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians. [¶] (d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land. [¶] (e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation...." (Pub. Resources Code, § 10202.)

CEQA does not limit mitigation measures to those that would entirely avoid the environmental impacts of a project. Instead, CEQA requires that mitigation include measures that would substantially lessen the significant environmental effects of the project. (Pub. Resources Code, § 21002.) Thus, a project converts farmland to urban use, conservation easements on other land may not replace the converted land, but such conservation easements can diminish the development pressures created by the conversion of farmland and provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project.

While conservation easements do not create replacement farmland, they certainly qualify as feasible mitigate because easements ameliorate a range of impacts associated agricultural conversions. As set forth in the unpublished opinion of Third District Court of Appeals (*South County Citizens for Responsible Growth, et al., v. City of Elk Grove, et al.*, No. CO2302, 2004 WL 219789)(AR 844-869), conservation easements reduce the development pressures on agricultural lands created projects such as the SOIA.

In the present action, the Project will impact up to 7,360 acres of farmland. (Draft EIR at p. 3.2-2.) Appropriately, the Draft EIR identifies this impact as significant. (Draft at p. 3.2-3.) Mitigation Measure AG-1 provides that the mitigation for this impact is for the City of Elk Grove to identify lands to be aside in permanent conservation easements at a ratio of one open space area converted to urban land uses to one-half open space acre preserved and at a ratio of one agriculture acre converted to urban land uses to one-half agriculture acre preserved. (*Id.* at p. 3.2-8.) This mitigation measure is fatally flawed. First, the mitigation measure only requires the City to identify lands to be set aside in permanent conservation. The mitigation measure does not require that the land be set aside, it only requires the City to identify the lands. The mitigation measure also does not indicate what entity would hold the conservation easement. Will the City hold the

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these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities. [¶] (d) The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas...." (Pub. Resources Code, § 10201.)

conservation easements? Thus, there is no certainty to the mitigation and it is merely speculative at best. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) This does not constitute enforceable or legally binding mitigation as required by CEQA and the CEQA Guidelines. (See Guidelines, § 15126.4(a)(1)(D)(2).) This is particularly egregious when the Legislature has repeatedly stressed the importance of preserving California's diminishing agricultural land through the use of conservation easements. (See Gov't Code, § 51220; Pub. Resources Code, § 10200, Civ. Code, § 815-816.)

The mitigation measure also mixes open space mitigation with agricultural land. The Draft EIR, however, fails to provide sufficient discussion or analysis of open space or identify the amount of acreage that would be deemed open space as compared to agricultural.

Additionally, Mitigation Measure AG-1 is fatally flawed in that the mitigation ratio for mitigating agricultural impacts should be at least 1:1. Such a mitigation ratio has become the minimum standard and is feasible. (See Mitigation policy AG-5 in the Sacramento County General Plan; see also *Building Industry Association of Central California v. County of Stanislaus* (2010) 190 cal.App.4th 582, 588.)

B. Biological Resources

The comment letters submitted by the FOSH, the Sacramento County Audubon Society, and the Environmental Council of Sacramento provide detailed comments regarding the Draft EIR failure to adequately disclose, analyze, and mitigate the Project's impacts to biological resources. These comments demonstrate the that Draft EIR failed to include important biological data that was readily available to LAFCO; improperly relied upon the California NDDB; fails to identify the project and adjacent area population of nesting Swainson's hawks; fails to identify availability of suitable habitat to mitigate for loss of foraging habitat in the SOI; and unlawfully defers mitigation of biological impacts.

The Draft EIR claims that since future development in the SOI will be subject to CEQA, implementation of LU-3, which requires participation in the South Sacramento County Habitat Conservation Plan", and "MM Bio-1a" a measure to demonstrate Elk Grove's compliance with four quite general measures required by LAFCO. (Draft EIR at pp. 3.4-37 to 38.) The discussion, however, does not deal with the loss of foraging habitat and essentially defers mitigation to post-approval studies. CEQA disallows deferring the formulation of mitigation measures to post-approval studies. (Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d at pp. 308-309.) An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." (*Id.*, at p. 308.)

In the present case, the Draft EIR defers mitigation for biological impacts to Swainson's Hawk to the future development of the habitat conservation plan and contains no performance standards by which to judge the deferred mitigation measures. (See *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669-670.) As such, the Draft EIR must be revised to provide mitigation measures for nesting and foraging habitat of the Swainson's hawk. To the extent, such mitigation measures are deferred the EIR must contain specific performance standards for the mitigation measures.

C. Greenhouse Gas Emissions

The Draft EIR contains an inadequate discussion of Greenhouse Gas Emissions ("GHG") and fails to provide adequate mitigation measures regarding the Project's impacts emission reductions mandated by the State of California.

In April of 2010, the First District Court of Appeal published the first decision on greenhouse gas emissions and CEQA. In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70 ("*CBE v. Richmond*"), the court set aside the EIR for Chevron's Richmond refinery upgrade, in part on the basis that the EIR did not adequately describe mitigation measures for greenhouse gas emissions. The court's ruling on greenhouse gas mitigation measures is significant in that the court applied *existing* CEQA rules on mitigation measures in determining that the mitigation was inadequate. The court cited to Guidelines section 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d at 311; *San Joaquin Raptor/Wildlife Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645670; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261; and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794. (*CBE v. Richmond, supra,* 184 Cal.App.4th at 92-93.) These authorities are not new, nor do they present a "moving target."

In *CBE v. Richmond,* the mitigation plan that was adopted required Chevron to hire an expert to prepare an inventory of greenhouse gas emissions and to identify emissions reduction opportunities. Chevron was required to consider various measures that were specified in the EIR, and to submit to the City a proposed plan to achieve a complete reduction of the increased greenhouse gas emissions from the project. (*Id.* at 90-92.) The First District Court of Appeal held that this mitigation scheme impermissibly deferred the required formulation of mitigation measures. The court rejected Chevron's arguments that the City had proceeded appropriately by setting a performance standard and setting forth a menu of potential mitigation measures. (*Id.* at 94.) Even though several cases have allowed such an approach, the court said that the City had offered no assurance that the plan was feasible and efficacious, and created no objective criteria for determining the success of the measures. (*Id.*) The mitigation strategy in the present case includes the same flaws.

In enacting Assembly Bill 32 ("AB 32"), the California Global Warming Solutions Act of 2006, the State of California confirmed that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California." (Health & Safety Code § 38501(a).)

California has set greenhouse gas emission reduction targets in an effort to avoid the catastrophic impacts projected with higher emissions scenarios. AB 32 requires California to return to 1990 levels of greenhouse gas emissions by the year 2020. (Health & Safety Code § 38550.)[4] Looking beyond 2020, Executive Order S-3-05 sets an emissions reduction target of 80 percent below 1990 levels by 2050. (Exec. Order S-3-05.)

The discussion of GHG emissions fails to provide sufficient information regarding thresholds of significance. Additionally, Mitigation Measure GHG-1 fails to provide sufficient information as to what efforts will be made to reduce GHG emissions. The mitigation measure simply states that future development will be consistent with regional emission reduction targets in effect at the time of application for annexation. It should not be at the time of application, but at the time of development. The time of application and time of development may differ by years, in which time the reduction targets may have dramatically changed.

D. The Draft EIR Fails to Provide an Adequate Discussion and Analysis of the Alternatives

The EIR fails to provide an adequate discussion of the alternatives that fosters informed decision-making and informed public participation. Additionally, the alternatives analysis in the EIR does not meet the requirement of a reasonable range of alternatives that lessen the Project's significant environmental impacts as it does not focus on alternatives that either eliminate adverse impacts to Swainson's hawks or reduce the impacts to insignificance, even if they would to some degree impede the Project's objectives, as required by CEQA.

CEQA mandates a lead agency to adopt feasible alternatives or feasible mitigation measures that can substantially lessen the project's significant environmental impacts. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002(a)(3), 15126.6(a); *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) For that reason, "[t]he core of an EIR is the mitigation and alternatives sections." (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 564.) "The purpose of an environmental impact report is to identify the significant effects on the environment of a project, *to identify alternatives to the project*, and to indicate the manner in which those significant effects

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[4] In the first reported case on greenhouse gas emissions and CEQA, the court relied in large part upon Health & Safety Code section 38500 *et seq.* (*CBE v. Richmond, supra*, 184 Cal.App.4th at 90-91.)

can be mitigated or avoided. (Pub. Resources Code, § 21002.1(a) (emphasis added); see also Pub. Resources Code, § 21061.) In preparing an EIR, a lead agency must ensure "that all reasonable alternatives to proposed projects are thoroughly assessed." (*San Joaquin Raptor/Wildlife Rescue Center* v. *County of Stanislaus, supra*, 27 Cal.App.4th at p. 717; quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; Pub. Resources Code, § 21001(g) (lead agency must "consider alternatives to proposed actions affecting the environment"); *Laurel Heights I, supra,* 47 Cal.3d at p. 400.)

The EIR must "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the alternatives." (CEQA Guidelines, § 15126.6(a).) The alternatives discussion must focus on alternatives that avoid or substantially lessen any significant effects of the project. (*Id.*, § 15126.6(b); *Goleta Valley, supra,* 52 Cal.3d at 556, [EIR must consider alternatives that "offer substantial environmental advantages"].) The range must be sufficient "to permit a reasonable choice of alternatives so far as environmental aspects are concerned." (*San Bernardino Valley Audubon Soc'y* v. *County of San Bernardino* (1984) 155 Cal.App.3d 738, 750; see also *Sierra Club* v. *Contra Costa County* (1992) 10 Cal.App.4th 1212, 1217-18, 1222, [EIR that only considered two alternatives for less development was not a range of reasonable alternatives.].)

The range of potential alternatives to the proposed Project shall include those that could feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen one or more of the significant effects. (CEQA Guidelines, § 15126.6(c); *see Citizens of Goleta Valley* v. *Board of Supervisors, supra,* 52 Cal.3d at 566.) The EIR must "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines, § 15126.6(d); see also *Kings County, supra, 221* Cal.App.3d at 733, [The alternatives discussion must contain specific quantitative information for an adequate comparison.].) An EIR's discussion of alternatives must be reasonably detailed, but not exhaustive. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163, ["An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible."]; CEQA Guidelines, § 15126.6.) The key issue is whether the alternatives discussion encourages informed decision-making and public participation. (*Laurel Heights I, supra*, 47 Cal.3d at p. 404.) The burden of identifying and evaluating alternatives rests with the agency, not the public. (*Laurel Heights I, supra,* 47 Cal.3d at pp. 405-406.) Contrary to CEQA's directive, LAFCO's alternative analysis fails to provide sufficient information and analysis of the alternatives for informed decision-making by the LAFCO Board and the public.

The alternatives analysis fails to include an alternative that would reduce of avoid the Project's significant impacts on Swainson's hawk. (See Comment letter from FOSH regarding Notice of Preparation.) FOSH proposed an alternative of a smaller SOI

amendment that would increase the SOI by 500 to 600 acres at Highway 99 and Kammerer Road that would be limited exclusively to development of office and industrial parks. By contrast, the alternatives considered in the Draft EIR do not reduce or avoid the impacts to Swainson's hawks. As such, the alternative's discussion and analysis fail to meet CEQA's requirements.

III. Conclusion

For the reasons stated in this comment letter, the comment letters submitted by Friends of Swainson's Hawk, the Sacramento Audubon Society, the Environmental Council of Sacramento, and others, the Draft EIR fails to meet the legal requirements of the California Environmental Quality Act. As such, LAFCO must recirculate the Draft EIR after it has made the necessary and required revisions.

Sincerely,

Donald B. Mooney
Attorney

cc: Jude Lamare