



# REPORT TO COUNCIL

## City of Sacramento

915 I Street, Sacramento, CA 95814-2604  
[www. CityofSacramento.org](http://www.CityofSacramento.org)

**PUBLIC HEARING**  
**January 13, 2009**

Honorable Mayor and  
 Members of the City Council

**Title: Delta Shores (P06-197)**

**Location/Council District:** On the east and west sides of Interstate-5 at the southwestern limits of the City of Sacramento boundaries; APN: 119-0010-001 through -015, -026, -034, -053, and -060; 119-0190-024, -025, -026, -028 and -030; 119-0090-005, -011, and -013; 053-0010-051, -059, -059, -060, and -061. (District 7, and 8)

**Recommendation:** Conduct a public hearing and upon conclusion adopt 1) a **Resolution** adopting the Environmental Impact Report; 2) an **Ordinance** approving the Delta Shores Development Agreement; 3) a **Resolution** adopting the Delta Shores Inclusionary Housing Plan; 4) a **Resolution** amending the existing General Plan Designations *from* Industrial-Employee Intensive, Community/Neighborhood Commercial, and Offices, Regional Commercial and Offices, Low Density Residential, Medium Density Residential, and Parks-Recreation-Open Space *to* Regional Commercial and Offices, Community/Neighborhood Commercial and Offices, Residential Mixed Use, Low Density Residential, Medium Density Residential, and Parks-Recreation-Open Space; 5) a **Resolution** amending the existing Airport/Meadowview Community Plan designations *from* High Tech Industrial, Commercial, Office, Residential 4-8 du/na, Residential 7-15 du/na, Residential 11-19, Public/Quasi-Public, and Agriculture/Open Space *to* Commercial, Residential 4-8 du/na, Residential 7-15 du/na, Residential 16-29 du/na, Public/Quasi-Public, and Parks; 6) a **Resolution** amending the Delta Shores Planned Unit Development including adopting new Development Guidelines and Schematic Plan; 7) a **Resolution** amending the City of Sacramento Bikeway Master Plan; 8) a **Resolution** approving the Delta Shores project entitlements involving a master and two tentative subdivision maps; 9) an **Ordinance** rezoning the existing site *from* Manufacturing, Research, and Development PUD (MRD-PUD), Shopping Center PUD (SC-PUD), and Single Family Alternative PUD *to* General Commercial PUD (C-2-PUD), Residential Mixed Use PUD (RMX-PUD), Standard Single Family PUD (R-1-PUD), Single Family Alternative PUD (R-1A-PUD), Multi-Family PUD (R-3-PUD), and Agriculture-Open Space-PUD (A-OS-PUD); and 10) a **Resolution** adopting the Delta Shores Financing Plan.

**Contact:** Antonio Ablog, Associate Planner, (916) 808-7702; Gregory Bitter, Principal Planner, (916) 808-7816



**Presenter:** Gregory Bitter, Principal Planner

**Department:** Development Services

**Division:** Current Planning

**Organization No.:** 21001010

**Description/Analysis:**

**Issue:** The Delta Shores Planned Unit Development (PUD) is a request by the applicant, M&H Realty (Merlone Geier Partners, LLC), for the necessary entitlements to allow the future development of a 782-acre master planned community. The PUD is envisioned as a mix of commercial development and a compact residential community of up to 5,222 residential units ranging from single-family detached homes to high density multi-family housing. The commercial component of the project includes a regional village commercial center, and a neighborhood-serving mixed-use town center. Amenities such as open space, recreation, two school sites, pedestrian/bicycle paths, and a private community center have been incorporated into the land use plan. The project applicant is proposing develop the commercial areas including the Village Center and Residential/Mixed-Use area. The Village Center is planned to accommodate up to approximately 1.3 million square feet of regional retail and commercial uses while the Residential/Mixed-Use area would include a maximum of approximately 161,600 square feet of retail, 187 residential units, and incorporated office uses. The residential portions of the PUD will be developed by other developers in accordance with the PUD Guidelines. Staff finds that the proposal is compatible with the adjacent uses and is consistent with adopted applicable policies and goals of the City's General Plan, and the Airport/Meadowview Community Plan. Staff recommends approval of the project.

**Applicant:** M&H Realty (Merlone Geier Partners, LLC)

**Policy Considerations:** The Sacramento City Council adopted a set of Smart Growth Principles in order to promote growth that is economically sound, environmentally friendly, and supportive of community livability. The proposed project is consistent with the Smart Growth Principles in that it provides a compact mix of commercial and residential land uses that creates a range of housing and employment opportunities. The project concentrates new development on a site that has been slated for urban development for twenty-five years. The Delta Shores project includes a land use plan and circulation plan that fosters a walkable community and encourages multi-modal transportation and land use patterns that support walking, cycling, and public transit. Support for such projects allows for progressive growth management as it provides a range of housing choices in an area typified by single-family homes on large lots.

The City adopted the General Plan Update Vision and Guiding Principles in 2005 to capture a vision for the City's key values and aspirations for Sacramento's future. The plan is consistent with many of the adopted principles and the

following are the highlights:

- Encourage sustainable levels of energy and resource consumption through efficient land-use, transportation, building design, construction techniques, waste management, and other infrastructure systems
- Preserve and protect important historic and cultural resources that serve as significant, visible reminders of the City's social and architectural history.
- Improve and expand the urban forest that contributes to the uniqueness of Sacramento: the City of Trees.
- Improve the jobs-housing balance by siting housing near employment centers.
- Include a mix of housing types within neighborhoods to promote a diversity of household types and housing choices for residents of all ages and income levels in order to promote stable neighborhoods.
- Locate and design buildings, streetscapes, and public spaces that contribute to walkable neighborhoods.
- Create a vibrant regional center that serves as a destination for the residents of South Sacramento.

Finally, the project focuses higher density development and mixed-use projects in areas adjacent to transit stations, along transit corridors and commercial corridors, near job centers, and in an identified strategic opportunity areas within the city.

**Committee/Commission Action:** On December 11, 2008 the City Planning Commission heard testimony both for and against the project and ultimately voted (5-2) to forward no formal recommendation to the City Council for the development known as the Delta Shores Planned United Development (PUD). A summary of this hearing and the list of Commissioner concerns can be found in the Background section of this report (Attachment 1), and in a memo from the Planning Commission included as Attachment 2.

**Environmental Considerations:** In accordance with California Environmental Quality Act (CEQA) Guidelines, Section 15081, the City, as Lead Agency, determined that an EIR should be prepared for the proposed project. The initial study and Draft EIR identified potentially significant impacts to Agricultural Resources, Air Quality, Biological Resources, Noise, Public Services, Transportation and Circulation, Hazards, and Cultural Resources. Mitigation measures were identified to reduce project impacts to a less than significant impact; however, significant and unavoidable impacts remain for noise, transportation and circulation

and air quality. These mitigation measures can be found in the CEQA Findings and Statement of Overriding Considerations (Exhibit A of Attachment 6).

The Draft EIR was prepared and released for a forty-five (45) day public review period beginning on September 9, 2008 and ending on October 23, 2008. A public notice was placed in the Daily Recorder on September 9, 2008, which stated that the Draft EIR was available for public review and comment. A public notice was posted with the Sacramento County Clerk's Office on September 9, 2008. A Notice of Availability (NOA) dated September 9, 2008 was distributed to all interested groups, organizations, and individuals for the Draft EIR. The NOA was mailed to property owners within 500 feet of the project site, and stated that the City of Sacramento had completed the Draft EIR and that copies were available at the City of Sacramento, Development Services Department, Environmental Planning Services, 300 Richards Boulevard, Sacramento, CA 95811.

Sixteen comment letters were received on the DEIR. The comment letters and responses to comments are included in the Final EIR. The FEIR responds to all comments received on the Draft EIR and revises text and/or analyses where warranted. Pursuant to the requirements of CEQA, digital copies of the Final EIR, with responses to comments were sent on November 9, 2008 to all who commented on the Draft EIR. Attachment 7 includes written comments received by the City following distribution of the Final EIR.

The City Planning Commission held a public hearing on December 11, 2008. The EIR was presented to the Planning Commission for their review and recommendation to forward to the City Council. The Planning Commission forwarded the project without a recommendation because they did not have sufficient time to review the FEIR and a submitted a separate comment letter. Under the CEQA Guidelines Section 15025(c), to make a recommendation only the DEIR is required to be presented to the Planning Commission. Errata No. 1 and Errata No. 2 have been prepared, containing changes to the FEIR as circulated. The DEIR, FEIR, Errata No. 1, and Errata No. 2 were placed on the City's website:

<http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>.

**Sustainability Considerations:** The project applicant has voluntarily agreed to implement greenhouse gas (GHG) emission mitigation measures (5.10-1 (a) through (cc)), and to comply with future GHG City ordinances that may be implemented in response to the City's General Plan Update. Some of obligations which address sustainability and are not currently required under the City Code are as follows: pedestrian and bike paths shall be located in a manner to minimize road crossings to promote safety and encourage children to walk or bike to school, consistent with the project's Air Quality Management Plan; energy efficiency shall be increased fifteen percent (15%) above Title 24 requirements; light-colored roofing materials and paints shall be used on building roofs; Energy Star rated appliances shall be installed in all residential development; encourage

participation in the California Energy Commission's New Solar Homes Partnership and encourage solar power; encourage energy efficient design, such as providing hot water systems with booster heating and locating hot water heaters near hot water taps; encourage the use of solar on retail/commercial rooftops and parking lots; recycled building materials shall be used where feasible in building designs; and reuse and recycle construction waste where feasible.

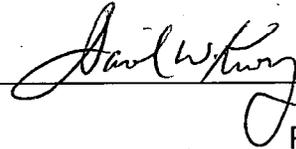
**Rationale for Recommendation:** The overall Delta Shores project supports policies contained in the General Plan, the Airport/Meadowview Community Plan and is consistent with the zoning code. The project promotes pedestrian friendly development, supports alternative modes of transportation, maintains and enhances existing wetlands, and establishes a well-designed mixture of land uses for existing and future residents of South Sacramento. The proposed project consists of master plan level entitlements with the goal of meeting the present and future needs of the community while addressing changes in the local and national economy. The PUD will ensure that individual portions of the project site will be developed under a unifying set of guidelines and development standards. Though the Planning Commission voted to forward the project to the City Council with no formal recommendation, staff maintains its support for the proposed Delta Shores PUD as the project facilitates compact suburban development on one of largest remaining development sites in the City of Sacramento.

**Financial Considerations:** The Delta Shores PUD project will have a positive impact on the General Fund. Due to its retail components, revenues from sales taxes together with property taxes and utilities users taxes will exceed General Fund expenditures needed to service the project.

For the capital aspects of the project, a Finance Plan has been prepared that lays out the cost of all backbone infrastructure, the financing sources, structure and timing to construct all infrastructure, and the tax and fee burden on each land use required for applicable financing mechanisms. The Finance Plan concludes that the Delta Shores PUD project is financially feasible and does not place an undue fee or tax burden on any land use.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully submitted by:



David Kwong  
Planning Manager

Approved by:



William Thomas  
Director of Development Services

Recommendation Approved:



RAY KERRIDGE  
City Manager

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**Attachment 1 – Project Background/Summary**

**Applicant/Owner:** M&H Realty c/o Scott McPherson, 3580 Carmel Mountain Road, San Diego, CA 92130

The proposed project site is located in the southern portion of the city of Sacramento on 782 acres. Interstate 5 bisects the project site into approximately 120 acres to the west of Interstate 5, and 662 acres to the east of Interstate 5. The western portion of the project site is generally bounded by Freeport Boulevard to the west and the Bartley Cavanaugh Golf Course to the south. The eastern portion of the project site is bounded by the SRCSD bufferlands to the south, existing residential development to the north, and a mix of undeveloped land and the Sacramento Job Corps facility to the east.

The project site consists mostly of vacant land and land supporting agricultural uses. Stonecrest Avenue extends from Freeport Boulevard at the northwest portion of the site and bridges the existing west and east portions of the site with a freeway overpass. Stonecrest Avenue terminates on the east side of the freeway and does not provide through connection to any existing public streets.

In 1983, the City approved the Delta Shores Planned Unit Development (PUD) which was intended to be developed as a manufacturing, research, and development zone with an emphasis on high tech business. A limited amount of residential development was included with the original PUD. The project site has remained mostly undeveloped and has been used primarily for agricultural purposes.

To accommodate the proposed master plan the applicant is requesting a General Plan Amendment, a Community Plan Amendment, a Rezone, amendments to the Delta Shores Schematic Plan and PUD Guidelines, an Inclusionary Housing Plan, a Development Agreement, a Master Parcel Map, two Tentative Subdivision Maps, and a Bikeway Master Plan Amendment. Aside from the two Tentative Subdivision maps, the applicant is not seeking any development level entitlements with this request. The project supports policies contained in the General Plan, the Airport/Meadowview Community Plan and is consistent with the zoning code.

**Tentative Maps**

The applicant is proposing to subdivide the 782+ acre site with a Tentative Master Subdivision Map. Master parcels will be created for residential, commercial and parks/open space uses. Some of the master parcels, such as the High Density Residential parcels, are final parcels while other parcels may be subject to further subdivision for single-family lots or other development consistent with the PUD. Along with creating lots for future development, the Master Parcel Map provides dedications and easements for backbone infrastructure such as detention basins, wetlands areas, the Cosumnes River Boulevard extension, and the 24<sup>th</sup> street extension. The Master Parcel Map also allows for the construction of a new Interstate 5 interchange that will provide direct access to the subject site from the freeway.

There are two subdivisions requested for approval with the master parcel map. The Delta Shores West Tentative Map comprises 88.5± acres west of Interstate 5 and is bounded by the town of Freeport to the west and the Bartley Cavanaugh golf Course to the south. Access to this subdivision will be via Freeport Boulevard and the proposed Interstate 5 interchange. This subdivision map consists of 240 standard single-family lots, and 110 higher density, or "alternative", single-family lots. The "alternative" single-family lots are located at the northern portion of the subdivision, and are proposed to have alley access.

### **Pedestrian/Bicycle Circulation**

On-site pedestrian and bicycle access is proposed to be provided via a number of on and off-street trails that work in conjunction with the planned parks to provide pedestrian and bicycle access through the Delta Shores PUD and to adjacent neighborhoods. The applicant has provided a trails plan as part of the PUD that depicts features such as off-street multi-use trails, on street bike lanes, widened sidewalks, and pedestrian bridges.

Off-street trails provide access and recreation opportunities throughout the PUD on both the east and west sides of Interstate 5. On-street bike lanes are proposed to provide bicycle circulation within the PUD. The bike lanes are 8-feet wide and are proposed to be included on most of the major streets in the project. The bike lanes will connect to existing neighborhoods at 24<sup>th</sup> street, Manorside Drive, and Cosumnes River Boulevard.

Along with the on and off-street trails, the project also includes two pedestrian bridges. One bridge crosses over Delta Shores Circle South and will lead pedestrians to the proposed village plaza and regional commercial center. A second bridge will cross Cosumnes River Boulevard and will provide access to the Mixed-Use Town Center.

### **PUD Guidelines and Schematic Plan**

The applicant is requesting to amend the existing Delta Shores PUD Schematic Plan and PUD Guidelines to accommodate the proposed development. The new PUD Guidelines will supersede the old PUD Guidelines and will provide regulations and standards to guide development on the project site. The PUD Schematic Plan will establish general intensities and types of land uses for each area within the PUD. The proposed Schematic Plan provides allowable land uses and intensities that future projects can be evaluated through the Planning Director plan review process assuming consistency with the Schematic Plan, PUD Development Guidelines, and the procedural requirements of the Sacramento Zoning Code.

The proposed Delta Shores PUD guidelines are organized into the following sections: Introduction, Residential Neighborhoods, Commercial Centers, Mixed-Use Town Center, Parks and Open Space, Circulation and Streetscape, Public Facilities and Landscape Design. The Delta Shores PUD envisions new neighborhoods linked to existing communities. The PUD promotes varied housing densities ranging from detached single-family homes to high density mixed-use residential units. A target of 5,092 housing units is proposed within the PUD, with 5,222 units being the maximum.

Of this total, 675 are proposed to be developed in the low density range, 2,493 in the medium density range, 1,738 in the high density range, and 187 in mixed-use. The Residential Neighborhoods section includes the site and architectural standards applicable to each density range. These standards are intended to promote compact development while preserving the character of existing neighborhoods adjacent to the project.

Two Commercial Centers are proposed within the PUD; a Regional Retail Center, with a Village Center Plaza, and a Mixed-Use Town Center. The Regional Retail Center is proposed to serve the South Sacramento region with up to 1.3 million square feet of commercial and retail uses. This center is proposed to be located adjacent to Interstate 5 on the east side. The main portion of the Regional Retail site is to the south of Cosumnes River Boulevard, with a 24.7± acre Regional Retail site on the north side of Cosumnes River Boulevard.

The PUD also includes a Mixed-Use Town Center on the east side of the project site south of Cosumnes River Boulevard. The Town Center is proposed to be approximately 20 acres consisting of high density residential and up to approximately 161,000 square feet of community serving commercial uses. The Town Center is proposed to be built around a water quality basin/wetlands area that will serve as an amenity to the surrounding development. Surrounding the town center are a school site, a 26± acre community park, and a mix of medium to high density residential uses. A bridge provides pedestrian connectivity to the residential neighborhood proposed for the north side of Cosumnes River Boulevard.

The PUD Guidelines include a number of design principles and development standards as they apply to the Regional Commercial Center and the Village Center Plaza. These design principles and standards include building orientation and setback, circulation and parking, building form (scale, massing, and facades), color and materials, lighting, and landscape.

Of particular interest with the commercial design, has been the interface of the proposed regional retail with the view from Interstate 5. Being the southernmost development in the City, the Delta Shores project will serve as a gateway to the City. Along with creating a visual monument signifying the entry to the city (PUD Guidelines, pg. 3-32), the PUD Guidelines recognize the need to provide varied and interesting architectural elevations along the west side of the regional commercial center. Section 3.13 specifically addresses freeway visibility by setting forth development guidelines affecting building facades facing the Interstate-5 corridor.

The Parks and Open space section of the PUD is intended to cover public and private open spaces including the Community Park, Neighborhood Parks, wetlands areas, Mini Parks, and Pocket Parks to Plazas, trails, and small public places. This section provides both the basis for providing parks of varying sizes as well as park characteristics and guidelines for developing the parks. Aside from providing development guidelines for the various parks, the PUD also provides discussion on the wetlands preserve area that will serve as a natural amenity within the proposed PUD.

The open space/wetlands area is proposed to serve dual purposes, a) to serve as active filtration for project runoff, and b) to provide an opportunity for passive recreation around seasonal wetlands.

The PUD Schematic Plan works in concert with the PUD Guidelines to provide a land use plan consisting of open space, circulation, and development sites to form an integrated master project site justifying exceptions to the normal regulations of the zoning code. The following information portrays the potential land uses as identified on the PUD Schematic Plan without delving into significant details concerning the potential building design and layout. The general schematic plan offers more flexibility in the overall review of future projects in the Delta Shores PUD. Staff will evaluate future projects in conjunction with the intent of the PUD Guidelines and PUD Schematic Land Use Plan. The PUD Schematic Plan is consistent with the amended General Plan, Community Plan, zoning designations, and PUD Guidelines for the project site.

The following table illustrates the distribution of land uses within PUD Schematic Plan area:

<b>Schematic Plan Land Uses</b>	
<b>Land Use Designation</b>	<b>Proposed (ac)</b>
Low Density Residential (4-7 units/acre)	136.89
Medium Density Residential (8-14 units/acre)	178.04
High Density Residential (15-27 units/acre)	64.36
Mixed-Use (23-29 units/acre)	19.93
Commercial	127.40
Public/Quasi Public	6.67
Parks/Open Space	144.50
Schools	19.90
Streets/Circulation	84.44
<b>Total</b>	<b>782.13</b>

### **Planning Commission Hearing**

On December 11, 2008 the City Planning Commission heard testimony and voted (5-2) to forward no formal recommendation on the Delta Shores Planned Unit Development. There were a number of speakers who spoke both in opposition to, and in favor of, the proposed project.

### **Testimony in opposition to the project was in reference to:**

- General inadequacy of the EIR and associated Mitigation Measures
- Specifically, testimony regarding the EIR was presented regarding:
  - inadequate Swainson's Hawk mitigation
  - inadequate analysis of drainage runoff into Stone Lake Wildlife refuge
  - inadequate analysis of off-site sewer extension

- inadequate analysis of impacts related to global climate change and the inadequacy of the global climate change mitigation measures
- inadequate analysis of historic resources, specifically the projects impact on the town of Freeport
- Encroachment on Town of Freeport – will change the character of historic town (Freeport residents)
- Freeport might lose federal funding for water and sewer (Freeport residents)
- Request for large open space buffer between Delta Shores and Town of Freeport (Freeport residents)
- Request for intersection improvements at Freeport/Meadowview intersection in phase 1 (from South Pocket)
- Request to change High Density Residential site on west side of I-5 to Medium Density Residential (from South Pocket)
- Request to limit inclusionary units on west side of I-5 to no more than 15% of overall units on west side of I-5 (from South Pocket)
- Request for the Delta Shores development to not accept any inclusionary unit transfers from other development projects

**Testimony in support of project was in reference to:**

- Creating a new neighborhood that will complement and enhance existing adjacent neighborhoods
- Providing increased parks and recreational opportunities
- Providing much needed shopping services
- Providing jobs (for all different age groups)
- Increasing property values of existing development
- Better traffic circulation, due to Interchange and CRB extension
- Realization of Delta Shores development after 25 years of waiting
- Providing wide range of housing choices – opportunity of all income levels to live in neighborhood
- Smaller multi-family parcels – no large adjacent multi-family developments
- Appreciation that developer worked with the community and responded to requests for project changes

The majority of the Planning Commission's deliberation focused on the EIR, specifically on:

- Amount of time provided to review Final EIR
- Conclusions and mitigation measures regarding Global Climate Change
- Recommendation to strengthen Global Climate change mitigation measures
- Adequacy of Swainson's Hawk mitigation
- Adequacy of drainage runoff into Stone Lake Wildlife refuge

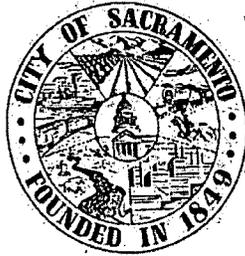
The Planning Commission also commented on:

- Requirement for a roadway connection from Meadowview neighborhood within the first phase of the project (applicant agreed to work this out to make it happen)
- Provision of additional open space buffer adjacent to Freeport
- They did not look at final finance plan

### **Commission Action**

After several hours of deliberation, the Commission voted to forward the project to City Council with no formal recommendation, by a vote of 5-2. A letter outlining the Commissions comments and recommendations will be provided in the staff report for the Council's January 13, 2009 hearing on the project.

**Notice of Hearing:** As required by sections 17.200.010(C)(2), 16.24.097, 17.204.020 (C), 17.208.020 (C), 17.180.050 (D), and 18.16.080 of the City Code, a ten day notice of the January 13, 2008 public hearing has been given by publication, posting and mail (500').



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CITY PLANNING COMMISSION  
C/O DEVELOPMENT SERVICES  
DEPARTMENT

**CITY OF SACRAMENTO**  
CALIFORNIA

300 RICHARDS  
BLVD. 3<sup>RD</sup> FLOOR  
SACRAMENTO, CA 95811

## MEMORANDUM

DATE: December 18, 2008

TO: Honorable Mayor Kevin Johnson  
Members of the City Council

FROM: Darrel Woo, Chair, City Planning Commission

RE: Delta Shores Planned Unit Development – Planning Commission Comments

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On December 11, 2008 the City of Sacramento Planning Commission heard and considered the Delta Shores project. At the conclusion of its hearing the Commission voted to make no recommendation regarding the project, and to forward its comments in writing to the City Council. These comments relate to Commissioner's views regarding aspects of the project that we believe are important for the City Council to consider. This letter serves that purpose.

The following issues were raised by the members of the Commission during the hearing as important considerations. While some of the issues were identified by individual members, no dissent to any of the comments was voiced by any member of the Commission:

1. **Connectivity:** The applicant has presented the project as providing new services and employment opportunities to members of the existing community. In order to achieve this goal, the Delta Shores project must be effectively connected to the community. While some access is provided, no local access is provided in Phase 1 and the connection via the extension of 24<sup>th</sup> Street, which we view as the most critical, would not be constructed until the final phase of the project. This could occur many years in the future. **We believe that 24<sup>th</sup> Street should be extended to Cosumnes River Boulevard as part of the initial phase of the project. The applicant indicated during the hearing that they were open to providing at least one connection from the adjacent northern community to Cosumnes River Boulevard in the**

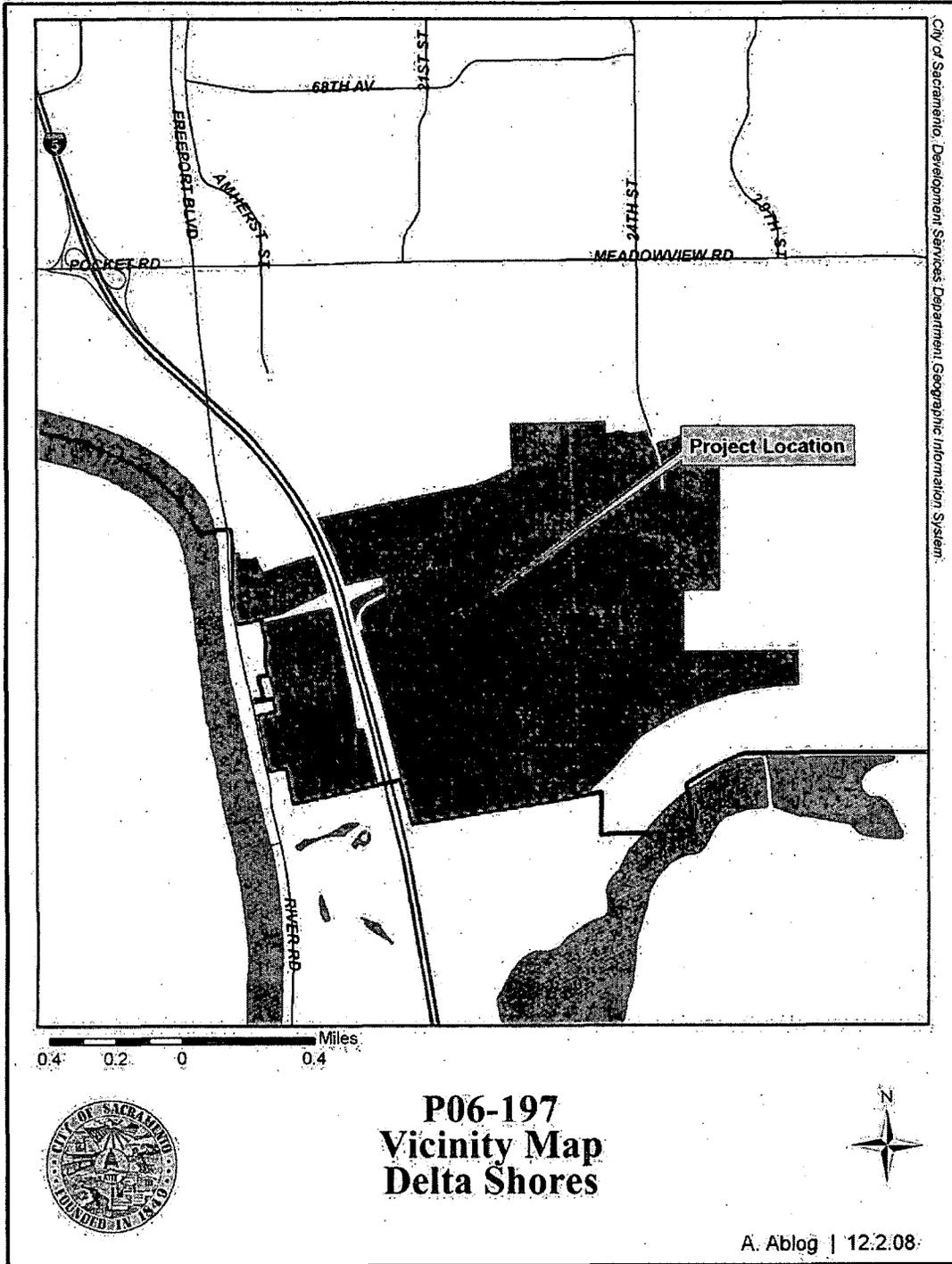
**first phase of development, whether that connection be the 24<sup>th</sup> Street extension, or another connecting roadway.**

2. Swainson's hawk mitigation: The applicant proposes to provide 100 acres of replacement habitat in close proximity to the project site, and approximately 800 acres of habitat at Brannan Island Farms, approximately 20 miles distant from the project site. The applicant asserted lack of available foraging habitat in close proximity to the project site, financial feasibility and high value of the Brannan Island Farm site as reasons for not providing all replacement habitat within a five-mile radius of the project site. We encourage the City Council to examine these assertions closely as there was public testimony that contradicted this.
3. Climate change: The applicant has committed to a number of conditions that relate to the reduction in greenhouse gas emissions, and the development agreement for the project includes provisions that subject the project to future actions by the City in this regard. We recommend that the City Council review the project conditions and development agreement to ensure that these provisions are mandatory and their implementation coincides with the city actions.
4. West side of I-5: We believe the housing proposed on the west side of Interstate 5 could be reduced by 20% to 40% to promote livability and to provide a necessary measure of protection for the historic community of Freeport.
5. Stone Lakes: Concerns have been raised regarding water quality impacts on the Stone Lakes Refuge caused by potential runoff from the Delta Shores project site. These should be closely examined.
6. The Commission did not have a chance to review the final finance plan for the project.
7. Some concern was expressed over the walkability aspects of the major commercial land use design.

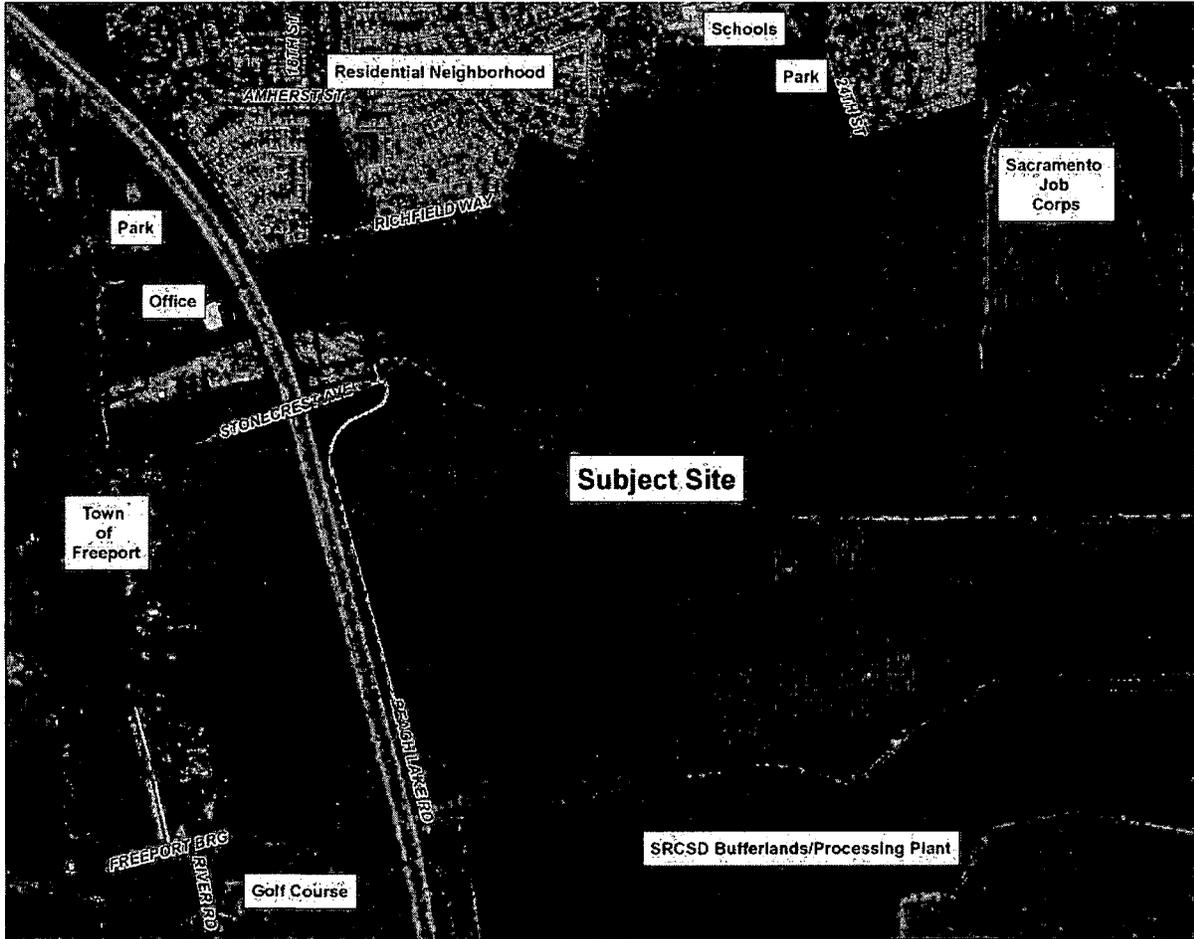
We appreciate the opportunity to comment on the project. If you have any questions regarding the above, please let me know.

Cc: City Manager Ray Kerridge  
David Kwong, Secretary, Planning Commission  
Members of the Planning Commission  
Gregory Thatch, Attorney for Applicant

Attachment 3 – Vicinity Map



Attachment 4 – Land Use & Zoning Map



**Attachment 5 – Delta Shores Finance Plan Summary***Delta Shores Financing Plan Summary*

The Delta Shores Public Facilities Financing Plan (Financing Plan) identifies all backbone infrastructure improvements, public facilities, and administrative costs needed to serve the proposed land uses in the Delta Shores Planned Unit Development, located at the southern edge of Sacramento's existing city limits along the Interstate-5 corridor. Delta Shores will contain up to 5,222 residential units and roughly 150 acres of commercial/mixed-use development, as well as a series of public facilities to support this new growth, including parks and open space, public safety facilities, and schools. Infrastructure will include regional improvements, such as Cosumnes River Boulevard and the associated interchange on Interstate-5, as well as backbone improvements serving Delta Shores alone or Delta Shores and the adjacent Stone-Boswell site. To provide an accurate assessment of the feasibility of development for projects benefiting from the same backbone infrastructure, the Delta Shores Financing Plan includes appropriate cost shares for regional improvements and the 1,200 unit Stone-Boswell project site for backbone improvements.

Adoption of the Financing Plan by the City of Sacramento (City) will ensure timely and appropriate funding for capital facilities necessary to serve the Delta Shores. The Financing Plan includes improvements to transportation, sewer, water, drainage, parks, open space, schools, fire, police, and library facilities and will describe the costs and financing mechanisms that will be used to construct these improvements in a timely manner.

The Financing Plan is designed to achieve the following goals:

- Fund the construction of backbone infrastructure so as to make Delta Shores self-supporting, with the exception of appropriate regional cost-sharing improvements.
- Identify ways to finance construction of public infrastructure and facilities through public and private financing.
- Use existing City, Sacramento Regional County Sanitation District (SRCSD), and other Special District fee programs to the extent possible for water, sewer, parks and schools facilities.
- Participate in any planned City fee programs for transportation, drainage, police, fire, and library improvements.
- Establish a Special Financing District fund all or a portion of major backbone infrastructure and other public facilities not included in existing or planned fee programs, through the creation of a fee program and/or the use of one or more Community Facilities Districts (CFD).
- Establish and/or participate in appropriate maintenance districts for public services, including transit management, parks, drainage, and right-of-way landscaping.

- Make maximum use of “pay as you go” mechanisms.
- Make appropriate use of municipal debt-financing mechanisms.
- Build in flexibility to allow response to market conditions.
- Provide developer funding for appropriate facilities.
- Describe reimbursement mechanisms to the master developer for advance funding of backbone improvements on behalf of other parties and/or over-sizing of facilities to benefit users beyond the Delta Shores project.

### *Overview of Financing Strategy*

The major infrastructure required for development to proceed in Delta Shores will be funded through a combination of public and private financing. Existing fees (e.g., City, Special District or Plan Area fees) will be used to fund required facilities whenever possible. The City and Special Districts serving Delta Shores have established development impact fee programs to fund all or a portion of transportation, sewer, water, and park facilities. The master developer will advance-fund and construct most backbone facilities and receive appropriate fee credits or reimbursement; the master developer will also receive reimbursements for funding and constructing facilities sized to benefit other users.

A Special Financing District may also be created to fund the balance of the remaining backbone costs and other public facilities serving Delta Shores. Funding sources within this District could include a new Delta Shores fee program or a Community Facilities District. If such a program is not used, the cost of any public facilities not funded through existing fees or through bond financing will be paid for by the master developer(s).

Delta Shores also contains improvements designed to serve areas beyond the immediate sites proposed for development. Cosumnes River Boulevard is a regional arterial road that will bisect the Project. Funding for the upgrade to the Interstate-5 Cosumnes interchange, widening of existing road segments through Delta Shores and Stone-Boswell, and construction of new road segments will come from a variety of sources. Measure A (development impact fee and sales tax), the new citywide transportation development impact fee, a Special Financing District, other City/State/Federal funding sources, and, reimbursements from other projects will contribute needed funding for these regional roadway improvements. The precise level of funding from each source has not been analyzed at this time, but if available, is identified in the Financing Plan as the environmental review and approval process continues.

Bond financing likely will be needed to help fund those items required during the early years of development in the Project, as well as at other strategic times when development impact fees are not able to fund in a timely fashion the necessary facilities required for new development. Debt financing, however, will be limited to prudent levels and shall be consistent with State and City guidelines.

Several different financing sources will be used to fund the infrastructure required to serve the projected development and to mitigate impacts on surrounding developments.

School facilities could be funded through school mitigation fees and possibly through other funding sources including the State School Building Program or local general obligation bonds.

It is expected that costs will change over time; therefore, each funding mechanism should include a method for adjusting the amount of funding to reflect current costs at the time of construction. At any stage, smaller sub-areas may develop, depending on the financing capacity of the area, development plans, and market conditions.

### ***Financing Methods***

This section includes a discussion of possible Financing methods.

#### *EXISTING CITY IMPACT FEES/TAXES*

The City has adopted a set of development impact fees to finance capital improvements. Future updates to the City fees may include certain improvements in the Project. These fees include the Major Street Construction Tax, citywide water fee, citywide sewer fee, and citywide park fee.

Should the City adopt other citywide fee programs for transportation, drainage, library, police, or fire facilities, Delta Shores will participate in these fees.

#### *STA MEASURE A FUNDS*

Voters approved Measure A in 2004. The one-half cent sales tax will go into effect in 2009. In addition, Measure A authorized a development impact fee on new development. The Measure A funding program is managed by the Sacramento Transportation Authority. A portion of these funds will be available for the construction of Cosumnes Boulevard and the INTERSTATE 5 Interchange at Cosumnes Boulevard.

#### *SCHOOL DISTRICT IMPACT FEES*

Delta Shores falls within the boundaries of the Sacramento City Unified School District (SCUSD). The school district has established fees, in accordance with State regulations, to be used to construct school facilities. The SCUSD currently charge fees at the Level I rate. The City collects school impact fees before the issuance of a building permit and forwards them to the school district.

#### *STATE SCHOOL FUNDING/OTHER*

School facilities also may be funded by using California State grant funding. Any shortfall from the actual amount required by the school district that is above and beyond

the funding provided by development impact fees and State funding may be funded by school district-wide General Obligation bonds or by another viable financing mechanism.

### *SPECIAL FINANCING DISTRICT*

The Financing Plan includes the development of a Special Financing District to fund the balance of transportation, water, sewer, drainage, open space, parks, public safety, library, Swainson's hawk and other capital facilities not funded through other sources. This Special Financing District could take many forms.

One form would be the creation of a Plan area fee and/or a reimbursement program. Alternatively, the master developer could use a combination of cash, equity, or private debt financing to construct backbone infrastructure and other public facilities not adequately funded by other means and be reimbursed by other sources through land sale values and/or private reimbursement agreements.

A third option would be a community facilities district (CFD) that may be established to help fund the construction and/or acquisition of backbone infrastructure and facilities in Delta Shores. The 1982 Mello-Roos Community Facilities Act enables cities and other entities to establish a CFD to fund various facilities and services by levying an annual special maximum tax on land within the CFD boundaries. The proceeds from a CFD bond sale can be used for direct funding of improvements, to acquire facilities constructed by the developer, to reimburse developers for advance funding of improvements, and/or to prepay certain development fees. The annual maximum special tax can be used toward bond debt service or to build or reimburse for infrastructure as needed. The proceeds of the Mello-Roos special tax can be used for direct funding of facilities and/or to service bond debt.

### *OTHER SPECIAL AGENCY FEES*

Delta Shores will participate in other Special Agency fee programs for facilities from designed to serve the project, such as the Sacramento Regional County Sewer District.

### *OTHER DEVELOPMENT PROJECTS*

Delta Shores will participate in funding of facilities whose benefit is shared by other neighboring development projects. The Financing Plan will identify which facilities are included in this category, their costs, and the methodology by which these costs are to be allocated to each project.

### *Cost Summary*

It is estimated that the Combined Project will include \$375 million in total backbone and public facilities improvement costs at buildout. This amount includes backbone roadway, sewer, water, and storm drainage costs designed to serve both Delta Shores and Stone Boswell. However, the amount for public facilities includes only costs for

Delta Shores; costs for Stone-Boswell will be estimated in the Financing Plan and are anticipated to be proportional to Delta Shores on a per-person served basis. In addition, these costs are preliminary estimates only and do not include *in-tract* subdivision costs, which are the responsibility of individual developers.

*Financial Feasibility*

The cost of proposed mitigation measures identified in the Draft Environmental Impact Report (DEIR), backbone infrastructure, and public facilities required to serve Delta Shores are similar to those at nearby projects and do not appear to be prohibitively high. As a result, Delta Shores should be able to feasibly fund the cost of the required mitigation measures and infrastructure facilities.

The Financing Plan provided to the City Council includes analysis of the ability of the project to fund required infrastructure and public facilities. The Financing Plan compares the cost burdens for Delta Shores to those of surrounding projects and shows the total cost burden per unit as a percentage of sale prices to demonstrate feasibility.

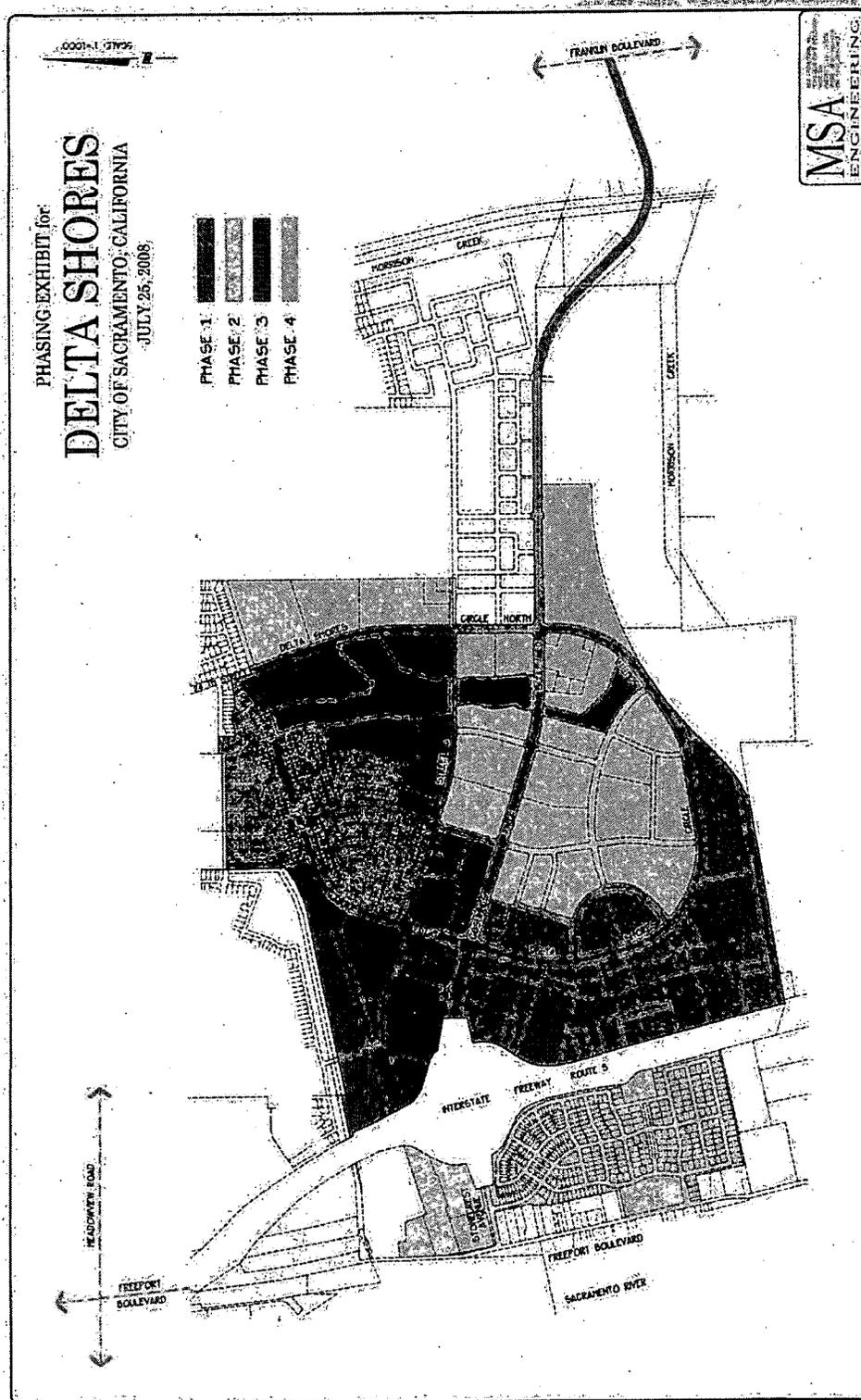
*Operations and Maintenance*

The Financing Plan describes how the operation and maintenance of public facilities (e.g. transportation management, parks, drainage, and right-of-way landscaping) will be funded. Existing or new Mello-Roos CFDs or Assessment Districts may be established to fund these annual operations and maintenance costs.

*Financing Plan Approval Process*

The Delta Shores Financing Plan was submitted concurrent with the Delta Shores final Environmental Impact Report for public review and approval by the City Council.

Attachment 6 – Delta Shores Proposed Phasing Plan



**Attachment 7 – Delta Shores EIR Correspondence**

The City received the following correspondence regarding environmental review for the Delta Shores Project following distribution of the Final EIR.

December 15, 2008	Judith Lamare, Friends of the Swainson's Hawk, with attached letter to Mr. John J. Hagenbuch, M & H Realty Partners L.P.
December 18, 2008	Kent Smith, Habitat Conservation Program Manager, Department of Fish and Game
December 23, 2008	Linnea Fronce and Thomas Hall (via email)
December 23, 2008	Peggy Kennedy (via email)
December 26, 2008	Russell E. von Loben Sels
December 29, 2008	Kevin McCrae
December 29, 2008	David Coursey (via email)
December 29, 2008	Jim Estep, Chair, Swainson's Hawk Advisory Committee
December 29, 2008	Judith Lamare, President, Friends of the Swainson's Hawk



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December 15, 2008

Recipients  
City of Sacramento  
915 I Street  
Sacramento, Ca 95814

Please note:

Attached is a letter from Friends of the Swainson's Hawk to Mr. John Hagenbuch, M&H Realty Partners regarding the proposed Swainson's Hawk mitigation program for Delta Shores.

This is not our formal letter to the City responding to the Final EIR on Delta Shores.

Sincerely,

Judith Lamare  
President, Friends of the Swainson's Hawk  
[judelam@sbcglobal.net](mailto:judelam@sbcglobal.net)  
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December 15, 2008

Mr. John J. Hagenbuch, Chairman  
M&H Realty Partners L.P  
353 Sacramento Street, Suite 2160  
San Francisco, California 94111

RE: Delta Shores project, mitigation measures for impacts on Swainson's Hawk

Dear Mr. Hagenbuch:

Friends of the Swainson's Hawk has recently reviewed the Final EIR for the Delta Shores project (P06-197). As an advocate for the Swainson's Hawk, we are deeply troubled by your proposal to mitigate for loss of 765 acres of Swainson's Hawk foraging habitat. We have prepared this letter to you to share in some detail (1) why this is a highly flawed proposal and (2) that feasible alternatives exist with much more effective mitigation results. Please consider our request that you change your mitigation plan before finalizing the EIR and the project approval with the City of Sacramento.

We understand that M & H purchased the proposed mitigation site, 850-acre Brannan Island Farm, recorded 8/18/05, and conveyed an agricultural conservation easement on 295 acres to City of Elk Grove to mitigate for loss of prime farmland due to the Lent Ranch project. We do not know what other conservation easements, if any, affect the property. It is understandable why M & H would like to use the property as SWH mitigation, and then perhaps try to sell the property to a farmer, subject to the agricultural and Swainson's Hawk conservation easement restrictions. As explained below, though, the Brannan Island Farm site does not mitigate for loss of SWH habitat at the Delta Shores site.

The Final EIR, and Mr. Greg Thatch's comments to the Planning Commission 12/11/08, made representations about the merits of M & H's proposed mitigation plan for impacts on SWH which unfortunately are less than factual.

Below are listed key reasons why the mitigation you propose does not reduce impacts to less than significant, has cumulatively unmitigated impacts, defers key mitigation

decisions contrary to the California Environmental Quality Act; and why we believe that feasible, reasonable and superior alternatives exist.

However, first, please consider the negative public relations impact of your present decision to shortchange the Swainson's Hawk in the development of the Delta Shores project. The Swainson's Hawk ("SWH") is an iconic species for our region and has become increasingly an object of public affection and concern. Your company would best be served by a biologically sound, highly visible, successful mitigation program, and there is the opportunity to do that. It would be unfortunate to start off your excellent project with the taint of a bad faith effort at mitigation for Swainson's Hawk impacts.

1. Your identified mitigation site, Brannan Island Farm, is too distant to benefit the local population of Swainson's Hawks impacted by Delta Shores, and is in an area of sparse SWH nests. It is axiomatic that mitigation land for loss of SWH foraging habitat be as close as possible to the site of the project impact, so that the local population of the species which forages on the Delta Shores site will benefit from the mitigation (e.g.: permanent preservation of SWH foraging habitat within easy range of the nests using the Delta Shores site). This is especially important to maintaining the range of the species, one of the key impacts to be mitigated under CEQA.

Locating mitigation land 20 miles from the project site is damaging to Swainson's Hawks because distance of quality foraging from nesting sites is a critical variable in reproductive success. Studies have shown that reproductive success varies with distance foraged by parenting hawks. Beyond 10 miles, the energy efficiency of serving the nest site drops significantly. The likelihood of survival of nesting chicks is dependent upon the number of rodents brought to the nest by the parent birds. The further a parent SWH must fly to find rodents, the fewer the number of rodents which are brought to the nest, and the likelihood of chick starvation or nest abandonment increases substantially. The parent energy needs to supply nestlings are another part of this equation. Obviously, to maintain our population of Swainson's Hawks while removing foraging and nesting habitat they depend upon, we need to ensure that reproductive success increases through preservation of well placed and managed habitat land.

Department of Fish and Game recommends mitigation sites be as close as possible, or within five miles, of the project site, and no further than ten miles from the project site. The FEIR and Mr. Thatch wrongly represented that the DFG had set 5 miles as the limit. Five miles would be best, but 10 miles is much better than 20 miles distant, which would be useless to the local SWH population presently using the Delta Shores site.

2. There are thousands of acres of suitable mitigation land in Sacramento County located closer to the project area than the site M & H has chosen. Other jurisdictions have repeatedly acquired lands for mitigation south of Elk Grove and north of the Cosumnes River. The idea presented in the FEIR that the 765 acres of mitigation land must be a single tract is untrue.

Fortunately, opportunities do exist in close proximity to the Delta Shores site to do an outstanding Swainson's Hawk mitigation preserve of over 700 acres with willing local farmers and the Sacramento Valley Conservancy, who want establish a permanent farmland preserve just south of Delta Shores. This area consists of 800 acres within the 1500-acre RD 744, which is

three miles south of Freeport, between the Stonelake Wildlife Refuge and the Sacramento River, as presented by rancher Russ van Loben Sels at the Planning Commission hearing December 11, 2008, and discussed a year ago amongst the farmers, City, DFG and the Sacramento Valley Conservancy. In light of its critical location, the preservation of 765 acres of SWH foraging habitat at that location, by means of a Conservation Easement approved by DFG and held by Sacramento Valley Conservancy, could provide an excellent public relations opportunity for M & H and Delta Shores.

If this transaction were for some reason unable to gel for the full 765 acres, there is also an opportunity to acquire 150 acres adjacent to the City of Elk Grove's Delta Breeze SWH 750-acre preserve, thereby expanding a permanent Swainson's Hawk preserve very close to nesting Swainson's Hawks just south of Elk Grove.

In the event that it is suggested that M & H acquire SWH mitigation land in Yolo County, M & H should be aware that the Yolo County has made it clear to Sacramento that Yolo does not want Yolo farmlands used as Swainson's Hawk mitigation preserves for Sacramento's development.

3. Brannan Island Farms is not at appropriate site for mitigation of Delta Shores impacts on Swainson's Hawks. It is unsuitable for alfalfa that provides high-quality SWH foraging habitat and is not a California Department of Fish and Game approved mitigation bank for Swainson's Hawk. It is not appropriate to mitigate for non-Delta impacts in the Delta.

At the Planning Commission hearing, Mr. Thatch presented the argument that Brannan Island Farms, though quite distant from Delta Shores, would provide high quality habitat and noted it would be farmed in alfalfa. We disagree.

The FEIR claims that the Brannan Island Farm site will be farmed with alfalfa, which provides high-quality SWH foraging habitat, but there is no evidence that Brannan Island Farm can be successfully farmed in alfalfa. Alfalfa is a perennial crop with a deep root system requiring well-drained soil at all times. It is highly sensitive to lack of drainage and soil waterlogging. The soil type on most of Brannan Farm is Rindge Mucky Silt Loam. It is not appropriate for growing alfalfa. Most of the Brannan Island Farm site is waterlogged or covered with standing water during the winter, and has a shallow summer water table even with pumping to lower the water table. We have seen a photo showing a large area of shallow water on the site during winter. It is impossible for alfalfa to survive in those conditions. Due to the deep depression of most of Brannan Island below sea level (which is the minimum surface level of the Sacramento River), other crops are possible only with continual pumping to remove surface and groundwater and prevent reversion of Brannan Island to a marsh or lake.

We understand that the property has been cropped with corn for most recent years. This may be the most profitable agricultural use of the property today. However, cultivation of corn, asparagus, safflower, and sunflowers would be prohibited or greatly restricted by a Swainson's Hawk Conservation Easement, because the height and density of these crops preclude SWH access to rodents that may be within these crops. Such restrictions would certainly affect the ability of M & H to lease or sell the land to farmers.

Most of Brannan Farms is seventeen feet below sea level. The Delta levees are fragile and likely to be lost as climate change causes sea level rise. Delta islands may be lost to the expansion of the island sea. Thus, nesting trees and foraging habitat located here are much more vulnerable to loss. Brannan Island is not a place to hinge our protection of Swainson's Hawks. Even the very few SWH nest trees on or next to levees near Brannan Island are vulnerable to removal under the current flood control policies of the Corps of Engineer which call for removing all trees on and near levees.

While Fish and Game may approve use of Brannan Island Farms for mitigation of impacts on Delta Swainson's Hawks, it is unlikely that the Department of Fish and Game would approve the use of Delta lands to mitigate for impacts on non-Delta lands. The mitigation of "like with like quality" standard means that land that may be appropriate for mitigating Delta impacted lands would not be appropriate for mitigating for non Delta land impacts.

4. Courts have overturned a number of project approvals where mitigation measures were not defined at time of project approval or enforceable. Your final EIR does not include sufficient detail and enforcement mechanisms to qualify and would be classified as "deferred mitigation." Without disclosure of the conservation management, maintenance fees and designation of an entity to enforce compliance with the easement in perpetuity, the permanent maintenance of the dedicated land to Swainson's Hawk foraging cannot be assured, and the project would be noncompliant with CEQA's requirement that mitigation measures be enforceable and not deferred to the future. Specifically, the conservation easement used should be approved by CDFG as appropriate for a Swainson's Hawk mitigation easement.

5. The cumulative impacts of the City approving your proposed mitigation program are serious and the FEIR fails to consider these.

6. We are very uncomfortable with the role of the City in the mitigation program. Any approvals called for in the mitigation program should include approval by the California Department of Fish and Game. The easements or title should be held by CDFG and a non profit conservation organization and not the City alone. There should be no opportunity for a future City Council to dispose of the land for a different purpose than stated in this EIR. There is no evidence that City has the expertise to monitor and enforce compliance with a conservation easement in perpetuity. Potential mistakes by the City in its management of the SWH conservation easement could potentially expose M & H's land use entitlements to challenge. It is in the best interest of M & H that the Conservation Easement be held by a non-profit conservation organization which is competent to manage it, and DFG.

Presumably the enclosed California Department of Fish and Game, dated October 28, 2008, was earlier forwarded to you by City or your representative. If not, I urge you to review it.

We are of course more than willing to meet with you to discuss these matters in more detail, but the purpose of our letter is to urge you to work with others, including other private property

owners, the Sacramento Valley Conservancy, and the California Department of Fish and Game, and to quickly put forward a more credible mitigation program for your Final EIR.

Sincerely,



Judith Lamare  
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fax: 916 244-0507

c: Mayor Kevin Johnson, City of Sacramento  
Tom Buford, City of Sacramento  
Kent Smith, California Department of Fish and Game  
Greg Bitter, City of Sacramento  
Ray Kerridge, City of Sacramento

**Legend**

Study Area

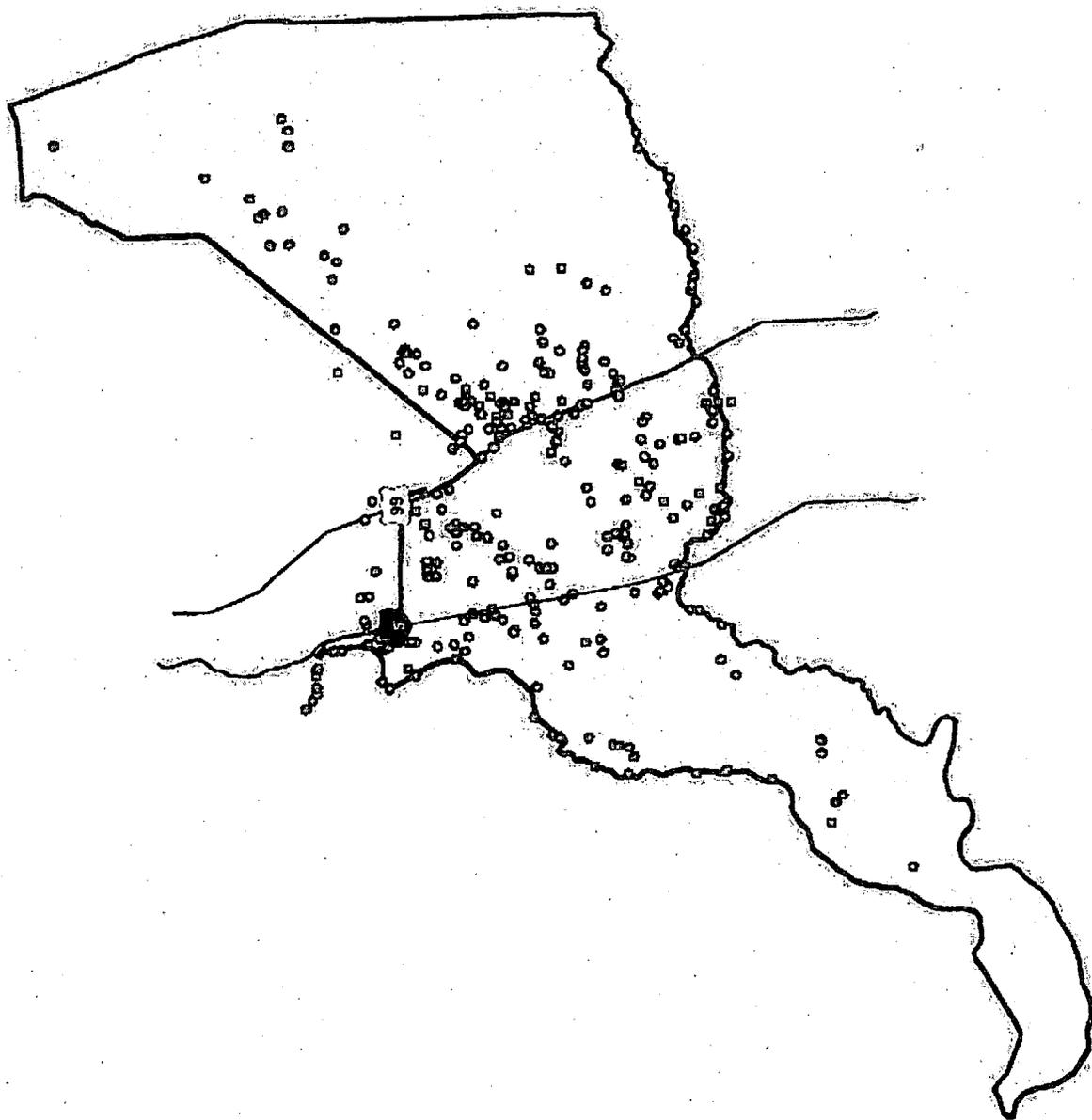
Major Roads

Swainson's Hawk Nest Site

● Jones & Stokes 2004 Data

⊙ CNDDDB and Other Historic Data

⊙ DFG 2002 - 2003 Data





DEPARTMENT OF FISH AND GAME

Delta Shores (P06-197)  
<http://www.dfg.ca.gov>

January 13, 2009

North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
(916) 358-2900

October 28, 2008

Ms. Rochelle Amrhein  
Environmental Planning Services  
City of Sacramento  
2101 Arena Boulevard, Suite 200  
Sacramento, CA 95834

Dear Ms. Amrhein:

The Department of Fish and Game (DFG) has reviewed the September 2008 Delta Shores Draft Environmental Impact Report (DEIR). The Delta Shores project (proposed project) includes the development of a 782-acre master planned community. The proposed project is envisioned as a compact residential community of approximately 5,092 residences with two mixed-use retail centers – a Regional Village Center and a neighborhood-serving residential mixed-use retail area. This project also includes open space, recreation, and pedestrian and bicycle friendly aspects. The project proposes to subdivide approximately 315 acres into residential lots and approximately 118 acres into parks, trails, open space, and wetland preserve. A total of approximately 147 acres would be designated for commercial development with the remaining area set aside for schools, utilities, a private community center, and roadways, including development of internal residential collector streets.

Wildlife habitat resources consist of cropland, irrigated hayfield, lacustrine, and urban habitats (Mayer and Laudenslayer 1988). Significant natural resources of the project include wetlands, nesting and foraging habitat for raptors including the Swainson's hawk (*Buteo swainsoni*), the burrowing owl (*Athene cunicularia*), and the white-tailed kite (*Elanus leucurus*). An evaluation of impacts to biological resources was contained with the DEIR.

As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of such species. In that capacity, the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that affords protection to the State's fish and wildlife trust resources. The DFG also considers issues as related to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) (MBTA).

We offer the following comments and recommendations as referenced by DEIR content heading:

*Conserving California's Wildlife Since 1870*

#### **5.4-3 Development of the proposed project could result in the loss of foraging habitat for Swainson's hawk and other raptors**

The DEIR states that "development of the project would result in the conversion of approximately 765 acres of potential Swainson's hawk... the resulting loss of this habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could likely increase. Therefore, the loss of potential foraging habitat for Swainson's hawk, white-tailed kite, burrowing owl, or other raptors would be considered a *potentially significant impact*."

The DEIR further provides the following mitigation measure to reduce the above impact to a "*less-than-significant level* through the preservation and management in perpetuity of suitable foraging habitat, contiguous with other areas of suitable foraging habitat, for Swainson's hawk, white-tailed kite, burrowing owl and other raptors":

*"5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio, or a ratio acceptable to CDFG. Suitable foraging habitat includes alfalfa or other low growing row crops. Preservation could occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. Land and easements shall be approved by the City in consultation with CDFG."*

In February of 2008, upon request from the City of Sacramento (City), the DFG reviewed a November 20, 2007, proposed Delta Shores Project's draft Mitigation Plan and provided guidance to the City for establishment of adequate Swainson's hawk mitigation lands. At that time, the DFG recommended that the above mitigation plan did not provide sufficient mitigation measures because the proposed mitigation site at the Brannon Realty Farm site (> 20 miles distant) was not positioned within close proximity to the foraging habitat or to the nesting hawks which may be impacted by the proposed project. Additionally, the DFG recommended that mitigation lands be identified within closer proximity to the proposed project site, that habitats utilized for mitigation be in-place before the impacts occur to greatly increase the mitigation's effectiveness, and that mitigation lands be protected in perpetuity with a DFG approved conservation easement.

The DEIR states on page 5.4-18 that "Swainson's hawks can forage as far as 10 miles from the nest, but nests are generally more successful if suitable foraging habitat is present within an approximate 5-mile radius", and also states on page 5.4-31 that "the resulting loss of this (foraging) habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could likely increase." The DFG agrees with this assertion, and supports it by adding that some local telemetry studies have been conducted to determine foraging requirements of Swainson's hawks, and shows that the majority of birds observed typically use relatively small home ranges in close

proximity to their nests (mean size = 2760 ha) in search of prey (Estep 1989, Babcock 1993). Other studies suggest that if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling vigor with an increased likelihood of disease and/or starvation. In more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985). Suitable foraging habitat mitigation lands should be located within an energetically efficient distance from the active Swainson's hawk nests affected by the proposed project, so that adult hawks potentially affected by the proposed project can achieve an energy balance between the needs of themselves and the demands of nestlings and fledglings.

The DEIR's mitigation measure MM 5.4-3 does not provide an adequate requirement to ensure that the mitigation lands are properly established, maintained, or monitored. Therefore it does not demonstrate how the project will minimize the above identified potentially significant impact to less than significant. Subdivision (b) of Section 21081.6 of the CEQA Guidelines requires mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Incorporating adequate mitigation measures into the conditions of approval applied to the project could meet this requirement.

The DFG recommends as a means to reduce impacts to below a significant level that the City include a mitigation and monitoring program, that an endowment account (based on a Property Analysis Record [PAR] that is approved by the DFG) be established to maintain and monitor Swainson's hawk foraging habitat mitigation lands, and that the DEIR mitigation measure MM 5.4-3 be revised to state:

*5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio, within close proximity of the proposed project site. Preservation shall occur through the purchase of conservation easements or fee title of lands. A mitigation plan shall be established and submitted to the DFG and the City for approval, and at a minimum shall include details on mitigation site location, development, maintenance, and monitoring. Any easements shall be in compliance with Government Code Section 65965.*

**5.4-4 Implementation of the proposed project could result in the disturbance of nesting habitat for birds protected by the MBTA, including raptors**

The DEIR states that "trees in the project site could provide nesting habitat for a number of protected avian species including white-tailed kite, tree swallow, western blue bird, great egret, great blue heron, and other birds... some examples of project related activities that could cause nest abandonment or forced fledging are: demolition, large mobile construction equipment such as large bulldozers, and earth movers working directly under the nest trees for a significant amount of time and people trying to climb the nest tree", and "implementation of the proposed project could result in the disturbance to protected nesting avian species potentially leading to nest abandonment and mortality. This would be considered a *potentially significant impact*."

The DEIR further asserts that "implementation of Mitigation Measure 5.4-4(a) would require surveys for protected bird species to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, implementation of Mitigation Measure 5.4-4(b) through (d) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing loss or take of this species. Implementation of Mitigation Measures 5.4-4(a) through (d) would reduce the potential disturbance of nesting avian species to a *less-than-significant level*."

Mitigation Measure 5.4-4(a) mentions that nest surveys will be conducted in potential nest trees within 500 feet of demolition/construction or ground disturbing activities, and Mitigation Measures 5.4-4(b) states that if "active nests...be identified... the applicant, or developer(s)...shall delay construction in the vicinity of active nest sites during the breeding season while the nest is occupied with adults and/or young...the size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet."

The DFG is not aware of information supporting the City's assertion that performing surveys for nesting birds (including the white-tailed kite) within 500 feet of demolition/construction or ground disturbing, or that providing a minimum standard of a 100-foot protection buffer is adequate to properly assess impacts and provide protections for nesting raptors. The DFG has had good success with, and recommends that a more conservative approach to protecting raptors and avoiding take of these species include performing surveys and providing a general protective no-work buffer out to a distance of ¼ mile from demolition/construction or ground disturbing activities. The DFG also recommends that Mitigation Measure 5.4-4(a) be revised to replace the 500 foot survey with a ¼ mile survey, and that Mitigation Measure 5.4-4(b) be revised to replace the 100 foot minimum protective buffer with a general ¼ mile protective no-work buffer.

Mitigation Measure 5.4-4(d) states that "if demolition/construction activities are unavoidable within the (above) buffer zone, the project applicant shall retain a qualified biologist to monitor the nest site to determine if construction activities are disturbing the adult or young birds. If abandonment occurs the biologist shall consult with CDFG or USFWS for the appropriate salvage measures. This could include taking any nestlings to a local wildlife rehabilitation center. "Abandonment of an active raptor nest, and capturing raptor nestlings could be considered "take" under Fish and Game Code, and is not advised". Therefore, the DFG recommends that Mitigation Measure 5.4-4(d) be revised to state:

*"If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall consult with the DFG and the City, and develop DFG approved appropriate impact reduction and take avoidance measures."*