

**5.4-5 Implementation of the proposed project could result in the disturbance of nesting habitat for Swainson's hawks**

The DEIR states that "trees existing in the riparian area of the Sacramento River could support nesting habitat for Swainson's hawks...(and) construction activities associated with the proposed project within a ¼ mile (1,320 feet) of a Swainson's hawk nest could disturb nesting pairs of Swainson's hawk possibly resulting in nest abandonment, forced fledging and/or mortality...and thus would be considered a *potentially significant impact*".

The DEIR further states that "implementation of Mitigation Measure 5.4-5(a) would require surveys for nesting Swainson's hawks to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-5(b) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing disturbance to any nesting birds reducing the impact to a *less-than-significant level*."

Mitigation Measure 5.4-5(a) asserts that surveys for Swainson's hawks will be conducted no more than 30 days prior to the start of any demolition or construction activities. The DFG believes that surveys should be conducted according to the Swainson's Hawk Technical Advisory Committee's May 30, 2000, "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley," which requires that surveys should be completed for at least the two survey periods (defined within the May 30, 2000 protocol) immediately prior to a project's initiation. Therefore, the DFG recommends that Mitigation Measure 5.4-5(a) be revised to describe that the above methodology will be used for performing Swainson's hawk surveys.

Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley," which requires that surveys should be completed for at least the two survey periods (defined within the May 30, 2000 protocol) immediately prior to a project's initiation. Therefore, the DFG recommends that Mitigation Measure 5.4-5(a) be revised to describe that the above methodology will be used for performing Swainson's hawk surveys.

Mitigation Measure 5.4-5(b)(4) states that "if demolition/construction activities are unavoidable and are allowed by CDFG within the buffer zone, the project applicant or developer(s) shall retain a qualified biologist to monitor the nest to determine if abandonment occurs. If the nest is abandoned and the nestlings are still alive, the project proponent shall retain the services of a qualified biologist to reintroduce the nestling(s) (recovery and hacking). Prior to implementing, any hacking plan shall be reviewed and approved by the Environmental Services Division and Wildlife Management Division of the CDFG. The CDFG may allow reduction of the recommended buffers, if a qualified biologist is retained for on-site nest observations. The act of capturing nestlings for recovery and reintroduction could be considered "take"

October 28, 2008

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Delta Shores (P06-197)

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The DFG recommends as a means to reduce impacts to below a significant level, 1) that the City include in a mitigation and monitoring program, that an endowment account (based on a Property Analysis Record [PAR] type analysis) shall be established and approved by the DFG to maintain and monitor burrowing owl nesting and foraging habitat mitigation lands, and 2) that Mitigation Measure 5.4-6(b) be revised to include that prior to issuance of grading permits, the project applicant shall preserve an appropriate amount and type (as outlined in the California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines) of burrowing owl mitigation. 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.

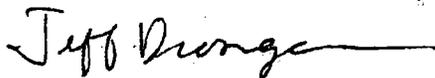
This project may have an impact to fish and/or wildlife habitat. Assessment of fees under Public Resources Code Section 21089 and as defined by Fish and Game

Code Section 711.4 may be necessary. Fees are payable by the project applicant upon filing of the Notice of Determination by the lead agency.

Pursuant to Public Resources Code Sections 21092 and 21092.2, the DFG requests written notification of proposed actions and pending decisions regarding this project. Written notifications should be directed to this office.

Thank you for the opportunity to review this project. If the DFG can be of further assistance, please contact Mr. Todd Gardner, Staff Environmental Scientist, at (209) 745-1968, or Jeff Drongesen at (916) 358-2919.

Sincerely,



*for* Kent Smith  
Habitat Conservation Program Manager

cc: Ms. Jana Milliken  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Room W2605  
Sacramento, CA 95825-1888

Mr. Jeff Drongesen  
Mr. Todd Gardner  
Department of Fish and Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670



**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

December 18, 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 December 2008 Delta Shores Final Environmental Impact Report (FEIR). 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.

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).

The DFG previously submitted to the City of Sacramento (City) three letters and one electronic mail stating our concerns with the proposed project, including: a letter to the City in response to the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the proposed project; a February 2008 letter to the City in response to the City's request for the DFG's review of a draft Mitigation Plan including guidance to the City for establishment of adequate Swainson's hawk (SWH; *Buteo swainsoni*) mitigation lands; a September 2008 electronic mail to the City in response to the City's request to review an updated mitigation proposal for SWH foraging habitat and a letter to the City in response to our review of the City's DEIR for the proposed project.

October 28, 2008

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January 13, 2009

### Literature Cited

Mayer, K.E. and W.F. Laudenslayer, Jr., eds. 1988. A guide to wildlife habitats of California. California Department of Fish and Game, Sacramento, California

Babcock, K.W. 1993. Home range and habitat analysis of Swainson's hawks in West Sacramento. Michael Brandman Associates report prepared for the Southport Property Owner's Group, City of West Sacramento, CA 21 pp.

Estep, J.A. 1989. Biology, movements, and habitat relationships of the Swainson's hawk in the Central Valley of California, 1986-87. Calif. Dept. of Fish and Game, Nongame Bird and Mammal Section Report, 53pp

Woodbridge, B. 1985. Biology and management of Swainson's hawk in the Butte Valley, California. U.S. Forest Service Report, 19pp.

Ms. Amrhein  
December 18, 2008  
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The DFG and the City have participated in discussions regarding the potential impacts of the proposed project on the SWH. We have on several occasions expressed our concerns about the project's potential individual and cumulative impacts on the above species foraging habitat. We have also asserted our biological opinion that adequate foraging habitat must be positioned in close proximity to those nesting hawks which may be impacted by a loss of foraging resources.

The FEIR states that the proposed project may impact up to 765 acres of SWH foraging habitat. The FEIR's proposed mitigation strategy for impacts to SWH includes the preservation and management of 100 acres closest to or within five miles of the project site, and 800 acres at the Brannon Farms location. Based on our review of the FEIR, the DFG remains concerned that the FEIR does not provide adequate mitigation measures to minimize significant effects to SWH to below a significant level, particularly the mitigation lands at the Brannon Island Farms location are not in close proximity to those nesting SWH potentially impacted by the proposed project. Although permanent protection of compensatory mitigation lands at the Brannon Island Farms location (a distance of greater than 20 miles from the project site) may be less difficult for the City's project applicant than within the biologically credible distance identified in the DEIR (within 5 miles of the project site), this assertion can not be supported biologically as described in our previous letters regarding this subject.

In further support of establishing mitigation lands at the Brannon Island Farms location, the FEIR states that sufficient mitigation lands within five miles of the project site are in short supply. The cost of acquiring these lands is high, and the area within five miles of the project site contains features which are not generally considered foraging habitat. Because of this assertion and the concern for cumulative loss of SWH foraging habitat within the limits of the City, the DFG recently analyzed some locations that could meet biologically firm criteria within a five mile radius of the project site. DFG has determined that a sufficient amount of potential mitigation lands occur within this distance as depicted on the attached map (see Figure 1). Mitigation lands designed to offset the impact to SWH foraging habitat should be biologically based. Providing these mitigation lands as close to the impacted nesting hawks as possible is necessary, as discussed on our previous letters to the City. If the City is ultimately unable to locate viable mitigation lands within the distance identified as necessary in the DEIR (within five miles), then mitigation lands should be identified within as close proximity to the proposed project site as possible. The FEIR does not and should provide a discussion of the properties available between the identified five mile distance and the distant Brannon Island Farms.

The DFG continues to recommend that an equal amount of high quality foraging habitat mitigation lands be identified and established as impacted, within as close proximity as

Ms. Amrhein  
December 18, 2008  
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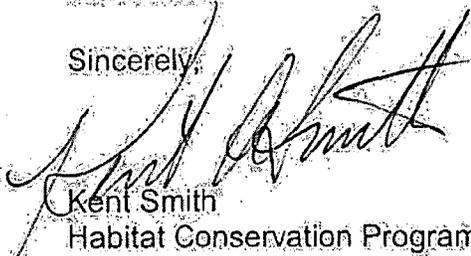
possible to the proposed project site, in order to reduce impacts to SWH to below a significant level. The identified Brannon Island Farms site does not meet this recommendation. We remain committed to working with the City to assist the City in identifying suitable mitigation lands, and are available to provide review and recommendations for any subsequently identified potential mitigation locations.

Pursuant to Public Resources Code Sections 21092 and 21092.2, the DFG requests written notification of proposed actions and pending decisions regarding this project. Written notifications should be directed to this office.

Thank you for the opportunity to review this project. If the DFG can be of further assistance, please contact Mr. Todd Gardner, Staff Environmental Scientist, at (209) 745-1968, or Jeff Drongesen at (916) 358-2919.

Attachment

Sincerely,



Kent Smith  
Habitat Conservation Program Manager

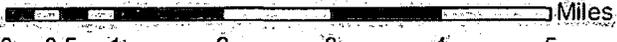
cc: Ms. Jana Milliken  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Room W2605  
Sacramento, CA 95825-1888

Mr. Jeff Drongesen  
Mr. Todd Gardner  
Department of Fish and Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

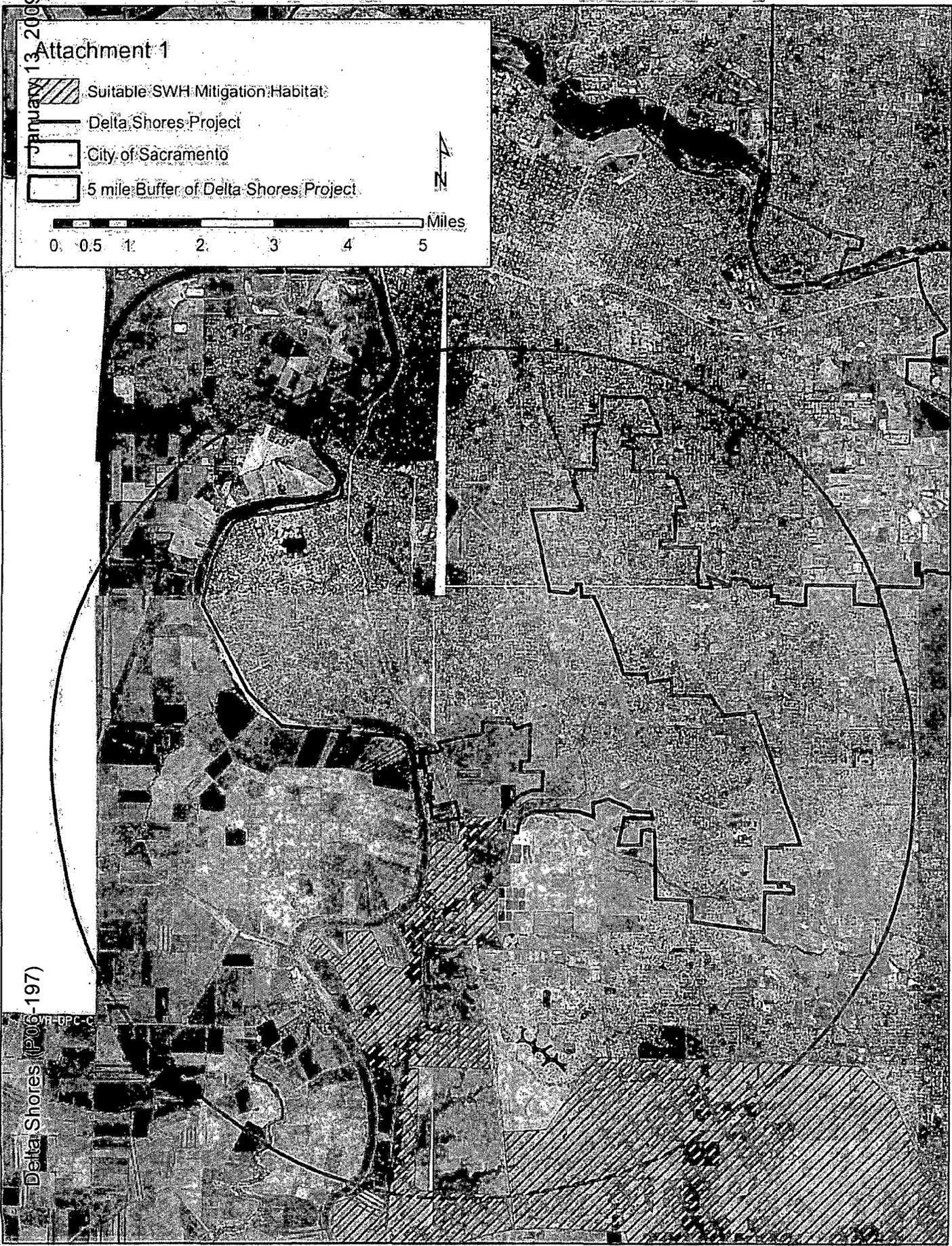
# Attachment 1

 Suitable SWH Mitigation Habitat  
 Delta Shores Project  
 City of Sacramento  
 5 mile Buffer of Delta Shores Project

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 Miles  
 0 0.5 1 2 3 4 5

Delta Shores (P06-197)  
VII-DPC-C



Delta Shores (P06-197)

January 13, 2009

**From:** Peggy Kennedy <krauskennedy1@comcast.net>  
**To:** <TBuford@cityofsacramento.org>  
**Date:** 12/23/2008 10:18 PM  
**Subject:** Swainson's Hawk Mitigation Program for Delta Shores Is Inadequate

Dear Tom Buford:

As you've doubtless heard from many others, the mitigation program for the impacts of Delta Shores on our Swainson's Hawk population is woefully inadequate. You know the reasons, some of which are as follows:

- the proposed mitigation land is farmland in the Delta twenty miles away from the 745 acres of Swainson's Hawk foraging habitat along the Sacramento River north of the town of Freeport that will be removed by the Delta Shores project

- the proposed mitigation land currently has few Swainson Hawk nests because most of Brannan Island is 17 feet below sea level and vulnerable to flooding with soils that are not appropriate for crops most valuable for Swainson Hawk foraging

- the distance of the proposed mitigation is too far from the 745 acres of the proposed Delta Shores project.

As you know, land adequate for Swainson Hawk foraging and nesting is available within Southern Sacramento County, south of Elk Grove and north of the Delta.

As you also know, California Department of Fish and Game has filed a letter detailing the problems with the mitigation proposal. They are the experts on wildlife and the City of Sacramento would do well to be guided by their knowledge.

For these reasons, I beg you to amend this mitigation program to provide genuine habitat protection for our Swainson's Hawks, a beautiful and endangered species that we are lucky to have a summer visitors.

Yours truly,

Peggy Kennedy

**Russell E. van Löben Sels  
P.O. Box 517  
Clarksburg, CA 95612**

December 26, 2008

Mayor Kevin Johnson and Sacramento City Council  
915 I Street  
Sacramento, CA 95814

Re: Comment on Final Environmental Impact Report for Delta Shores and Mitigation for  
Loss of Swainson's Hawk Foraging Habitat

Dear Mayor Johnson:

I farm property in Reclamation District 744 (R.D. 744) located two miles south of Freeport between the Stone Lakes Wildlife Refuge and the Sacramento River. R.D. 744 is close to a landscape of preserve areas, including Stone Lakes Wildlife Refuge and the Regional Sanitation Bufferlands, and serves multiple species.

R.D. 744 contains approximately 1,500 acres. There are about 400 acres of pear orchards and vineyards, and the remaining 1100 acres are devoted to grain crops, alfalfa, and tomatoes and provide excellent foraging habitat for the Swainson's Hawk. This foraging habitat lies in close proximity to the Delta Shores project.

More than a year ago, four farmers and representatives from the City of Sacramento, the California Department of Fish and Game, and a land conservancy met to explore R.D. 744 as a mitigation site for the Swainson's Hawk. The conclusions resulting from the meeting were as follows:

1. R.D. 744 is an excellent mitigation site because it is close to both southern Sacramento and Elk Grove.
2. Crops grown are compatible for Swainson's Hawk foraging. Nesting trees are available.
3. There are 600 to 800 acres of land available for easements.

Landowners in R.D. 744 remain very interested in selling easements to provide the following multiple benefits by preserving:

1. Open space directly south of Sacramento and at the north end of the Delta,
2. Foraging and nesting habitat for the Swainson's Hawk,
3. Farmland at the southern gate to Sacramento, and
4. Foraging habitat for multiple species from the Stone Lakes National Wildlife Area.

Because the Brannan Island mitigation site for loss of Swainson's Hawk habitat is more than 20 miles away from the negative impact created by the proposed Delta Shores project and because there are closer more suitable opportunities, I strongly urge you to reject the Brannan Island site. R.D. 744 is one of several much closer locations, which would adequately mitigate for Delta Shores' negative impact to the Swainson's Hawk.

Sincerely,

Russell E van LöbenSels  
Vice President  
Amistad Ranches  
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Clarksburg, CA 95612  
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cc: Antonio Ablog  
Tom Buford  
Ray Tretheway  
Sandy Sheedy  
Steve Cohn  
Robert Fong  
Lauren Hammond  
Kevin McCarty  
Robbie Waters  
Bonnie Pannell  
James Pachi

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December 30, 2008

Re: Delta Shores Project: Swainson's Hawk Mitigation Insufficient

Honorable Mayor, Council Members and Staff:

As a businessman in Sacramento for twenty years, a county resident for the same, a UC Davis Plant Science graduate (1978) and a Master Falconer licensed with the California Department of Fish and Game (CDF&G) for thirty-five years (35) years, I am in a position to knowledgably comment on the proposed Swainson's Hawk (SWH) mitigation for the Delta Shores Project.

It is CURRENTLY INSUFFICIENT AS PROPOSED.

There are several reasons, the most important of which is the fact that the mitigation property is too far away to maintain SWH in the area of proposed development. It is too far away from the project impacts. The CDF&G has said as much in its letter commenting on the draft EIR.

Rather there is/are other adequate lands available within ten (10) miles of the project site in the County of Sacramento, that if protected could provide preferable mitigation habitat lands.

Secondly, the Delta Shores mitigation program must require oversight by the CDF&G. The City of Sacramento does not have the experience, the staff, or the desire/commitment to adequately determine the location and conservation easement for the project.

MITIGATION FOR IMPACTS ON SWH OUTSIDE OF THE DELTA, WITH DELTA LAND IS NOT APPROPRIATE OR ADEQUATE MITIGATION.

That amounts to setting aside land for SWH where they do not exist and do not go. It does not help.

Project development alone is not what will make Sacramento a desirable place to come and live.

Yours truly,

*Kevin McRae*  
Kevin McRae

Delta Shores (P06-197)

January 13, 2009

**From:** David Coursey <david@coursey.com>  
**To:** <AAblog@cityofsacramento.org>  
**Date:** 12/29/2008 1:49 PM  
**Subject:** Swainson's Hawks

I am writing as a semi-regular birder with a special interest in Swainson's Hawks. I am concerned that Delta Shores mitigation project does not adequately meet the birds' needs and hope the City of Sacramento and other interested parties will make amendments to the plan.

If you are not a birder or outdoorsperson, who may not appreciate this brief story. But, as you may know, Swainson's Hawks are not solitary creatures, as are most hawks. Where you find one you will likely find a couple of dozen. My most memorable birding experience occurred at dusk in a preserve along the San Joaquin River in Lathrop. For some reason, a flock of about 100 Swainson's Hawks chose the grove of trees all around me as their roost for the night. I will never forget the sight of these magnificent birds landing in trees on all sides of me, calling loudly to one another. I have had other "close encounters" with Swainson's Hawks, but this is the one I'd tell my grandkids about.

The Swainson's Hawk, because of its remarkable migration, is a very special bird that can be endangered at both ends of its trip--here in the U.S. as well as in Central and South America. The birds are wonderfully adapted for long flight and, for a hawk, are remarkably graceful creatures. Few birds can stall in mid-air and get behind the crow that is "mobbing" them--Red-taileds can't--but I've often watch Swainson's turn the pursuer into the pursued.

These are great birds and they deserve whatever protection can be afforded them.

Sincerely,

David Coursey  
1528 Tamarisk Ln  
Tracy CA 95377  
209-835-9284



**Swainson's Hawk**  
**Technical Advisory Committee**

Rochelle Amrhein  
Environmental Planning Services  
City of Sacramento  
2101 Arena Boulevard  
Sacramento, CA 95834

December 29, 2008

Subject: Comments on December 2008 Delta Shores Final Environmental Impact Report

Dear Ms. Amrhein:

The Swainson's Hawk Technical Advisory Committee (TAC) has reviewed the December 2008 Final Environmental Impact Report (FEIR) for the Delta Shores project and is respectfully submitting the following comments related to proposed mitigation for impacts on the state-threatened Swainson's hawk. The TAC is an ad hoc group of research biologists formed in 1989 to facilitate research on the Swainson's hawk and to provide technical assistance to the California Department of Fish and Game and other state, federal, and local agencies regarding land use issues affecting this species.

The proposed project involves the development of a 782-acre master planned community east of the Sacramento River and south of Meadowview Road. The FEIR states that the project would impact a total of 765 acres of Swainson's hawk foraging habitat. The proposed mitigation includes the preservation and management of 100 acres closest to or within five miles of the project site and 800 acres on Brannon Island, approximately 20 miles southwest of the project site in the Central Delta.

Following the implementation of the proposed mitigation the project will still result in a substantial reduction of Swainson's hawk habitat in the Sacramento Region; however, the *amount* of mitigation proposed is consistent with other projects and thus the TAC will provide no further comment in this regard for this project. But as the California Department of Fish and Game (CDFG) has pointed out in four letters to the City regarding this project, the proposed mitigation *location* on Brannon Island does not represent a suitable area for Swainson's hawk mitigation and would not sufficiently offset impacts of the proposed project. In this regard, the TAC concurs entirely with the statements by CDFG in their four previous letters.

Briefly, the TAC has the following four primary concerns about the Brannon Island location.

- Protection of foraging habitat that is 20 miles from the location of the impact does not sufficiently address the impact on the affected nesting population. In the absence of a comprehensive regional approach to conservation and sustainability of nesting populations, the proposed location lacks a nexus between the project impact and the

proposed mitigation. In general, to meet this requirement for impacts on Swainson's hawk, the mitigation site should be in close proximity to the project area. For reference, the City of Elk Grove with assistance from CDFG has successfully identified and approved mitigation sites for development projects through an evaluation process that includes distance criteria. Through this process, the City of Elk Grove has successfully met the requirements of the California Environmental Quality Act (CEQA) with respect to the nexus issue, and has contributed to a biologically more effective approach to regional conservation.

- The Central Delta, including Brannon Island, supports substantially fewer number of nesting Swainson's hawks compared with the proposed project area. Thus, while the mitigation proposal includes protection of 800 acres on Brannon Island, the use of those protected lands by Swainson's hawks is likely to be substantially less than the proposed project area or surrounding open lands.
- Central Delta islands, including Brannon Island, do not typically provide high value Swainson's hawk foraging habitat. Soil and hydrologic conditions on most Central Delta islands are most suited to crops such as corn and asparagus that are not considered high value crop types for Swainson's hawk. A higher value agricultural landscape that includes alfalfa, other hay crops, or more suitable row and grain crops, is likely not sustainable on Brannon Island. Thus, while 800 acres may be protected, it would likely provide only low value habitat for Swainson's hawk.
- The Central Delta, including Brannon Island, is generally considered inappropriate for Swainson's hawk mitigation because of the potential for future inundation of Central Delta islands. With elevations already near or below sea level, the potential for continued subsidence, the potential for levee breaches, and the longer term effects of sea water intrusion from climate-related rising sea levels, establishing mitigation lands on Central Delta islands designed to provide habitat in perpetuity is considered an inappropriate investment for long-term conservation.

The TAC therefore requests that the proponents of the Delta Shores project investigate other mitigation opportunities in the vicinity of the project area that more effectively address the impacts of the project and contribute to sustainability of the local nesting population. We suggest that the City of Sacramento work directly with the CDFG to develop a more standardized and comprehensive approach to the selection and approval process for acquisition of mitigation lands and that mitigation for the proposed Delta Shores project be re-evaluated using this approach.

We hope our comments are useful in your decision making process. We also appreciate the opportunity to comment on this project and welcome the opportunity to provide further comment or technical support.

Sincerely,

James A. Estep  
Chair



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[swainsonshawk@sbcglobal.net](mailto:swainsonshawk@sbcglobal.net)

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December 29, 2008

Tom Buford  
Antonio Ablog  
City of Sacramento  
Development Services Department  
300 Richards Blvd, 3rd Floor  
Sacramento, CA 95811

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

Dear Mr. Buford and Mr. Ablog:

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 the proponent's proposal to mitigate for loss of 765 acres of Swainson's Hawk foraging habitat. We prepared a letter to the project proponent which was returned to us today. This letter describes in some detail (1) why this is a highly flawed proposal and (2) that feasible alternatives exist with much more effective mitigation results. We are asking the City to change the 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 proposed 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.

1. The 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 a suitable mitigation program.

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, City 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 nesting 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. The Delta Shores final EIR does not include sufficient detail and enforcement mechanisms and would be classified as "deferred mitigation." Without disclosure of the terms 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 the proposed inadequate mitigation program are serious and the FEIR fails to consider these. In particular, we see a major conflict between the program proposed in this EIR and the South County Habitat Conservation Plan and existing City of Elk Grove and County of Sacramento mitigation programs. The City's proposed mitigation program will undermine the more biologically sound programs in place and being established close by.

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 (DFG). 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. It is in the best interest the public that the Conservation Easement and endowment funds for monitoring and enforcement be held by a non-profit conservation organization which is competent to manage it, and DFG.

This letter complements our previous letter and testimony to the Planning Commission and incorporates by reference all comments made by the California Department of Fish and Game and the Swainson's Hawk Technical Advisory Committee, a group of expert scientists.

Sincerely,



Judith Lamare

President, Friends of the Swainson's Hawk

916-447-4956 fax: 916 244-050

c: Mayor and City Council

**Attachment 8 – Environmental Impact Report Resolution**

**RESOLUTION NO.**

Adopted by the Sacramento City Council

**CERTIFYING THE ENVIRONMENTAL IMPACT REPORT  
AND ADOPTING THE MITIGATION MONITORING PROGRAM FOR THE DELTA  
SHORES PROJECT (P06-197)**

**BACKGROUND**

- A. On December 11, 2008, the City Planning Commission conducted a public hearing, and forwarded to the City Council the Delta Shores project with no recommendation.
- B. On January 13, 2009, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200, and received and considered evidence concerning the Delta Shores project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds that the Environmental Impact Report for Delta Shores (herein EIR) which consists of the Draft EIR and the Final EIR (Response to Comments) (collectively the "EIR") has been completed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the Sacramento Local Environmental Procedures.

Section 2. The City Council certifies that the EIR was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, the State CEQA Guidelines and the Sacramento Local Environmental Procedures, and constitutes an adequate, accurate, objective and complete Final Environmental Impact Report in full compliance with the requirements of CEQA, the State CEQA Guidelines and the Sacramento Local Environmental Procedures.

Section 3. The City Council certifies that the EIR has been presented to it, that the City Council has reviewed the EIR and has considered the information contained in the EIR prior to acting on the proposed Project, and that the EIR reflects the City Council's independent judgment and analysis.

Section 4. Pursuant to CEQA Guidelines Sections 15091 and 15093, and in support of its approval of the Project, the City Council adopts the attached Findings of Fact and Statement of Overriding Considerations in support of approval of the Project as set forth in the attached Exhibit A of this Resolution.

Section 5. Pursuant to CEQA section 21081.6 and CEQA Guidelines section 15091, and in support of its approval of the Project, the City Council adopts the Mitigation Monitoring Program to require all reasonably feasible mitigation measures be implemented by means of Project conditions, agreements, or other measures, as set forth in the Mitigation Monitoring Program as set forth in Exhibit B of this Resolution.

Section 6. The City Council directs that, upon approval of the Project, the City's Environmental Planning Services shall file a notice of determination with the County Clerk of Sacramento County and, if the Project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to the provisions of CEQA section 21152.

Section 7. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Table of Contents:

- Exhibit A - CEQA Findings of Fact and Statement of Overriding Considerations for the Delta Shores project
- Exhibit B – Delta Shores Mitigation Monitoring Plan

**CEQA FINDINGS AND  
STATEMENT OF OVERRIDING CONSIDERATIONS  
FOR THE DELTA SHORES PROJECT**

**Project # P06-197**

**Description of the Project.**

The City Council (the "Council") of the City of Sacramento (the "City") hereby adopts and makes the following findings relating to a General Plan Amendment, an amendment to the Airport/Meadowview Community Plan, a Rezone, Delta Shores Planned Unit Development Guidelines and Schematic Plan Amendments, a Master Tentative Parcel Map, Tentative Subdivision Maps, a Development Agreement and an Inclusionary Housing Plan for the Delta Shores Project (the "Project"), located in south Sacramento adjacent to the southern boundary of the City limits. The Project Applicant/Owner is M&H Realty Partners VI, L.P., c/o Merlone Geier Management LLC, 3580 Carmel Mountain Road, Suite 260, San Diego, California 92130. These CEQA Findings have been prepared for the certification of a Final Environmental Impact Report (the "FEIR") prepared for the Council's approval of the Project pursuant to Resolution Number \_\_\_\_\_, dated \_\_\_\_\_ (the "Resolution"). The foregoing actions are collectively referred to herein as the "Project". These Findings are prepared pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code, Section 21000 *et seq.*). (See Public Resources Code, Section 21081)

The Project objective is the development and construction of a 782-acre master planned community. It is envisioned as a compact residential community of approximately 5,222 residences with two retail centers. The approximately 147 acres of retail centers will consist of an approximately 127 acre Regional Village Center with up to 1.3 million square feet of retail and commercial uses, and an approximately 19.9 acre neighborhood serving residential mixed-use retail area with up to 161,600 square feet of retail and incorporated office uses. Delta Shores will also include 384 acres divided into residential lots and approximately 118 acres of parks, trails, open space and wetland restoration areas.

The Project is designed to meet those objectives. In order to do so, the Project has the following entitlement components:

- General Plan Amendment *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.
- Airport/Meadowview Community Plan Amendment *from* High Tech Industrial, Commercial, Office, Residential 4-8 du/na, Residential 7-15 du/na, 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.
- Rezone *from* Manufacturing, Research, and Development PUD (MRD-PUD), Shopping Center PUD (SC-PUD), and Single Family PUD (R-1-PUD), 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-PID (A-OS-PUD).
- Development Agreement.
- Delta Shores Planned Unit Development Guidelines and Delta Shores Schematic Plan.
- Master Tentative Parcel Map to subdivide 43 parcels totaling 782 acres into 64 master parcels.
- Tentative Subdivision Map to subdivide 98.70 acres into 423 lots.
- Tentative Subdivision Map to subdivide 87.44 acres into 348 lots.
- Inclusionary Housing Plan.
- Bikeway Master Plan Amendment.
- Section 404 Wetlands Permit (U.S. Army Corps of Engineers).
- Water Discharge Requirement Permit and section 401 Certification or Waiver (Regional Water Quality Control Board).

The Project, as proposed for adoption, has undergone modification and revision during

the course of public hearings concerning its content. As modified, the Project provides for an intensity of land uses which are within the range of land uses described and analyzed in the Draft EIR, as well as in the FEIR. The FEIR is adequate and sufficient to analyze the Project's impacts and inform the Council of those significant impacts. This point was recognized in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 29 Cal.Rptr.2d 182, where an environmental impact report was upheld for a project which had an approved residential density different from the originally proposed project, but within the range of residential densities analyzed in the alternatives analysis of the project's environmental impact report.

### **Findings Required Under CEQA.**

#### **1. Procedural Findings.**

The City Council of the City of Sacramento finds as follows:

Based on the initial study conducted for the Delta Shores Project, SCH#2007042070, (hereinafter the "Project"), the City of Sacramento's Environmental Planning Services determined, based on substantial evidence, that the Project may have a significant effect on the environment and prepared an environmental impact report ("EIR") on the Project. The EIR was prepared, noticed, published, circulated, reviewed, and completed in full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) ("CEQA"), the CEQA Guidelines (14 California Code of Regulations Section 15000 *et seq.*), and the City of Sacramento environmental guidelines, as follows:

- a. A Notice of Preparation of the Draft EIR was filed with the Office of Planning and Research and each responsible and trustee agency and was circulated for public comments from April 12, 2007 through May 14, 2007.
- b. A Notice of Availability ("NOA") and copies of the Draft EIR were distributed to the Office of Planning And Research on September 9, 2008 and to those public agencies that have jurisdiction by law with respect to the Project, or which exercise authority over resources that may be affected by the Project, and to other interested parties and agencies as required by law. The comments of such persons and agencies were sought.
- c. An official 45-day comment period for the Draft EIR was established by the Office of Planning and Research. The public comment period began on September 9, 2008 and ended on October 23, 2008.

- d. The Notice of Availability ("NOA") of the Draft EIR was mailed to all interested groups, organizations, and individuals who had previously requested notice in writing on September 9, 2008. The NOA stated that the City of Sacramento had completed the Draft EIR and that copies were available at the City of Sacramento, Development services Department, 300 Richards Boulevard, Third Floor, Sacramento, California 95811, and from the City's website at: <http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>. The NOA also indicated that the official 45-day public review period for the draft EIR would end on October 23, 2008.
- e. A public notice of availability was published in the Daily Recorder on September 9, 2008, which stated that the Draft EIR was available for public review and comment.
- f. A public notice of availability was posted in the office of the Sacramento County Clerk on September 9, 2008.
- g. Following closure of the public comment period, all comments received on the Draft EIR during the comment period, the City's written responses to the significant environmental points raised in those comments, and additional information added by the City were added to the Draft EIR to produce the Final EIR and the errata thereto.

## 2. Record of Proceedings.

The following information is incorporated by reference and made part of the record supporting these findings:

- a. The City of Sacramento General Plan. (January 1988)
- b. The City of Sacramento General Plan Update (2001)
- c. Environmental Impact Report for the City of Sacramento General Plan Update, City of Sacramento, March 1987 and all updates (SCH # 2007072024).
- d. Findings of Fact and Statement of Overriding Considerations for the adoption of the Sacramento General Plan Update, City of Sacramento, 1988 and all updates.

- e. Blueprint Preferred Scenario for 2050, Sacramento Area Council of Governments, December 2004.
- f. Airport/Meadowview Community Plan.
- g. All Notices of Preparation and other public notices issued by the City in conjunction with the Project.
- h. The City of Sacramento Noise Ordinance (December 2003).
- i. The City of Sacramento Zoning Ordinance, Ordinance No. 2550, Fourth Series (Revised January 1, 1997) and all subsequent amendments.
- j. The Draft EIR prepared for the Project and all appendices thereto (SCH #2007042070).
- k. The Final EIR prepared for the Project and all errata and appendices thereto (SCH #2007042070).
- l. The Delta Shores Project's application materials, including application information, PUD Schematic Plan, PUD Guidelines and Tentative Map.
- m. All staff reports, memoranda, maps, letters, exhibits, minutes of meetings, referrals, and other planning documents prepared approved, reviewed, or relied upon by any City commissions, boards, officials, consultants, or staff relating to the Project.
- n. All testimony, documents, and other evidence presented by landowners and members of the public and their representatives within the Project Area;
- o. All testimony and documents submitted to the City by public agencies and members of the public in connection with the Project;
- p. Minutes and verbatim transcripts of all workshops, information sessions, public meetings, and public hearings held by the City in connection with the Project;
- q. Any documentary or other evidence submitted to the City at such workshops, information sessions, public meetings and public hearings.

- r. Matters of common knowledge to the Council, including, but not limited to, the following:
  - (1) Sacramento Metropolitan Air Quality Management District's *Guide to Air Quality Assessment in Sacramento County*, July 2004.
  - (2) Other formally adopted City policies and ordinances; and
- s. The Mitigation Monitoring Program for the Project.
- t. Draft and Final Environmental Impact Statement/Environmental Impact Report for the Interstate-5/Cosumnes River Boulevard Extension, Sacramento County, California (State Clearinghouse # 2007022072)

3. **Definitions.** A number of terms used in these Findings are defined as follows:

"CARB" means the California Air Resources Board.

"CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*).

"City" means the City of Sacramento.

"Council" means the City Council of the City of Sacramento.

"County" means the County of Sacramento.

"DEIR" or "Draft EIR" means the Draft EIR for the Project (September 2008).

"EIR" means environmental impact report, consisting of both the DEIR and FEIR.

"FEIR" or "Final EIR" means the Final EIR for the Project (December 2008), Errata No. 1, December 10, 2008 and Errata No. 2, December 17, 2008.

"GHG" means greenhouse gases.

"LOS" means level of service.

"NOP" means notice of preparation.

"NOx" means oxides of nitrogen.

"Plan" means the Airport/Meadowview Community Plan.

"PM<sub>10</sub>" means fine particulate matter (solid particles less than ten microns in diameter).

"Project" means the Delta Shores Project, as well as the necessary land use entitlements, as granted by the Council.

"Project area" and "Project site" mean that land area encompassed within the Project.

"Record" means the Record of Proceedings hereinafter described in Section IV hereof.

"SMAQMD" means the Sacramento Metropolitan Air Quality Management District.

"SMUD" means Sacramento Municipal Utility District.

"VMT" means vehicle miles traveled.

#### 4. **Findings.**

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Mitigation measures or alternatives are not required, however, where such changes are infeasible or where the responsibility for the project lies with some other agency. (CEQA Guidelines, Section 15091, sub. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, Sections 15093, 15043, sub.(b); see also Public Resources Code Section 21081, sub.(b).)

In seeking to effectuate the substantive policy of CEQA to substantially lessen or avoid significant environmental effects to the extent feasible, an agency, in adopting findings, need not necessarily address the feasibility of *both* mitigation measures and environmentally superior alternatives when contemplating approval of a proposed project with significant impacts. Where a significant impact can be mitigated to an

"acceptable" level solely by the adoption of feasible mitigation measures, the agency, in drafting its findings, has no obligation to consider the feasibility of any environmentally superior alternative that could also substantially lessen or avoid that same impact - even if the alternative would render the impact less severe than would the proposed project as mitigated. (*Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California ("Laurel Heights I")* (1998) 47 Cal.3d 376, 400-403.)

In these Findings, the City first addresses the extent to which each significant environmental effect can be substantially lessened or avoided through the adoption of feasible mitigation measures. Only after determining that even with the adoption of all feasible mitigation measures an effect is significant and unavoidable does the City address the extent to which alternatives described in the EIR are (i) environmentally superior with respect to that effect, and (ii) "feasible" within the meaning of CEQA.

In cases in which a project's significant effects cannot be mitigated or avoided, an agency, after adopting proposed findings, may nevertheless approve the project if it first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the "benefits of the project outweigh the significant effects on the environment." (Public Resources Code, Section 21081, sub.(b); see also, CEQA Guidelines, Sections 15093, 15043, sub.(b).) In the Statement of Overriding Considerations found at the conclusion of these Findings, the City identifies the specific economic, social, and other considerations that, in its judgment, outweigh the significant environmental effects that the Project will cause.

The California Supreme Court has stated that "[t]he wisdom of approving ... any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefor balanced." (*Goleta II* (1990) 52 Cal.3d 553 at 576.)

In support of its approval of the Project, the City Council makes the following findings for each of the significant environmental effects and alternatives of the Project identified in the EIR pursuant to Section 21080 of the Public Resources Code and Section 15091 of the CEQA Guidelines:

**A. FINDINGS REGARDING POTENTIAL ENVIRONMENTAL IMPACTS  
DETERMINED NOT TO BE SIGNIFICANT**

These Findings do not address impacts that are considered to be less-than-significant prior to mitigation. These findings therefore do not address the following resource areas

because the Council, based upon the FEIR and the entire Record before the Council, finds that no significant impacts occur with respect to them:

- a) **Aesthetics and Visual Resources: 5.1-1.** Development of the proposed project would not have a significantly demonstrable negative aesthetic effect that would substantially degrade the existing visual character or quality of the project site and its surroundings.
- b) **Aesthetics and Visual Resources: 5.1-2.** The proposed project would not create significant new sources of light and glare that could adversely affect on-site and adjacent uses.
- c) **Aesthetics and Visual Resources: 5.1-3.** The proposed project would not significantly adversely affect a scenic vista or adopted view corridor.
- d) **Aesthetics and Visual Resources: 5.1-4.** The proposed project, in combination with other development in the City of Sacramento, would not result in a significant demonstrable negative aesthetic effect.
- e) **Aesthetics and Visual Resources: 5.1-5.** The proposed project, in combination with cumulative development surrounding the project site, could would not create significant new sources of light and glare.
- f) Omitted.
- g) **Agricultural Resources: 5.2-3.** The proposed project, in conjunction with future development in the city and county, would not significantly affect agricultural resources or operations (e.g., impacts to soils or farmlands, or impacts from incompatible uses).
- h) **Air Quality: 5.3-4.** The proposed project would not significantly increase traffic volumes that, in turn, would contribute to CO concentrations near roadways and intersections.
- i) **Air Quality: 5.3-5.** Implementation of the proposed project would not result in a substantial increase in the exposure of sensitive receptors to toxic air contaminants.
- j) **Air Quality: 5.3-6.** The proposed project would not generate significant objectionable odors or significantly expose on-site sensitive uses to odors from existing odor sources.

- k) **Air Quality: 5.3-10.** The proposed project, in conjunction with other future development in the project vicinity, would not significantly contribute to CO levels.
- l) **Air Quality: 5.3-11.** The proposed project would not significantly contribute to cumulative increases in TAC's within the air basin.
- m) **Biological Resources: 5.4-10.** Development of the proposed project would not result in the significant loss of individual giant garter snakes and their upland habitat.
- n) **Biological Resources: 5.4-13.** The proposed project, in combination with other construction in the City and region, would not result in the significant regional loss and/or disturbance of protected nesting avian species, including Swainson's hawks and other protected raptors.
- o) **Hydrology and Water Quality: 5.5-1.** Construction and operation of the proposed project would not result in the significant degradation of water quality in local and regional receiving waters.
- p) **Hydrology and Water Quality: 5.5-2.** Implementation of the proposed project would not result in a significant increase in the rate and amount of stormwater runoff that could exceed the capacity of the existing stormwater collection infrastructure.
- q) **Hydrology and Water Quality: 5.5-3.** Implementation of the proposed project would not expose people or property to significant risk of flooding from failure of a levee.
- r) **Hydrology and Water Quality: 5.5-4.** Implementation of the proposed project would not deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or lowering of the local groundwater table level.
- s) **Hydrology and Water Quality: 5.5-5.** Implementation of the proposed project, in combination with other development within the City, would not result in a significant increase in the rate and amount of surface and/or stormwater runoff discharged to the City's drainage system that would result in localized flooding.
- t) **Hydrology and Water Quality: 5.5-6.** The proposed project, in combination with other development in the City, would not result in a significantly increased discharge of stormwater runoff containing urban

pollutants to local waterways that would adversely affect surface water quality in the lower Sacramento River watershed.

u) **Hydrology and Water Quality:** 5.5-7. The proposed project, in addition to development in the City, would not expose people or property to a significant risk of flooding from failure of a levee.

v) **Noise:** 5.6-2. Ground-borne vibration from construction activity would not cause significant structural damage to nearby buildings.

w) **Noise:** 5.6-6. Traffic generated by the proposed project, in conjunction with traffic from planned future development in other surrounding areas of the City and County, would not permanently expose sensitive receptors to significantly increased cumulative noise levels from local roadways.

x) **Noise:** 5.6-7. Traffic generated by the proposed project, in conjunction with traffic from planned future development in other surrounding areas of the City and County, would not permanently expose sensitive receptors to significantly increased cumulative noise levels from Interstate 5.

y) **Public Services:** 5.7-3. The proposed project would result in the construction of new, or expansion of existing fire facilities, but would not result in significant adverse environmental impacts.

z) **Public Services:** 5.7-4. The proposed project, in combination with other development in the southern portion of the City, would result in the construction of new, or expansion of existing, fire facilities, but would not result in adverse environmental impacts.

aa) **Public Facilities:** 5.7-5. The proposed project could result in the construction of new, or expansion of existing, school facilities, but would not result in adverse environmental impacts.

bb) **Public Facilities:** 5.7-6. The proposed project could contribute to the cumulative need for the construction of new or expansion of existing school facilities within the SCUSD service area. The construction or expansion of these facilities would not result in adverse environmental impacts.

cc) **Public Facilities:** 5.7-7. The proposed project would increase the demand for parks at the project site and in the project vicinity, which could

result in the need for additional parks and park facilities, but the construction of which would not result in adverse environmental consequences.

dd) **Public Facilities:** 5.7-8. The proposed project, in combination with other development projects in the Airport/Meadowview Planning Area, would increase the demand for parks, which could result in the need for additional parks and park facilities, but the construction of which would not result in adverse environmental impacts.

ee) **Public Facilities:** 5.7-9. The proposed project could result in the construction of new or expansion of existing solid waste facilities, but it would not result in adverse environmental impacts.

ff) **Public Facilities:** 5.7-10. Solid waste generated by the project, in combination with other development in the City, would not exceed landfill capacity.

gg) **Public Utilities:** 5.8-1. The proposed project would increase wastewater flows, but would not exceed treatment capacity at the SRWTP and/or wastewater collection infrastructure.

hh) **Public Utilities:** 5.8-2. The proposed project, in combination with other development in the SRWTP service area, could increase wastewater flows; but would not exceed treatment capacity at the SRWTP and/or wastewater collection infrastructure.

ii) **Public Utilities:** 5.8-3. The proposed project's demand for potable water would not exceed available sources of water supply.

jj) **Public Utilities:** 5.8-4. The proposed project could require the construction of new water supply treatment and/or distribution utilities or the expansion of existing treated water and water distribution systems.

kk) **Public Utilities:** 5.8-5. The proposed project could contribute to cumulative increases in water demand throughout the City.

ll) **Public Utilities:** 5.8-6. The proposed project would contribute to cumulative increases in the need for water supply treatment and/or distribution facilities.

mm) **Public Utilities:** 5.8-7. The proposed project would increase the demand for electricity that could require the construction of new electrical

production or transmission facilities.

nn) **Public Utilities:** 5.8-8. The proposed project would increase the demand for natural gas that could require the construction of new gas production or transmission facilities.

oo) **Public Utilities:** 5.8-9. The proposed project, in combination with other development in the City of Sacramento, could exceed the electrical or natural gas supply and transmission capabilities.

pp) **Transportation and Circulation:** 5.9-11. Under Baseline Plus Project conditions, the project would not adversely affect existing bicycle or pedestrian facilities.

qq) **Transportation and Circulation:** 5.9-25. Under Cumulative Plus Project conditions, the project would not adversely affect existing bicycle or pedestrian facilities resulting in a less-than-significant cumulative impact.

## **B. LESS THAN SIGNIFICANT IMPACTS FOR WHICH MITIGATION IS RECOMMENDED**

The following less than significant environmental impacts of the Project, including cumulative impacts, are being further mitigated and are set out below. Pursuant to section 21081(a)(1) of CEQA and section 15091(a)(1) of the CEQA Guidelines, as to each such impact, the City Council, based on the evidence in the record before it, finds that changes or alterations incorporated into the Project by means of conditions or otherwise, mitigate, avoid or substantially lessen these less than significant environmental impacts of the Project. The basis for the finding for each identified impact is set forth below.

### Agricultural Resources

**Impact 5.2-1:** Development of the proposed project would not have a significant adverse effect on agricultural resources or operations (e.g., impacts to soils or farmlands, or impacts from incompatible uses).

Mitigation Measure (from MMP): The following mitigation measure(s) has been voluntarily adopted by the project applicant to address this impact:

*MM 5.2-1: The Development Agreement shall include a special condition requiring the preservation of farmland at a 1:1 mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island*

*Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.*

**Finding:** Impacts of the project on agricultural resources would result in the loss of 782 acres of farmland. By requiring the preservation of a total of 782 acres of farmland in Sacramento County, it will be assured that the impacts will remain less than significant. For these reasons, the impact remains *less than significant*.

### Biological Resources

**Impact 5.4-10:** Development of the proposed project would not result in the loss of individual giant garter snakes and their upland habitat.

**Mitigation Measure (from MMP):** The following mitigation measure(s) has been adopted to address this impact:

*MM 5.4-10: The project applicant shall consult with the USFWS to address potential impacts on giant garter snake (GGS). Due to the minimal area of potential impact, it is likely that the proposed project could be covered under the Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. For construction activities within the vicinity of Morrison Creek or the ditch north of the project site, the following avoidance measures shall be implemented consistent with the USFWS-Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat:*

- *Confine movement of heavy equipment to existing roadways to minimize habitat disturbance.*
- *Construction shall be restricted to the active season for GGS (mid-March through early October), or as determined in consultation with the USFWS.*
- *Construction personnel shall receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).*

- *24-hours prior to construction activities, the project area shall be surveyed for giant garter snakes. Survey of the project area should be repeated if a lapse in construction activity of two weeks or greater has occurred. If a giant garter snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the giant garter snake will not be harmed. Any sightings or incidental take will be reported to the Service immediately.*

**Finding:** No occupied giant garter snake habitat was found to be present on the project site. Any potential impacts to the giant garter snake would be avoided by the above mitigation measure, by assuring that any potential impacts remain *less than significant* by requiring compliance with the USFWS Standard Avoidance and Minimization Measures.

### Noise

**Impact 5.6-7:** Traffic generated by the proposed project, in conjunction with traffic from planned future development in other surrounding areas of the City and County, could permanently expose sensitive receptors to increased cumulative noise levels from Interstate 5.

**Mitigation Measure (from MMP):** The following mitigation measure(s) has been adopted to address this impact:

#### *5.6-7 Implement Mitigation Measure 5.6-4:*

*The project applicant shall have a certified acoustical professional prepare a site-specific analysis for all residential uses fronting both sides of I-5 that details how exterior noise levels would achieve exterior noise levels less than 65 dB Ldn and interior noise levels less than 45 dB Ldn. The results of the analysis shall be submitted to the City of Sacramento for review and approval and appropriate recommended noise reduction measures/design features shall be incorporated into project design. Noise reduction measures/design features may include, but are not limited to the following:*

- Prior to final design review, all low-density and medium-density residences west of I-5 and medium-density residential residences east of I-5 (in the 8.62-acre parcel adjacent to I-5) would be designed and constructed to Title 24 standards which specify that interior noise levels attributable to exterior sources shall not exceed 45 dBA Ldn in any habitable room of new dwellings.*