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January 25, 2010

Galt Planning Dept.
495 Industrial Dr.,
Galt, CA 95632
Attention: Chris Erias
Fax 209-744-1642 Email: planning@ci.galt.ca.

Comments of Friends of the Swainson's Hawk regarding the Walmart DEIR

Dear Mr. Erias and Galt Planning Department,

Friends of the Swainson's Hawk (FOSH) is a non-profit charitable organization concerned with the conservation of wildlife, and particularly raptors, in California. We have reviewed your DEIR for the Walmart project. The proposed project consists of a new Walmart store at the southeast corner of Twin Cities Road and Fermoy Way in the City of Galt, California. The proposed project would consist of approximately 133,279 square feet of retail commercial located on approximately 11.26 acres. Please review our comments and notify us of the FEIR and future public hearings on the project.

Our comments are limited to impacts on Swainson's Hawk, and mitigation measures for impacts of the project upon the Swainson's Hawk.

Analysis of Impacts of the Project on Swainson's Hawks

We noticed that DEIR addressed biological issues in a section titled "environmental issues not addressed further in this EIR". Apparently, the DEIR author considered it sufficient to concede that there are significant impacts, without providing information about the presence of species or the likely impacts. This clearly falls short of CEQA's requirement that an EIR fully disclose all impacts on the environment, and is especially inappropriate given the special status of Swainson's Hawks and its prevalence in the Sacramento south county area.

The DEIR fails to identify nesting habitat at the project site, and known nesting sites in very close proximity to the site. Had the DEIR author contacted Fish and Game for specific information on the site and surrounding area, it would have found ample evidence of Swainson's Hawk presence and could have been more specific about the significant impacts on Swainson's Hawk from development of this property.

A two year study of south county Swainson's Hawk nesting and foraging habitat by Jim Estep,

published in 2007 by City of Elk Grove, contains a map of documented SWHA nest sites in the area (attached). It shows one nest site apparently on the project site (alongside Twin Cities road), 4 additional SWH nests within one mile of the project site, and 9 additional nest SWH nest sites 1 to 2 miles from the project site. This is an unusual concentration of SWH nests within a relatively small area. Swainson's Hawks have high nest site fidelity and are known to habitually nest in the same area if not in the same nest tree in successive years.

Swainson's Hawk reproductive success is in part due to the presence of suitable nesting habitat near suitable foraging habitat. The presence of nesting sites in close proximity to the project site indicates very favorable conditions for Swainson's Hawk reproduction, and high likelihood of frequent use of the project site for foraging by Swainson's Hawks. Loss of the trees and foraging habitat at this site will have a significant impact on Swainson's Hawks reproducing there. Other suitable nesting and foraging sites are occupied and future year reproduction will likely be diminished by development of this site. There is no assurance that the nesting pairs displaced by this development will nest elsewhere. The loss of prey value to other nesting sites because of development of this site also could diminish reproductive performance in the vicinity.

Mitigation of Impacts

MM 5.0-3 is inadequate and is a clear violation of CEQA. It defers formulation of mitigation measures for loss of SWH habitat until a later time, which is improper deferral of mitigation and violation of CEQA. Courts have voided a number of EIR's for improper deferral of formulation of mitigation measures. The DEIR proposes no mitigation for loss of nesting habitat, including the loss of the nest tree which is apparently on the project site (discussed *supra*). Moreover, MM 5.0-3 gives the developer the discretion to determine what that mitigation will be, without the need for approval by the City. A finding that this undetermined mitigation proposal would mitigate impacts to less than significant is not supported by substantial evidence, and also violates CEQA by failing to disclose the mitigation measure. It is impossible to determine adequacy of mitigation or whether it will mitigate to less than significant due to lack of information about the acreage of mitigation, the location of the mitigation site, whether it would be held in fee title or conservation easement, who will manage it, conditions of management for SWH foraging, and terms of the conservation easement.

We expect that any mitigation program should be approved by California Fish and Game as satisfying their criteria for adequate mitigation for Swainson's Hawk impacts.

Recirculation of DEIR Is Required by CEQA

Revision and recirculation of the DEIR is required due to its (1) failure to disclose even basic information regarding the location of known Swainson's Hawk nests which may be affected by the project due to loss of foraging habitat and the loss of the on-site nest; and (2) failure to prescribe any ascertainable mitigation measures. Deferral of development of mitigation measures until later, and then only at developer discretion, is not an ascertainable mitigation measure. Any of these basic deficiencies would expose the EIR to legal challenge.

We reiterate that Friends of the Swainson's Hawk has reviewed only that portion of the DEIR pertaining to the Swainson's Hawk. We suggest that the City retain an independent consultant to peer-review the entire DEIR, because there may well be errors of equal magnitude in those sections of the DEIR pertaining to other issues which must be analyzed and mitigated for the EIR to comply with CEQA.

Given the magnitude of the errors pertaining to the EIR's analysis of impacts on the Swainson's Hawk and mitigation for impacts on the Swainson's Hawk, we respectfully suggest that it might be in the City's interest to retain a different consultant to prepare the Recirculated DEIR.

Thank you for the opportunity to comment.

Sincerely,



Jude Lamare, President, Friends of the Swainson's Hawk

