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February 25, 2010

Mr. Michael Yankovich  
County of Solano, Department of Resource Management  
675 Texas St., 5500  
Fairfield, Ca 94633

Re: Middle Green Valley Specific Plan, DEIR, SCH #2009062048, Solano County

Dear Mr. Yankovich:

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 are dedicated to seeing the California population of Swainson's Hawks flourish for all generations to come. Swainson's Hawks are listed as threatened under state law and afforded protections through California Endangered Species Act (CESA) and California Environmental Quality Act (CEQA).

Please include us in any notice of recirculation, the distribution of the FEIR, and any notice of public hearing on the EIR.

The majority of Swainson's hawks in California nest in Sacramento, San Joaquin, and Yolo Counties with Solano, Merced, Stanislaus, Sutter, Glenn, and Colusa Counties all important to the central range of the bird. Throughout their range in California they are found using alfalfa and other hay crops as well as many row crops that are also important foraging habitat at specific times of the year. Swainson's hawks are also found using grassland habitats, but in much lower densities than are supported by the active agricultural uses described here.

California Department of Fish and Game's most recent inventory of Swainson's hawks in California estimated that 95 percent nest in the Central Valley. The highest nesting densities were also found in this area. Sixty percent of the nesting pairs were found in the four-county region of San Joaquin, Sacramento, Yolo and Solano, which is why this is considered the core breeding area for Swainson's hawks in California. (Anderson, Richard et al. (2007) California Swainson's Hawk Inventory: 2005-2006 DFG Staff Report Final Report Contract P0485902. UC Davis Wildlife Health Center Department of Fish and Game Resource Assessment Program.)

The purpose of the MGV plan is to

“ establish a land use and circulation layout, and associated land use tools such as development clustering, a Transfer of Development Rights (TDR)/conservation easement program, and a land conservation trust, which are intended to limit the effects of residential development on the rural character of the valley, including the valley's viewsheds, wildlife habitat, wildlife movement corridors, and agricultural activities.”

The Plan's purpose is clearly consistent with the conservation of Swainson's Hawk. The Plan and EIR pertain to 1,905 acres of mostly agricultural lands with oak woodlands, and is an area which would be expected to support nesting and foraging Swainson's Hawks as well as other raptors. However, the EIR is notably lacking in the assessment of impacts on and description of mitigation measures for impacts on Swainson's Hawks. We do not agree with the conclusion that such impacts are mitigated to less than significant.

We have reviewed the Middle Green Valley Specific Plan draft EIR, and submit the following comments. Please accept our apology in advance should our comments show a lack of understanding of your plan and EIR. We're not very familiar with your planning process in Solano County and ask that you put us on your mailing list so we can become better educated.

We support and incorporate by reference any comments made by California Department of Fish and Game.

**1. Mitigation for Loss of Prime Agricultural Land.** The Swainson's Hawk population in California is highly interdependent with an agricultural economy. Nesting density is associated with a landscape of alfalfa and hay production, grazing using irrigated pasture, and row crops. The DEIR says there is no feasible mitigation for loss of prime agricultural land. We find the reasoning faulty and not supported by substantial evidence. In Yolo, San Joaquin and Sacramento Counties, local governments typically require projects removing agricultural land uses to do 1:1 mitigation, with permanent agricultural conservation easements, held by third party conservation organization in nearby agricultural areas within the county. The net result of this policy is to permanently conserve farmland and to avoid some of the negative cumulative impacts on agriculture of urban sprawl. Therefore we do not understand the DEIR statement that there is no feasible mitigation for loss of prime agricultural land. The highly acclaimed Solano County Land Trust would be an ideal third party to hold agricultural conservation easements to mitigate for loss of prime farmland due to this project. It currently hold over 19,000 acres for habitat and/or agricultural mitigation, in either fee title or agricultural or conservation easements, much of it dedicated as mitigation for development projects like Middle Green Valley. There is a plentiful supply of farmland in Solano County whose owners would be glad to sell a permanent agricultural easement, to be held by the Solano County Land Trust. The assertion that there is no feasible mitigation for loss of prime farmland has no basis in fact and, if carried into the certified EIR for this project, would make this EIR vulnerable to CEQA litigation.

**2. Implementation Guarantees.** The specific plan calls for approximately 1500 acres of the plan area to be permanently under conservation easement as open space but does not indicate how this policy will be implemented and financed.

"Approximately 1,490 acres (about 78 percent) of the plan area is designated as permanent open land, of which approximately 440 acres would be preserved as working agriculture. Approximately 23 percent of the planning area is designated for development, in a "neighborhood framework," each neighborhood having a designated informal pattern of rural roads, residential building types, and community buildings. "

What is the implementation guarantee for this aspect of the plan? Any board of supervisors could rezone the land "permanently designated open space" unless conservation easements were recorded. These easements could prove to be expensive; how would they be financed? Who would hold title to the permanent open space land and the conservation easement? What measures would prevent the grantor and holder of the conservation easement from subsequently rescinding the conservation easements? The draft conservation easements, or at minimum a statement of key provisions, needs to be included in the EIR so that the decision-maker and

public can form an opinion about what the easement will accomplish and how permanence is assured. Without the guarantees, the cumulative future impacts to the wildlife would be significantly greater than assessed in the EIR.

**3. Assessment of Impacts on Swainson's Hawks.** The DEIR relies on the NDDB, which is poorly kept database to identify nesting Swainson's Hawks. In the absence of a thorough document search and field survey, it is safe to assume that there are nesting Swainson's Hawks at this location since the habitat is consistent with nesting activity and Swainson's Hawks are known to nest in eastern Solano County. The DEIR should not assume that the closest nesting activity is 2 miles from the project area, and should instead provide assessment and mitigation with the assumption that there are several nesting territories active in the area.

**4. Mitigation for Impacts on Swainson's Hawk.** The language of the EIR is very non-specific regarding what measures will be required of each project to mitigate for impacts to the Swainson's Hawk. Reference to a "work in progress" HCP that has neither been adopted or approved by the wildlife agencies is legally faulty. Reliance on this non-existent HCP as a mitigation measure constitutes deferred mitigation which Courts have repeatedly ruled as unlawful under CEQA. At minimum the specific plan should have included the existing language of the current HCP draft - not just a vague reference to a future document. We have no idea from this EIR what mitigation will be required. In other parts of Swainson's Hawk range, there are specific Swainson's Hawk mitigation requirements in all EIRs and one of the options given is to use an HCP if an adopted HCP exists at the time a project is specifically approved. Reference to a future mitigation plan is called "deferred mitigation" and is not permitted under CEQA.

**5. Minimum 1:1 mitigation for foraging loss required.** At least 1:1 mitigation for Swainson's Hawk foraging loss is the minimum standard for loss of SWH foraging habitat in a number of local land use jurisdictions, Yolo, Sacramento County, City of Elk Grove, San Joaquin County, and others, and is the standard used by DFG. If Solano County envisions developing 440 acres (23 percent of 1905 acres), then there should be guaranteed 440 acres under conservation easement and managed for Swainson's Hawk foraging habitat (irrigated row crops, alfalfa or pasture).

**6. Mitigation for nesting habitat loss.** There also needs to be a requirement that any project level loss of nesting habitat be mitigated beyond the 1:1 foraging habitat mitigation.

**7. Details needed for mitigation requirements.** Mitigation should include identification of criteria for mitigation lands, and the terms and conditions of conservation easements acquired, including endowment for perpetual monitoring and management, and that these first be approved by California Department of Fish and Game as appropriate mitigation. No mitigation land should be located more than 5 miles from the project site. The easements or title should be held by qualified non profit conservation organization(s), with third party easement held by CDFG ( or in fee title). Ensure that all mitigation measures for the Swainson's Hawk are enforceable. Even with the best available choice of lands, without management and enforcement fees and designation of an entity to manage and 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 not be compliant with CEQA's requirement that mitigation measures be enforceable.

CDFG is the trustee agency capable of judging the suitability of mitigation lands and conservation easements. CDFG has been performing this role for other mitigation (such as City

of Elk Grove), and has been working with other nearby jurisdictions on making such determinations. Other jurisdictions do require CDFG approval. There are several important functions that CDFG performs in this regard, including:

- standardization of easement requirements;
- assurance that no incompatible “double counting” or multiple sales of the same easement are taking place;
- biologically qualified judgment on habitat suitability and contiguity with nesting sites;
- assurance that better alternative sites have not been rejected by the local jurisdiction or applicant unreasonably.

**7. Measures to Avoid and Reduce Take Inadequate.** Regarding the DEIR’s measures to avoid and minimize take, they are inadequate to protect the Swainson’s Hawk against nest disturbance and reproductive disruption as well as interference with fledging. We disagree with the DEIR statement that Mitigation Measures 6-8 through 6-10 reduce potential impacts to less than significant. Each project should be required to do multiple nesting site surveys between April 1 and June 30 to determine nesting activity within a half mile radius. If any nesting activity is underway, CDFG should be consulted and the site should be managed per CDFG direction.

We strongly disagree with the policy of removing Swainson’s Hawk nesting trees during the non breeding period because there is high nesting site loyalty, and the removal of nesting sites can result in loss of breeding. At minimum any nesting site removal should be fully mitigated through agreement with California Department of Fish and Game. Many Swainson’s Hawks have retained nesting sites after urbanization if suitable foraging habitat is close by and human disturbance is minimized. We recommend every effort be made to identify, monitor, buffer and maintain known nesting trees.

Thank you for this opportunity to comment.

Sincerely,



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

Cc: Ryan Ohal, USFWS  
Charles Armor, CDFG