



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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December 9, 2020

Governor's Office of Planning & Research

Dec 14 2020

Mr. Sean Trippi, Principal Planner
Napa County
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STATE CLEARINGHOUSE

Subject: Safe Harbor 3.0, Mitigated Negative Declaration, SCH No. 2020110227,
Napa County

Dear Mr. Trippi:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Safe Harbor 3.0 Project (Project) and is submitting the following comments on the MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act Permit, the Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to California's (State's) fish and wildlife trust resources.

ENVIRONMENTAL SETTING

The approximately 12.18-acre Project site is in south Napa County. The majority of the Project is located on 9.82 acres immediately west of Devlin Road and north of Fagan Creek, with a portion occurring on 2.36 acres immediately east of Devlin Road (and north of Fagan Creek). A portion of the parcel occurs immediately south of Fagan Creek, but all Project development will occur north of the creek. North of the Project site is a large warehouse building with approximately 380,000 square feet of floor area. The Project parcel is long, narrow, and relatively flat with slopes ranging from 0-5 percent and elevations ranging from 45-60 feet above mean sea level. Fagan Creek flows from east to west across the southern portion of the Project site and is a direct tributary to the Napa River. Dominant vegetation communities on the Project parcel consist of annual grassland interspersed with coyote brush (*Baccharis pilularis*), and mixed oak riparian woodland.

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PROJECT DESCRIPTION

The proposed Project will develop an 850,000 gallon per year wine production, bottling, and storage facility, which will include 1) the construction of an approximately 50,612 square-foot building with 8,796 square feet of outdoor covered work areas; 2) a 16,858 square-foot building with 5,975 square feet of covered work areas; 3) on-site parking for 100 vehicles; 4) an on-site process wastewater pre-treatment system, and 5) landscaping improvements. Additionally, the Project will construct two storm drain outfalls into Fagan Creek, which will require an LSA and finalization of a LSA Agreement with CDFW per Fish and Game Code section 1602(a)(1).

COMMENTS AND CONCERNS

Swainson's hawk (*Buteo swainsoni*)

The biggest threat to California's Swainson's hawk population continues to be habitat loss, especially the loss of suitable foraging habitat due to urban development and incompatible agriculture (CDFW 2016). In 2016, CDFW prepared a Five-Year Status Report (Status Report) for Swainson's hawk in California. In the Status Report, CDFW recommended to the Fish and Game Commission that Swainson's hawk retain their Threatened classification under CESA because of 1) on-going cumulative loss of foraging habitats throughout California, 2) significantly reduced abundance throughout much of the breeding range compared to historic estimates, and 3) an overall reduction in the species breeding range (in California). While Swainson's hawk densities are highest in California's Central Valley, particularly in Sacramento, Yolo, and San Joaquin County, current General Plans for these counties contain goals of converting large areas of natural and agricultural lands that contain suitable Swainson's hawk foraging habitat to urban uses. This will reduce Swainson's hawk foraging habitat in Central Valley counties, elevating the importance of that same habitat type within surrounding counties such as Napa.

The Napa Valley Business Park Environmental Impact Report (NVBP EIR), which covers proposed development projects within the NVBP area, such as the subject Project, includes the conversion of large areas of Swainson's hawk foraging habitat to urban/industrial uses. According to the NVBP EIR, prepared by Napa County, adopted on July 29, 1986 and amended October 22, 2013, the planning area encompasses approximately 2,945 acres of land, of which approximately 2,800 acres are planned to be developed (i.e. approximately 95% of all of the land in the Napa Valley Business Park area will be developed). Furthermore, the EIR states that in 1984 approximately 1,780 acres of agriculture and open space existed within the area, and planned development in the area will remove 1,744 acres, leaving only 36 acres of agriculture and open space land (i.e., development will result in a reduction in approximately 98%

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of all agriculture and open space land). According to the *Airport Area Master Environmental Assessment*, prepared for the NVBP EIR:

“The grassland and pasture areas found within the study area serve as an important raptor feeding area. Conversion of these areas from their present agricultural uses to urban development would significantly reduce their value to the various predatory bird species found in the area. Complete development of these areas would eliminate their value to all species while incremental development would slowly reduce their habitat values.”

Furthermore, it states:

“Small animals and birds that use the grassland habitat type would be displaced when development occurred. These species would experience a decline in their local populations proportional to the loss of habitat.”

Without mitigation, the Project as proposed will have a substantial adverse effect on a CESA-listed species for the reasons stated above, and therefore is a significant impact. To mitigate to a level of less-than-significant. CDFW strongly recommends Napa County require that the Project proponent preserve Swainson’s hawk foraging habitat at the following ratios in accordance with the *Staff Report Regarding Mitigation for Impacts to Swainson’s Hawks (Buteo swainsoni) in the Central Valley of California* (CDFG 1994):

- For projects within one-mile of an active nest tree (i.e., a nest tree that has been used at least once during the past 5 years), provide one-acre of land for each acre of development authorized (1:1 ratio).
- For projects within five miles of an active nest tree, but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree, but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

The closest known occurrence of nesting Swainson’s hawk to the Project site is 0.5-mile to the northeast. There are five other marked occurrences of nesting Swainson’s hawk north of the Project site, three within 1.25 miles of the Project site and two within 2 miles of the Project site. CDFW is also aware of three other active nests from Spring 2020 located within 2 miles of the Project site (i.e. along and immediately south of Suscol Creek), that have not been updated in the California Natural Diversity Database. The nest site located within a 0.5-mile of the Project site should be assumed to be active unless there exists survey data that indicates otherwise. Napa County should require the preservation of Swainson’s hawk foraging habitat, of equal or greater habitat value

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as determined by a qualified biologist, at a 1:1 mitigation to impacts acreage ratio, in perpetuity under the form of a conservation easement held by the Napa County Land Trust, or similar. As such, CDFW recommends that Mitigation Measure BIO-5 be revised as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

*If construction ~~will~~ **will** commence anytime during the nesting/breeding season of the Swainson's hawk, or other raptors (typically February 1 through September 30), a ~~preconstruction survey of the project vicinity for nesting birds and raptors shall be conducted. This survey shall be conducted by a qualified biologist (experienced with the nesting behavior of bird species of the region) within 14 days prior to the commencement of construction activities that would occur during the nesting/breeding season. The intent of the survey shall~~ **shall** should be to determine if active nests are present within or adjacent to the construction zone ~~and within approximately 250 feet (300 feet for raptors). The surveys shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. The surveys shall commence early in the Swainson's hawk nesting season (late March to early April) and surveys shall~~ **will** be conducted within a minimum ~~0.25-mile~~ **0.5-mile** radius of the Project area. The surveys shall be timed such that the last survey is concluded no more than ~~7 days~~ **two weeks** prior to initiation of construction. If ground disturbance activities are delayed following a survey, then an additional pre-construction survey ~~shall~~ **should** be conducted such that no more than ~~7 days~~ **two weeks** will have elapsed between the last survey and the commencement of ground disturbance activities. If **Swainson's hawk-occupied** active nests are found **within a 0.5-mile of the Project site, the Project proponent shall get a CESA Incidental Take Permit from CDFW prior to starting Project activities. Alternatively, Project activities shall be delayed until the nest is no longer occupied, as determined by a qualified biologist (i.e., the young are no longer dependent on the nest and can forage independently, or the nesting attempt failed due to natural causes).** ~~areas that could be directly or indirectly affected by the project, Surveys for nesting birds and Swainson's hawk shall be repeated each year project activities occur, in accordance with the above.~~*

To mitigate for the loss of foraging habitat, the Project proponent shall hire a qualified biologist to prepare a Mitigation Plan for CDFW review and approval, prior to the start of Project activities. The Mitigation Plan shall include the preservation of Swainson's hawk foraging habitat, of equal or greater habitat value than that which will be impacted by the Project, in perpetuity at 1:1 mitigation to impacts ratio.

~~no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. If any active Swainson's hawk nests are found during the survey, CDFW recommends a disturbance~~

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~~buffer of at least a 0.25 mile to avoid a "take" or adverse impacts to Swainson's hawk. No trees or vegetation shall be removed from the project site during the breeding period. The size of the buffer zones and types of construction activities restricted within them should be determined through consultation with the CDFW depending on the species, taking into account factors such as the following:~~

- ~~•Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;~~
- ~~•Distance and amount of vegetation or other screening between the construction site and the nest; and~~
- ~~•Sensitivity of individual nesting species and behaviors of the nesting birds.~~

~~The buffer zone around an active nest should be established in the field with orange construction fencing or another appropriate barrier and construction personnel should be instructed on the sensitivity of nest areas. The qualified biologist should serve as a construction monitor during those periods when construction activities would occur near active nest areas of special status bird species to ensure that no impacts on these nests occur.~~

~~Method of Mitigation Monitoring: The permittee shall **provide survey reports for the pre-construction nesting bird and raptor survey and all protocol Swainson's hawk surveys to Napa County and CDFW for review and written acceptance prior to the start of Project activities.** have a nesting bird survey completed prior to any construction activities scheduled to occur on the site from February 1 through September 30. The permittee survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site, construction activities **shall** will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting Swainson 's hawk, which may include preservation of potential foraging habitat.~~

Other Nesting Birds and Raptors

Mitigation Measure BIO-4 requires that a qualified biologist perform a pre-construction nesting bird and raptor survey within 14 days of the start of work. CDFW is concerned about a single survey being performed 14 days prior to the start of work because it increases the chances of nesting birds going undetected on the Project site within the two-week period after surveys are performed. CDFW recommends the following

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revisions to Mitigation Measure BIO-4 (added language in **bold italics**, deleted language in ~~strikethrough~~):

*If construction would commence anytime during the nesting/breeding season of any bird **or raptor** species listed in the Migratory Bird Treaty Act (MBTA), typically February 1 through August 31, a preconstruction survey of the project vicinity for nesting birds **and raptors** shall be conducted. This survey shall be conducted by a qualified biologist (experienced with the nesting behavior of bird species of the region) within ~~744~~ days prior to the commencement of construction activities that would occur during the nesting/breeding season. The intent of the survey will be to determine if active nests are present within or immediately adjacent to the construction zone. If ground disturbance activities are delayed **for 7 days or greater** following a survey, then an additional pre-construction survey shall be conducted **by a qualified biologist**. ~~such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities.~~ If active nests are found in areas that could be directly or indirectly affected by the project, a **qualified biologist shall determine appropriate no-disturbance buffer zone distances** ~~shall be created~~ around **all** active nests **in consultation with CDFW, prior to conducting project activities. CDFW may recommend that a qualified biologist monitor active nests daily during project activities to ensure the buffers are adequate and until the nest is no longer active or the young have fledged. If active nests appear to be disturbed by project activities at any time, project activities shall cease immediately and CDFW shall be consulted with prior to resuming project activities. In this event, project activities shall not resume without CDFW permission.** ~~during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them should be determined through consultation with the CDFW depending on the species, taking into account factors such as the following:~~*

- ~~• Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;~~
- ~~• Distance and amount of vegetation or other screening between the construction site and the nest; and~~
- ~~• Sensitivity of individual nesting species and behaviors of the nesting birds.~~

The **no-disturbance** buffer zones **shall be established around all active nests using** ~~around an active nest should be established in the field with orange~~ construction fencing or another appropriate barrier, **as determined by a qualified biologist**, and construction personnel ~~shall~~**should** be instructed on the sensitivity of nest areas. The qualified biologist ~~shall~~**should** serve as a construction monitor during those periods when construction activities would occur near active nest areas of **nestingspecial-status birds and raptors** species to ensure that no impacts on these nests occur.

Method of Mitigation Monitoring: The permittee shall have a nesting bird survey completed prior to any construction activities scheduled to occur on the site from February 1 through August 31. The survey results shall be provided to the Napa County

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Planning, Building and Environmental Services and CDFW for review and written acceptance prior to the start of project activities. In the event any special-status or other protected nesting birds are found to occur on-site, construction activities shall will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting birds protected under the MBTA.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CDFW appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at garrett.allen@wildlife.ca.gov; or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse

REFERENCES CITED

California Department of Fish and Wildlife (CDFW). 2016. *Status Review of Swainson's Hawk in California*. Wildlife Branch. Nongame Wildlife Program.

California Department of Fish and Game (now CDFW). 1994. *Status Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*. Wildlife Branch. Nongame Wildlife Program.