



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002

www.wildlife.ca.gov

GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

January 11, 2021

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STATE CLEARINGHOUSE

Mr. William He, Associate Planner

City of American Canyon

4381 Broadway Street, Suite 201

American Canyon, CA 94503

whe@cityofamericancanyon.org

Subject: SDG Commerce 217 Distribution Center Project, Mitigated Negative Declaration, SCH No. 2020120302, Napa County

Dear Mr. He:

The California Department of Fish and Wildlife (CDFW) reviewed the Mitigated Negative Declaration (MND) for the SDG Commerce 217 Distribution Center Project (Project) and is submitting the following comments on the MND to inform the City of American Canyon, 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) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, Native Plant Protection Act Permit, 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.

Project Description

The proposed Project will develop a 217,294 square-foot wine distribution center, associated parking areas, a detention/bioretenion pond, and will utilize a soil borrow area immediately north of the SDG Commerce 330 Distribution Center.

Project Location and Environmental Setting

The Project site is located at 1075 Commerce Court (previously Commerce Boulevard) in the City of American Canyon, Napa County, and is centered at approximately 38.187092 latitude, -122.273383 longitude. Access to the Project site is from State Route 29 via Green Island Road to Commerce Court. The Project will occur on a 10.39-acre parcel comprised of annual grassland habitat surrounded by blue gum eucalyptus (*Eucalyptus globulus*). The Project site also includes an approximately 46,700 cubic-yard soil borrow area within the parcel between the Project parcel and the southernmost

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parcel where the nearly completed wine distribution center (i.e., SDG Commerce 330 Distribution Center) occurs. North Slough, a tributary to the Napa River, occurs immediately west of the Project site and is separated from it by a dense stand of eucalyptus. Industrial buildings occur to the north. The recently completed Commerce Court road extension borders the eastern side of the Project.

Comments and Recommendations

Swainson's hawk (Buteo swainsoni)

Mitigation Measure BIO-2 would not reduce potential impact to Swainson's hawk, a State listed as threatened species, to less-than-significant. CDFW recommends that surveys be conducted within a 0.5-mile radius as stated in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (May 31, 2000) available on CDFW's webpage at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. CDFW recommends that Mitigation Measure BIO-2 be revised as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

If Project activities must occur during the Swainson's hawk nesting season (i.e., typically March 1 through September 15), a qualified biologist (i.e., a biologist with at least two years' experience conducting protocol-level surveys for Swainson's hawk with detections) shall conduct pPre-construction surveys for nesting Swainson's hawks within shall be conducted for a halfquarter-mile radius around all project activities for at least two survey periods immediately prior to a project's initiation. The surveys shall be conducted in accordance with CDFW's "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley" (CDFG 2000), which identifies different survey windows throughout the pre-nesting and nesting season (ranging from January 1 through July 30/post-fledging) that have different survey methodologies and requirements.

If Swainson's hawks are found to be nesting on the project site or within a ¼0.5-mile of the project site, the project proponent shall either, a) delay project activities until all Swainson's hawk nests within 0.5 miles of the Project site are no longer active, as determined by a qualified biologist, b) determine if the 0.5-mile buffer zone may be reduced in consultation with CDFW based on site specific conditions, or c) if take cannot be avoided, obtain a CESA Incidental Take Permit from CDFW prior to starting project activities. consultation with CDFW shall be conducted. The size of the nest protection buffer shall be determined during consultation with CDFW but at a minimum there will be a 300-foot non-disturbance buffer around the nest site.

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Western burrowing owl (*Athene cunicularia*)

Mitigation Measure BIO-1 in the MND would not reduce potential impacts to burrowing owl, a California Species of Special Concern, to less-than-significant because conducting a single survey within 14 days of the start of Project activities would be unlikely to detect burrowing owls. Burrowing owls may use the Project site and adjacent habitat for foraging, overwintering, and/or nesting habitat.

CDFW recommends that Mitigation Measure BIO-1 be revised as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

A qualified biologist shall conduct surveys in accordance with the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>).

Surveys shall encompass the project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. ~~preconstruction survey for burrowing owls shall be conducted 14 days prior or less to initiating ground disturbance. As burrowing owls may recolonize a site after only a few days, time lapses between project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance to ensure absence. If no owls are found during these surveys, no further actions to protect burrowing owl would be necessary.~~

~~1) Burrowing owl surveys shall be conducted by walking the entire project site. Pedestrian survey transects shall be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines shall be seven meters to 20 meters and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. Poor weather may affect the surveyor's ability to detect burrowing owls thus, avoid conducting surveys when wind speed is greater than 20 kilometers per hour and there is precipitation or dense fog. To avoid impacts to owls from surveyors, owls and/or occupied burrows shall be avoided by a minimum of 50 meters (approximately 160 feet) wherever practical to avoid flushing occupied burrows. Disturbance to occupied burrows shall be avoided during all seasons.~~

1) If burrowing owls are detected on or adjacent to the site, the following restricted activity dates and setback distances recommended per CDFW's Staff Report (2012)

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shall be implemented, unless reduced buffers are accepted by CDFW in writing based on site specific conditions:

- *From April 1 through October 15, low disturbance and medium disturbance activities shall have a 200-meter buffer while high disturbance activities **shall** have a 500-meter buffer from occupied nests **and wintering sites**.*
- *From October 16 through March 31, low disturbance activities shall have a 50-meter buffer, medium disturbance activities shall have a 100-meter buffer, and high disturbance activities shall have a 500-meter buffer from occupied nests **and wintering sites**.*
- *No earth-moving activities or other disturbance should occur within the aforementioned buffer zones of occupied burrows. These buffer zones **shall be marked with high visibility fencing or flagging** ~~should be fenced as well. If burrowing owls are found in the project area, a qualified biologist shall delineate the extent of burrowing owl habitat on the site.~~*

*2) If burrowing owls are present outside of the nesting season, burrowing owls may be passively relocated from the project site **and adjacent habitat** using CDFW-~~accepted~~**approved** methods so that construction can proceed. Any required passive relocation of burrowing owls would require CDFW ~~acceptance~~**approval**. **If passive relocation of burrowing owls is necessary, a qualified biologist shall prepare a Relocation Plan, including compensatory habitat as described below, for CDFW review and acceptance prior to the start of construction activities.***

*3) If the survey determines that the project site is actively being used by burrowing owl, **or any owls are passively relocated as described above**, then compensatory habitat mitigation shall be provided. The habitat mitigation/compensation plan **shall be submitted to CDFW for review and approval prior to the start of project activities. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.** ~~would be subject to approval of the CDFW.~~ If burrowing owls are observed during surveys, notification shall also be submitted to the California Natural Diversity Database (CNDDDB; see <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>).*

Nesting Raptors and Other Birds

CDFW is concerned with the language in Mitigation Measures BIO-3 and BIO-4, particularly that surveys would be conducted within 30 days of the start of Project activities. Surveys should be completed as close to the start of Project activities as

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possible to minimize the likelihood of raptors and other birds nesting on or adjacent to the Project site between the time of the survey and the start of Project activities. CDFW recommends Mitigation Measures BIO-3 and BIO-4 be revised as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

To ensure that impacts to ~~tree or ground~~ nesting raptors and other birds are avoided, the following mitigation measures shall be implemented:

*1) In order to avoid impacts to nesting raptors, a preconstruction nesting survey shall be conducted by a qualified ~~raptor~~ biologist (i.e., **a biologist with at least 2 years' experience conducting surveys for nesting raptors with detections**) prior to commencing with earth-moving or construction work, if this work would commence between February 1st and August 31st. The survey shall be conducted within **7 days** ~~the 30-day period~~ prior to site disturbance. The raptor nesting surveys shall include examination of all trees and other suitable nesting structures, within **500**~~200~~ feet of the project site.*

*2) If nesting raptors are identified during the surveys, **a qualified biologist shall determine appropriate, species-specific no-disturbance buffers around all active nests. No-disturbance buffers shall be demarcated in the field with the dripline of the nest tree or ground nesting site shall be fenced with orange construction fencing (provided the nest site is on the project site), and a 200-foot radius around the nest tree or nest site shall be staked with orange construction fencing, or similar.** If the tree or **other** nest site is located off the project site, then the buffer shall be demarcated per above where the buffer occurs on the project site. **If nesting white-tailed kites are found during surveys, a minimum 300-foot no-disturbance buffer shall be established. To ensure the no-disturbance buffers are adequate, a qualified biologist shall monitor the active nests within and adjacent to the project site for a minimum of one consecutive week and then weekly during construction. If the qualified biologist observes any nesting raptor displaying potential nest-disturbance behavior, the qualified biologist shall require that all project activities cease. In this event, the qualified biologist and/or project proponent shall consult with CDFW regarding appropriate avoidance and minimization measures; and project activities shall not resume without CDFW's written permission. No-disturbance buffers shall remain in place until the nests are no longer active, as determined by a qualified biologist.** ~~The size of the buffer may be altered if a qualified raptor biologist conducts behavioral observations and determines the nesting raptors are well acclimated to disturbance. If this occurs, the raptor biologist shall prescribe a modified buffer that allows sufficient room to prevent undue disturbance/harassment to the nesting raptors. No construction or earth-moving activity shall occur within the established buffer until it is determined by a qualified raptor biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid~~*

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~~project construction zones. This typically occurs by August 1st. This date may be earlier or later, and shall be determined by a qualified raptor biologist. If a qualified biologist is not hired to watch the nesting raptors then the buffers shall be maintained in place through the month of August and work within the buffer can commence on September 1st.~~

3) If the preconstruction nesting survey identifies a large stick or other type of raptor nest that appears inactive at the time of the survey, but there are territorial raptors evident in the nest site vicinity, a protection buffer (as described above) shall be established around the potential nest **site** until the qualified ~~raptor~~ biologist determines that the nest is not being used. In the absence of conclusive observations indicating the nest site is not being used, the buffer shall remain in place until a second follow-up nesting survey can be conducted to determine the status of the nest and eliminate the possibility that the nest is utilized by a late-spring nesting raptor (for example, red-tailed hawk). This second survey shall be conducted even if construction has commenced. If during the follow-up late season nesting survey a nesting raptor is identified utilizing the nest, the protection buffer shall remain until it is determined by a qualified raptor biologist that **the nest is no longer active**. If the nest remains inactive, the protection buffer can be removed and construction and earth-moving activities can proceed unrestrained.

To ensure that impacts to nesting passerine birds are avoided, a **qualified biologist** ~~nesting survey~~ shall be conducted **a survey** within ~~7-15~~ days prior to commencing construction/grading or tree removal activities if this work would commence between ~~February~~ **March 1** and September 1. If common passerine birds or special-status passerine birds are identified nesting on **or adjacent to** the project site **within 200 feet, a qualified biologist shall determine appropriate, species-specific** ~~a non-~~ disturbance buffers for all nests. **The no-disturbance buffers shall be clearly demarcated in the field with** ~~of 75-foot shall be established or as otherwise prescribed by a qualified ornithologist. The buffer shall be demarcated with orange construction fencing, or similar, prior to the start of project activities.~~ Disturbance within the buffer shall be postponed until **a qualified biologist determines** ~~it is determined by a qualified ornithologist~~ that the young have fledged and have attained sufficient flight skills to leave the area, **and** that the nesting cycle has otherwise completed. **To ensure the no-disturbance buffers are adequate, a qualified biologist shall monitor the active nests within and adjacent to the project site for a minimum of one consecutive week and then weekly during construction. If the qualified biologist observes any nesting bird displaying potential nest-disturbance behavior, the qualified biologist shall require that all project activities cease. In this event, the qualified biologist and/or project proponent shall consult with CDFW regarding appropriate avoidance and minimization measures; and project activities shall not resume without CDFW's written permission.** ~~Typically, most passerine birds in the region of the~~

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~~project site are expected to complete nesting by August 1st. Many species can complete nesting by the end of June or in early to mid-July. Regardless, nesting buffers shall be maintained until September 1 unless a qualified ornithologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to September 1, the qualified biologist conducting the nesting surveys should prepare a report that provides details about the nesting outcome and the removal of buffers. This report shall be submitted to the City of American Canyon Planning Department prior to the time that nest protection buffers are removed if the date is before September 1.~~

Western Pond Turtle (*Emys marmorata*)

The CNDDDB shows an occurrence of western pond turtle from 2002 within 0.28 miles north of the Project site within North Slough. Western pond turtle is a California Species of Special Concern and impacts to this species would be potentially significant. Western pond turtles travel over land to reach nesting locations and may breed year-round. CDFW recommends the following mitigation measure:

A qualified biologist (i.e., a biologist with at least 2 years' experience conducting surveys for western pond turtle with detections) shall submit a wildlife exclusion fencing plan to CDFW for review and approval prior to starting construction. Exclusion fencing shall be installed along the western perimeter of the project site preventing the species from traveling from North Slough onto the project site during construction. A qualified biologist shall survey the project site and adjacent habitat within 72 hours of the start of project activities to determine if western pond turtle or their nests are present and guide the installation of the exclusion fence. If western pond turtles are discovered, a qualified biologist with experience handling and relocating the species shall move the species to the nearest suitable habitat outside of the project area and exclusion fencing. If western pond turtle nests or evidence of their presence is found, CDFW shall be consulted with, prior to starting project activities, regarding appropriate avoidance and minimization measures, such as delaying project activities until the nest is no longer active, as determined by a qualified biologist. In this event, project activities shall not begin without CDFW's written permission.

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.

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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:



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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse