



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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July 18, 2022

Governor's Office of Planning & Research

Jul 19 2022

Brent Cooper

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City of American Canyon

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STATE CLEARINGHOUSE

Subject: Giovannoni Logistics Center Project, Draft Environmental Impact Report, SCH No. 2021010104, City of American Canyon, Napa County

Dear Mr. Cooper:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a draft Environmental Impact Report (DEIR) from the City of American Canyon (City) for the Giovannoni Logistics Center Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

CDFW is submitting comments on the DEIR to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Buzz Oates

Objective: Develop a 2.4-million square-foot logistics center on an approximately 208-acre site; 163 acres would be developed, and 45 acres would be preserved as wetlands. In conjunction with the Project, the City would extend Devlin Road through the

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Project site. The Project is proposed to occur in two phases. During Phase 1, the 94.7-acre area east of the Devlin Road extension would be developed. During Phase 2, the 113.1-acre area west of Devlin Road would be developed.

Location: The Project site is in the City of American Canyon, approximately one mile southeast of the Napa County Airport and directly west of State Route 29, in southern Napa County. The Project site is bounded by the Napa Logistics Park and Devlin Road to the north and Green Island Business Park (i.e., industrial development) to the southwest, and centered at approximately Latitude 38.198921°N, Longitude 122.268598°W.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson’s hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), both of which are CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the project proponent’s obligation to comply with CESA.

Fully Protected Species

Fully Protected species, such as golden eagle (*Aquila chrysaetos*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an environmental impact report is appropriate for the Project.

Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Environmental Setting and Mitigation Measures

COMMENT 1: Swainson's Hawk MM BIO-1a (Section 3.3, Pages 24-27)

Issue: Mitigation measure (MM) BIO-1a identifies a 1,000-foot no disturbance buffer shall be established for any Swainson's hawk nest, which may be insufficient to reduce impacts to Swainson's hawk to less-than-significant and comply with CESA.

Furthermore, the language of MM BIO-1a regarding when surveys will occur should be revised for clarity to ensure any nesting Swainson's hawks that could be disturbed by the Project are detected. In the first paragraph it states that surveys will be completed for at least two survey periods prior to commencement of construction. In the second paragraph it inconsistently states that construction may commence if no nesting Swainson's hawks are found during the first non-optional survey period.

Additionally, the DEIR identifies the Project will remove Swainson's hawk foraging habitat, but it does not specify the number of acres that the Project will remove. Therefore, the approximately 45 acres of wetlands that will be preserved by the Project may not be sufficient to mitigate for the loss of Swainson's hawk foraging habitat. Additionally, please note that the presence of suitable Swainson's hawk foraging habitat near the Project site does not negate the need to mitigate for the permanent removal of foraging habitat for this species.

Specific impacts and why they may occur and be significant: If active Swainson's hawk nests are not detected by the proposed surveys or appropriate buffer zones are not established, Swainson's hawks could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Additionally, loss of foraging habitat is the primary threat to Swainson's hawk populations in California (CDFW 2016). Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an

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active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommendation: For an adequate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends revising MM BIO-1a to require that Swainson's hawk surveys be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000) survey protocol, within 0.5 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. Surveys in Period I may be required if the Project will commence by April 5. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

Additionally, to mitigate for the loss of foraging habitat, CDFW recommends including a mitigation measure that requires the preservation through a conservation easement of Swainson's hawk foraging habitat, of equal or greater habitat value than that which will be impacted by the Project, in perpetuity at a minimum 1:1 mitigation to impact ratio. CDFW must provide written approval of the habitat proposed for preservation prior to the start of Project activities.

COMMENT 2: Tricolored Blackbird (Section 3.3, Page 26)

Issue: The DEIR identifies there will be no impact on tricolored blackbird because there is no suitable nesting habitat within the Project site. However, the Project may impact tricolored blackbird that occur within 500 feet of the Project site.

Specific impacts and why they may occur and be significant: If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young,

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thereby substantially reducing the number of the species. Tricolored blackbird is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommendation: For an adequate environmental setting, to reduce impacts to tricolored blackbird to less-than-significant, and to comply with CESA, CDFW recommends revising MM BIO-4 to require that a survey for active tricolored blackbird nests shall be conducted by a qualified biologist within seven days prior to the beginning of Project activities, and within a minimum 500-foot distance of the Project. If nesting bird surveys, per MM BIO-4, detect nesting tricolored blackbird or evidence of their presence, CDFW shall be notified immediately, and Project activities shall not occur without written approval from CDFW allowing the Project to proceed. Presence of nesting tricolored blackbird may require CESA consultation and an Incidental Take Permit before Project activities may commence. If a lapse in Project construction of seven days or more occurs during nesting season, another survey shall be conducted. Please note, this also addresses impacts to nesting birds, which are protected under Fish and Game Code sections 3503, 3503.5, and 3513. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service?

Mitigation Measures

COMMENT 3: Golden Eagle MM-BIO 1b (Section 3.3, Pages 27)

Issue: MM-BIO 1b identifies a 1,000-foot no disturbance buffer shall be established for any golden eagle nests within 1,000 feet of construction activities, which may be insufficient to reduce impacts to golden eagle to less-than-significant. Additionally, the measure allows for modification of the buffer zone depending on behavioral factors and acclimation of nesting golden eagles. CDFW should be consulted before implementation of a reduced buffer zone to ensure protection of any nesting golden eagle.

Specific impacts and why they may occur and be significant: Golden eagle is a fully protected species and may not be taken or possessed at any time, except as described above (Fish & G. Code, §§ 3511), and is also protected under the federal Bald and Golden Eagle Protection Act. Golden eagle is highly sensitive to human disturbance which can result in lower brood size (Steenhof et al. 2014), lower nest

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attendance (Spaul and Heath 2016), and increased time spent away from the nest (Spaul and Heath 2017). If appropriate buffer zones are not established around active golden eagle nests, Project impacts to golden eagle would be potentially significant.

Recommendation: For an adequate environmental setting and to reduce impacts to golden eagle to less-than-significant, CDFW recommends revising MM BIO-1b to require that the survey area for golden eagle shall be determined by a qualified Raptor Biologist in consultation with CDFW, and if any golden eagle nest is identified during pre-construction golden eagle nesting surveys, a biological based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any golden eagle nest.

COMMENT 4: Northern Harrier MM-BIO 1c (Section 3.3, Pages 27)

Issue: It appears that surveys for nesting northern harrier (*Circus hudsonius*) would only occur within the Project site. However, nesting northern harrier may be impacted if they occur off-site within a minimum 500-foot radius around the Project site.

Additionally, MM-BIO 1c allows for modification of the buffer zone depending on behavioral factors and acclimation of northern harrier. CDFW should be consulted before implementation of a reduced buffer zone.

Specific impact and why they may occur and be significant: If an active northern harrier nest is present within a minimum of 500 feet of the Project and is not detected by the proposed surveys, or appropriate no disturbance buffer zones are not implemented, nesting northern harriers could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young. Northern harrier is a California Species of Special Concern (SSC). An SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria: is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions that, if continued or resumed, could qualify it for State threatened or endangered status; or has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status. Therefore, if nesting northern harriers are present and would be disturbed by the Project, impacts to northern harrier would be potentially significant.

Recommendation: For an adequate environmental setting and to reduce impacts to northern harrier to less-than-significant, CDFW recommends revising MM BIO-1c to

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require submission of a biological based justification for reducing the buffer zone, as determined by the qualified Raptor Biologist, to CDFW for review. Project activities shall not commence until CDFW provides written approval for the reduction of the no disturbance buffer zone around any northern harrier nest.

Additionally, MM BIO-1c should be revised to state that surveys shall be conducted to determine the presence of nesting northern harrier within a minimum 500-foot radius around the Project site.

COMMENT 5: Burrowing Owl MM BIO-1d (Section 3.3, Page 28)

Issue: MM BIO-1d indicates that surveys for burrowing owl (*Athene cunicularia*) would occur within two weeks prior to Project construction and a 100-foot no disturbance buffer would be implemented around refugia occupied by non-nesting wintering owls. However, the aforementioned survey and buffer distance may not be adequate to detect and avoid Project impacts to burrowing owls. The Project may result in the loss of burrowing owl breeding and non-breeding habitat and would likely result in the loss of foraging habitat.

Specific impacts and why they may occur and be significant: The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults, and a permanent reduction of burrowing owl habitat in Napa County.

Burrowing owl is an SSC because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels (*Spermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; CDFW 2012 Staff Report; personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (CDFW 2012 Staff Report; personal communication, Esther Burkett, May 13, 2022).

Historically, the most abundant populations of burrowing owl within the San Francisco Bay Area were in Alameda, Contra Costa, and Santa Clara counties and populations were locally abundant within portions of Solano and San Mateo counties. Burrowing owls are no longer abundant and may be disappearing entirely from western Contra Costa, western Alameda, and Santa Clara counties. Breeding burrowing owls may be extirpated in Marin County, and only use the region on a limited basis in winter

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(Townsend and Lenihan 2007 as cited in Sheffield 2021). Habitat loss caused by development is the most immediate threat to burrowing owls in high growth areas of the San Francisco Bay Area, and loss of burrowing owl habitat will likely continue well into the future (Townsend and Lenihan 2007). As urbanization increases and local burrowing owl populations decline, they become vulnerable to stochastic events (demographic, genetic, and environmental) associated with small population size, creating the potential for an extinction “vortex” (Gilpin and Soulé 1986 as cited in Townsend and Lenihan 2007).

Based on the above, if the Project would result in impacts to burrowing owl, Project impacts to burrowing owls would be potentially significant.

Recommendation: For an adequate environmental setting and to reduce impacts to burrowing owl to less-than-significant, CDFW recommends that MM BIO-1d be revised to require that a habitat assessment, and if warranted based on the habitat assessment breeding and non-breeding surveys, be conducted in conformance with the CDFW 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report), which states: A) breeding season surveys should include four survey visits: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July, with at least one visit after 15 June; and B) non-breeding season surveys shall be conducted according to the methods described for breeding season surveys (i.e., a minimum of three survey visits, at least three weeks apart), but conduct at least four visits, spread evenly throughout the non-breeding season. The habitat assessment and surveys shall be conducted within 500 meters (1,640 feet) of the Project site for breeding or non-breeding burrowing owls and the no disturbance buffer distance of 500 meters outlined in the 2012 Staff Report shall be implemented, unless otherwise approved in writing by CDFW.

Additionally, pursuant to the 2012 Staff Report, CDFW does not consider eviction of western burrowing owl (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure. Therefore, to reduce impacts to burrowing owl to less-than-significant, off-site habitat compensation shall be included in the eviction plan. 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.

If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), the following habitat mitigation shall be implemented prior to Project construction:

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Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

Impacts to burrowing owl foraging habitat shall be mitigated by permanent preservation through a conservation easement of foraging habitat at a 1:1 mitigation to impact ratio, in the same manner described above, and accepted by CDFW in writing. The CDFW 2012 Staff Report states, "current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal..."

EDITORIAL SUGGESTIONS

Clarify the development footprint for the Project component compared to the Program component. It is unclear if the 208-acre Project site will be used for both Phase 1 and Phase 2, or if a different site will be used for Phase 2.

The Project Summary (Section 2.3.1) indicates 163-acres will be developed. However, it also states that the Phase 1 will develop 94.7 acres and Phase 2 will develop 113.1 acres, for a total of approximately 208 acres. If the 208-acre Project site is specific to Phase 1, and only 94.7 acres will be developed during Phase 1, it is unclear what is occurring on the remaining 68.3 acres of the 163 acres planned for development.

CDFW recommends providing an aerial image outlining where both Phase 1 and Phase 2 development will occur, as well as the 44.8 acres that will be preserved as open space.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. 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. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021010104)

REFERENCES

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