



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



July 22, 2024

William He, Senior Planner
City of American Canyon
4381 Broadway Street, Suite 201
American Canyon, CA 94503
WHe@cityofamericancanyon.org

Subject: SDG Commerce 220 Distribution Center Project, Draft Environmental Impact Report, SCH No. 2023100842, Napa County

Dear Mr. He:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of American Canyon (City) for SDG Commerce 220 Distribution Center Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the Environmental Impact Report (NOP) in a letter dated November 17, 2023.

CDFW is submitting comments on the draft EIR to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. **Thank you** for including in the draft EIR mitigation measures CDFW has recommended for past projects to mitigate impacts to special-status species such as burrowing owl (*Athene cunicularia*) and western pond turtle (*Actinemys marmorata*).

Based on Google Earth aerial imagery, it appears that Project construction may have prematurely started as recent equipment staging and earthmoving are visible. CDFW notified you of this issue via email on July 17, 2024 and you indicated that your records do not show any grading permits issued for the SDG Commerce 220 property and the Project should not start construction. **CDFW requests that the City investigate any unauthorized Project construction to uphold protection of fish and wildlife resources and compliance with CEQA and other environmental laws.**

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

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.

William He
City of American Canyon
July 22, 2024
Page 2

Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement, 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: SDG Commerce 220, LLC

Objective: The Project would develop a 219,834-square-foot wine storage and distribution center, including the construction of vehicular access areas and drive isles and sharing a driveway with a neighboring facility. Additional vehicle parking spaces will be built, including 134 car spaces, 23 truck parking stalls, 19 electric vehicle stalls, and 3 bicycle storage lockers with room for 12 bicycles. Construction activities are expected to span 9.5 months and will include landscaping and the construction of large concrete slabs and wall panels using typical construction equipment.

Location: The Project site is located on 1055 Commerce Court in the City of American Canyon, Napa County; Latitude 38.185969 North, Longitude -122.274294 West; and encompasses approximately 10.45 acres.

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*), 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.

William He
City of American Canyon
July 22, 2024
Page 3

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below, which are also included in **Attachment 1**, 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.

I. Mitigation Measure Related Impact Shortcomings

MANDATORY FINDINGS OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species? Does the Project have impacts that are individually limited, but cumulatively considerable?

AND

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?

COMMENT 1: Swainson's hawk, draft EIR pages 3.3-15, 3.3-38, 3.3-39, and ES-8, Biological Resources Assessment page 42.

Issue: The draft EIR does not adequately mitigate potential impacts to Swainson's hawk. Mitigation Measure (MM) BIO-1b: Swainson's Hawk Avoidance and Minimization and Construction Monitoring of the draft EIR (page ES-8, 3.3-38) includes an insufficient buffer distance for occupied Swainson's hawk nests. Additionally, the draft EIR does not mitigate the loss of Swainson's hawk foraging habitat despite the Project site providing potentially suitable foraging habitat for this species and potentially suitable nest trees. There are unprocessed years 2023 and 2024 California Natural Diversity Database (CNDDDB) records of potentially nesting Swainson's hawks approximately 1.4 miles north of the Project site, and a year 2021 CNDDDB record of confirmed nesting Swainson's hawks along Fagan Creek approximately 1.9 miles north of the Project site,

William He
City of American Canyon
July 22, 2024
Page 4

which is part of a cluster of nesting records indicating the Project site is likely used for foraging by nesting Swainson's hawks.

Specific impacts, why they may occur and be potentially significant:

Nesting Swainson's hawks

Thank you for including in MM BIO-1b (b) protocol-level Swainson's hawk surveys pursuant to the 2000 *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) (draft EIR pages 3.4-35, 3.4-36, and 3.4-37). However, the proposed buffer distance of 600 feet (200 yards) around any detected active nests is potentially inadequate and therefore the Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels, which may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young. This above survey protocol includes project activities which occur greater than 200 yards in a category of low disturbance to the reproductive success of individuals (TAC 2000 page 5). However, this "low" level of disturbance may still result in take, and a 600-foot buffer may not be adequate to prevent take of nesting Swainson's hawk. A more protective 0.5-mile buffer is recommended in both the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>) and the *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83991&inline>) and should be implemented for this Project (CDFG 2012, and CEC and CDFG 2010).

Swainson's hawk foraging habitat

The Project's footprint will occupy approximately 10.45 acres (draft EIR page ES-1), displacing undeveloped grassland habitat. The draft EIR has established the potential for Swainson's hawk to nest in the vicinity of the Project site. However, it has not addressed mitigation for the loss of Swainson's hawk foraging habitat. Regarding nesting birds and all special-status bird species, the Biological Resources Assessment (page 42) states that "Although the site has been significantly disturbed in the past, the grassland on-site may provide marginal foraging opportunities to support nesting and rearing habitat." The draft EIR (page 3.3-15) states that "During the nesting season Swainson's hawk usually forage within 2 miles of the nest." Nesting Swainson's hawk adults and fledged young are limited in their foraging range and any in the vicinity of the Project site would likely rely on resources on it. Swainson's hawk chicks once fledged rely on nearby foraging resources to a greater extent than adults and are usually limited in their foraging scope to within just 0.5 miles from the nest (Woodbridge 1998).

William He
City of American Canyon
July 22, 2024
Page 5

Additionally, in 2016, CDFW released a Status Review for Swainson's hawk in California and recommended the species retain its status as threatened under CESA (CDFW 2016). The review states there is no indication the species has reoccupied its historical range and the distribution of Swainson's hawk remains largely unchanged and restricted. Additionally, the review cites the **primary threat** to Swainson's hawk continues to be habitat loss, **especially the loss of suitable foraging habitat**. One recent study done by CDFW scientists indicated Swainson's hawk populations have been increasing, but also cautioned using this data to inform conservation planning, stating this apparent stability remains largely unclear (Furnas et al. 2022). The study cites concerns regarding impacts to Swainson's hawk from urban development, reduction in grasslands, and orchard and vineyard cultivation, all of which are prominent impacts in Napa County, where the Project is proposed.

Potentially significant impacts

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

Other large development projects in Napa County have not been required to mitigate for Swainson's hawk foraging habitat, despite CDFW's recommendations. Therefore, the net loss of foraging habitat from the proposed Project, in conjunction with other projects that have not mitigated for loss of Swainson's hawk foraging habitat, may also contribute to a significant cumulative impact to Swainson's hawk, which is a **Mandatory Finding of Significance**.

Recommended Mitigation Measures: To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends incorporating the following into Mitigation Measures into MM BIO-1.

Swainson's Hawk Surveys: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) and prepare a report documenting the survey results. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the

William He
City of American Canyon
July 22, 2024
Page 6

Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections.

Swainson's Hawk Avoidance Buffer: If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, 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.

Swainson's Hawk Foraging Habitat Mitigation: Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a mitigation bank, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written approval of the habitat mitigation acreage and proposed habitat mitigation land or credits.

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 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>.

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

William He
City of American Canyon
July 22, 2024
Page 7

required in order for the underlying Project approval to be operative, vested, and final. (See 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 draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist, at Nicholas.Magnuson@wildlife.ca.gov or (707) 815-4166; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

B77E9A6211EF486

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023100842)

William He
City of American Canyon
July 22, 2024
Page 8

REFERENCES

CDFG, 2012. *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*. California Department of Fish and Game, Sacramento, CA.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

California Department of Fish and Wildlife (CDFW), 2016. 5-year Status Review: Swainson's hawk (*Buteo swainsoni*). Prepared for the California Fish and Game Commission. Nongame Bird and Mammal Program 1416 Ninth Street, Sacramento, CA.

CEC and CDFG, 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. California Energy Commission and Department of Fish and Game, Sacramento, CA.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83991&inline>

TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, Sacramento, CA.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

Woodbridge, B. 1998. Swainson's Hawk (*Buteo swainsoni*). In *The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California*. California Partners in Flight.

William He
 City of American Canyon
 July 22, 2024
 Page 9

ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1a	<p><i>Swainson's Hawk Surveys:</i> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections.</p>	Prior to Ground Disturbance	Project Applicant
BIO-1b	<p><i>Swainson's Hawk Nest Avoidance Buffer:</i> If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be</p>	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

William He
 City of American Canyon
 July 22, 2024
 Page 10

	avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.		
BIO-1c	<i>Swainson's Hawk Foraging Habitat Mitigation:</i> Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a mitigation bank, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written approval of the habitat mitigation acreage and proposed habitat mitigation land or credits.	Prior to Ground Disturbance	Project Applicant