

December 15, 2020

Napa County  
1195 Third Street, Suite 210  
Napa, CA 94559

Attention: Mr. Sean Trippi, Principal Planner

**RE: Response to Comments Regarding the Mitigation Negative Declaration  
Safe Harbor 3.0 Project (SCH No. 2020110227)  
Napa County, California**

Dear Mr. Trippi:

This letter provides responses to comments submitted by the California Department of Fish and Wildlife (CDFW) to Napa County (County) regarding the circulated Mitigated Negative Declaration (MND) *for the Safe Harbor 3.0 Project*. Below we address these comments in sequential order as numbered (“Reference Numbers”) on a copy of the CDFW’s letter provided hereto (attached).

In the CDFW’s letter dated December 9, 2020 but received by the County on December 11, 2020, Mr. Gregg Erickson, Regional Manager for the Bay Delta Region of the CDFW, provided comments that are addressed as follows:

**Reference Number 1**

Introductory statement. No response necessary.

**Reference Number 2**

Environmental setting discussion. No response necessary.

**Reference Number 3**

Project description provided. No response necessary.

**Reference Number 4**

The CDFW references the Five-Year Status Report for Swainson’s hawk in California to demonstrate that this species should retain its Threatened status and underscore the need to account for loss of foraging habitat in Napa County due to the Central Valley’s goals to convert large areas of natural and agricultural lands that support Swainson’s hawk foraging habitat to urban uses which would elevate the importance of the same habitat type within surrounding counties.

**Response to Reference Number 4:**

In 1979, a report prepared by Dr. Peter Bloom estimated 375 (+ or -50) breeding pairs of Swainson's hawks remained in California. Bloom's report noted that nesting numbers were greatest in the Central Valley and in the Great Basin area of northeastern California, with a few Swainson's hawk territories located in Shasta Valley, the Owens Valley, and the Mohave Desert. In 1988, a CDFW led survey effort revealed no change in Swainson's hawk distribution from 1980. The 1988 effort led to an estimate of 430 pairs in the Central Valley and a state-wide estimate of 550 breeding pairs. In 2005, a state-wide survey was conducted in the known range. The results showed a state-wide estimate for the number breeding pairs at 2,081.

Circa 2005, Dr. Bloom noted that the Swainson's hawk population in California and indeed throughout its historic range in North America was suffering from acute poisoning from grasshopper insecticides that were being applied directly on their gregarious migration roosts in Argentina (pers. comm. with G. Monk). This practice has largely been stopped in Argentina within the last 10 years and the Swainson's hawk nesting population in California seems to be responding remarkably. The Swainson's hawk nesting distribution now occurs in many areas where the Swainson's hawk has not been known to nest for decades, if ever. Napa County, while considered within the historic distribution of the Swainson's hawk, was not known to support nesting site for this hawk in the 1970s or 1980s. Similarly, the nesting population now extends into east Contra Costa County where nesting has not been recorded for many decades. Other nesting population recovery that Mr. Monk knows of includes the Southern California in the Antelope Valley and in Kern County. This widespread nesting recovery that is documented in the CNDDDB and by the personal observations of many other biologists in California, is yet to be incorporated into CDFW policy. Accordingly, the 1994 Staff report regarding Mitigation for Impacts to Swainson's hawks (*Buteo swainsonii*) in the Central Valley of California besides being geographically inappropriate for the proposed project in Napa County, is also not relevant to current nest territory expansion of the Swainson's hawk population into Napa County and elsewhere in the state. Thus, this document is not appropriately used as a basis for determining mitigation ratios for impacts to annual grassland in Napa County. That Staff Report requires mitigation for projects that impact foraging habitat within 10 miles of an "active" Swainson's hawk nest (as defined by the CDFW Staff Report). For the reasons provided above this mitigation requirement is not reflective of the current population expansion of the Swainson's hawk in California, and its use is geographically limited to the Central Valley.

It is noteworthy that other raptors that were state and federally listed when the Swainson's hawk was state listed in 1983 such as the Bald Eagle (*Haliaeetus leucocephalus*) and the peregrine falcon (*Falco peregrinus*) have been delisted (i.e., removed from protections provided by both the CESA and the FESA). The federal government conducted routine census surveys for these species and determined that the nesting populations of these species had fully recovered and thus that protection pursuant to the FESA was no longer warranted. The CDFW followed these delisting efforts. In contrast, the Swainson's hawk was never federally listed, and as the State of California does not have a recovery plan for the Swainson's hawk there is no guideline for what constitutes recovery. In addition, the Swainson's hawk certainly has not had a full "boots on the ground" nesting census to the extent that federally listed raptor species did. Thus, mitigation prescriptions developed 21 years ago are outdated today.

The decline of the Swainson's hawk population, while potentially still an issue in the Central Valley, specifically in Napa County may be overemphasized by the CDFW. While the CDFW published a 5-Year Status Review for the Swainson's hawk, the census data supporting its continued listed status was focused only on the known current distribution of this species (Bloom 1980) which this document claims is consistent with the distribution and numbers outlined in the original status review that led to the listing of this species by CDFW. As reference above, this data does not take into account the range expansions into areas where the Swainson's hawk had historically nested and the species was presumed extirpated, specifically Sonoma and Napa counties (page 14 of the 2016 CDFW Status Review) and from which may be difficult to prognosticate population trends. The CNDDDB, as noted in the CDFW's comment letter, lists many new CNDDDB records not taken into account within the geographic area of the project site (6 CNDDDB occurrences and 3 known but not recorded active nests within 5 miles), attesting to the health and well-being of the Swainson's hawk within this area of Napa County where it is clear the Swainson's hawk population is expanding.

**Reference Number 5:**

The CDFW references the Napa Valley Business Park Environmental Impact Report (NVPB EIR) and states that the NVPB Area will remove 1,744 acres of agriculture and open space and which acknowledges significant impacts to grassland and pasture areas within the study area which would reduce their value to various raptors and these impacts to grassland would similarly reduce habitat for small mammals and birds. Without mitigation, the CDFW puts forth that the Project will have a substantial adverse impact on CESA-listed species and is therefore a significant impact.<sup>1</sup>

**Response to Reference 5:**

The NVBP does contain grassland and pasture areas that serve as raptor feeding grounds and urban development would significantly reduce their value to raptor species. However, according to the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California* (hereinafter 1994 *Staff Report*) (CDFG 1994), impacts may be addressed in one of three ways: 1) avoided, 2) appropriate mitigation provided to reduce impacts to less than significant levels or 3) the lead agency must make and support a Findings of Overriding Consideration. The County made such a finding for the NVBP area in 1984 and impacts for the Specific Plan were fully evaluated at that time. Note that Swainson's hawk was listed at that time but did not occur in Napa. There were no records in Napa County until 2008, thus representing a recent range expansion from its previously known range. That said, the applicant will be conducting Swainson's Hawk nesting surveys within ¼ mile of the project site to ensure that there is no take or direct impacts to Swainson's hawks and that the Project remains in compliance with Fish and Game Code 2080.

**Reference 6:**

---

<sup>1</sup> It is M&A's belief that the only CESA listed species known from this area of Napa County that would be likely to occur is the Swainson's hawk. Other CESA listed species are not in question.

To mitigate impacts to a level of less than significant, the CDFW recommends that Napa County require the Project to preserve Swainson's hawk foraging habitat in accordance with the ratios outlined in the 1994 *Staff Report*. This is in consideration of the closest known nesting occurrence to the project site which is 0.5-mile northeast of the project site and the other 5 CNDDDB occurrences within 5 miles and the 3 additional active nests that have not yet been entered into the CNDDDB which, per the 1994 Staff Report, would require preservation of foraging habitat at a 1:1 mitigation to impacts ratio.

### **Response to Reference 6:**

The project site is regarded as low quality Swainson's hawk foraging habitat as it is located in an industrial area, adjacent to the tall walls of the adjacent warehouse which inhibit Swainson's hawk's sight and maneuverability with respect to hunting and "stooping" (diving) for prey on this very small site (Estep 1989, Smallwood 1995 as referenced in CDFW's 2016 Status Review). Boral Stone is located just south of the project site which is characterized by continual high noise levels and human activity.

Further, the project site is exceedingly small with the development footprint being only 4.90-acres (Attachment A). Per the 1994 CDFW Staff Report, "Cities, counties and project sponsors should be encouraged to focus development on open lands within already urbanized areas. Since small disjunct parcels of habitat seldom provide the foraging habitat needed to sustain the reproductive effort of a Swainson's hawk pair, Staff does not recommend requiring mitigation pursuant to CEQA nor a Management Authorization by the Department for infill (within an already urbanized area) projects in areas which have less than 5 acres of foraging habitat and are surrounded by existing urban development, unless the project area is within 1/4 mile of an active nest tree." Note that the project site meets this object for urban infill both due to size and as it is located within an industrial area bordered on three sides by industrial buildings to the north and south with the Napa County Airport located immediately west of the project site. Based upon this CDFW guidance, M&A believes that land preservation recommended by the CDFW comment letter is not warranted and the mitigation as presented in the MND which provides for surveys and consultation with the CDFW if an active nest is identified within 1/4 mile of the project site is adequate. Nonetheless, as compensation for impacts to County-mandated creek setback requirements from the proposed project, the applicant is permanently preserving 0.42-acre of grassland habitat and seasonal wetland on the south side of Fagan Creek via deed restriction, outside and in addition to the creek setback.

It is important to note that there is currently 2,092 acres of high-quality permanently preserved open space, comprised primarily of grassland with interspersed oak woodland, that is within 3.5 miles of the project site. These open space areas include Canyon Estates Preserve Area (67 acres), Lynch Canyon Preserve (1,039 acres), Napa Logistics Park Wetland Preserve (37.08 acres), Newell Preserve (640 acres) and the CDFW California Red-Legged frog Preserve (309-acres) as shown on Exhibit A (attached). Impacts to 4.90 acre of the project site represents an insignificant loss of poor quality foraging habitat (0.235% of the preserved foraging habitat within 3.5 miles). This should be more than adequate to support any nesting pairs within this area of Napa County.

**Reference 7:**

The CDFW recommends that Mitigation Measure 5 be revised as follows:

- 1) Preconstruction nesting surveys be conducted within 7 days prior instead of within 14 days to project initiation including the final survey for Swainson's hawk.
- 2) The Swainson's hawk survey area be expanded from within 0.25 mile to within a 0.5-mile radius around the project site.
- 3) If an occupied Swainson's hawk nest is found within 0.5-mile of the project site, the applicant get a CESA Incidental Take Permit or Project Activities be delayed until the nest is no longer occupied, as determined by a qualified biologist.
- 4) That the Swainson's hawk surveys be repeated each year project activities occur and be subject to same conditions as previously mentioned.
- 5) To get a CESA Incidental Take Permit (2081b), if an active Swainson's hawk nest is found within 0.5-mile.
- 6) To mitigate for the loss of foraging habitat, the CDFW recommends that the applicant hire a qualified biologist to prepare a Mitigation Plan for CDFW review and approval, prior to the start of Project activities. This plan is to include the preservation of Swainson's hawk foraging habitat at a 1:1 mitigation to impacts ratio.
- 7) To provide survey reports for the preconstruction nesting bird, raptor surveys and all protocol Swainson's hawk surveys to Napa County and CDFW for review and written acceptance prior to the start of Project activities.

**Response to Reference 7:**

- 1) M&A feels that 14 day window prior to project initiation is imperative to allow enough time for pre-scheduled construction crews to mobilize on schedule or to be waived off to account for any new nesting bird buffers established to protect nesting birds. M&A has found that a 7-14 day window prior to scheduled construction is sufficient to prevent impacts to nesting birds.
- 2) According to the 1994 CDFW Staff Report, the project site would be considered urban with significant ongoing noise and human activity. Thus, a ¼ mile buffer is adequate for the project site ***and the survey buffer will appropriately mirror this***. A buffer zone of a half mile would only be appropriate for nesting areas away from urban development (i.e. in areas where disturbance [e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities] is not a normal occurrence) or as determined by a qualified biologist/ornithologist, as necessary to protect nesting Swainson's hawks. It is important to note that Boral Stone immediately adjacent to the project site, operates 24 hours a day and is exceptionally noisy with pneumatic gas pipes that hiss and with fork lifts and other trucks that continuously load and unload products. A broadcast communication system is used regularly so workers can hear orders over the continuous noise. In addition, high voltage lights light up the creek channel on and adjacent to the project site through all hours of the night. It would a reasonable

assumption that any Swainson's hawks attempting to nest adjacent to the project site would be acclimated.

- 3) The same logic applies for the buffer radius as was discussed above for the survey radius from the project site as these are inextricably linked.
- 4) A nesting bird survey would be conducted 14 days prior to scheduled construction each year within a zone of influence around development activities for all nesting birds including passerines and raptors. If construction has been ongoing and birds nest near the project site, it will be assumed that nesting birds including Swainson's hawk are acclimated to continuing construction activities as evidenced by their nest establishment under these conditions. The size of nesting buffers will be taken into consideration.
- 5) A qualified biologist will determine if the project activities could result in take to the nesting Swainson's hawk and if so, a CDFW will be consulted for the project.
- 6) No land preservation is warranted for the loss of poor quality foraging habitat for Swainson's hawk that constitutes the project site in its industrial setting as discussed in detail above.
- 7) Nesting survey reports will be submitted to Napa County, in accordance with Mitigation Measure 5, of the MND. All nesting surveys will be completed in accordance with current standard methods used by qualified biologist/ornithologists and thus, review and written acceptance should not be required provided the biologist conducting the surveys can assure that there will be no take of nesting birds.

#### **Reference 8:**

The CDFW has expressed concerns that a single survey within 14 days prior to the start of work will increase chances of nesting birds going undetected on the Project site within the two week period after surveys are performed. The CDFW recommends that Mitigation Measure 5 be revised as follows:

- 1) Preconstruction nesting surveys be conducted by a qualified biologist or ornithologist within 7 days prior to project initiation including a final survey for Swainson's hawk by a qualified biologist.
- 2) If active nests are found, that a qualified biologist will determine appropriate non-disturbance buffer zones around all active nests in consultation with the CDFW.
- 3) That the CDFW may recommend that a qualified biologist monitor active nests daily to ensure that the buffers are adequate and until the nest is no longer active.
- 4) If active nests appear to be disturbed by project activities at any time, work will cease immediately and the CDFW be consulted prior to resuming project activities.
- 5) The survey results be provided to Napa County and CDFW for review and written acceptance prior to the start of project activities.

#### **Response to Reference 8:**

- 1) As discussed above, M&A feels that a 14 day window prior to project initiation is imperative to allow enough time for pre-scheduled construction crews to mobilize on schedule or to be waived off to account for any new nesting bird buffers established to

protect nesting birds. M&A has found that a 7-14 day window prior to scheduled construction is sufficient to prevent impacts to nesting birds.

- 2) If active nests are found, a qualified biologist will determine appropriate non-disturbance buffer zones around all active nests that adequately ensure that the project will not result in the take of nesting birds, their eggs or young. Active nests will be monitored by the qualified biologist initially during commencement of construction and that biologists shall have authority to stop construction if the protection buffers do not seem to be keeping the nesting birds safe from construction related impacts. The biologist, at this time, would also have authority to increase the size of the buffer if this is necessary to protect the nesting birds.
- 3) Monitoring of non-disturbance buffers will be implemented as deemed appropriated by a qualified biologist/ornithologist as necessary to ensure that the nesting birds will not be impact by project activities.
- 4) If non-disturbance buffers appear not to be providing all protections necessary to ensure the project does not result in harm/take of nesting birds, project activities will cease until a modified buffer is in place as recommended by a qualified biologist/ornithologist.
- 5) Nesting survey reports will be submitted to Napa County, in accordance with Mitigation Measure 5, of the MND. All nesting surveys will be completed in accordance with current standard methods used by qualified biologist/ornithologists and thus, review and written acceptance should not be required provided the biologist conducting the surveys can assure that there will be no take of nesting birds.

**Reference 9:**

Statement that assessment of filing fees by the CDFW is necessary and must be payable upon filing the Notice of Determination. No response needed.

In conclusion, the responses above demonstrate that the Initial Study and MND prepared for this Project provides adequate mitigation to ensure that any potential impact to Swainon's hawk are less than significant. This concludes the response to biology-related comments on the MND for the Project.

Sincerely,

Geoff Monk  
Principal Biologist



Christy Owens  
Associate Biologist



Attachments: CDFW Comment Letter with Reference Notations

Attachment A. A5 Site Restriction Plan for the Safe Harbor 3.0 Project prepared  
LeDoux and Associates, Inc.

Exhibit A. Preserved Open Space within the Vicinity of the Safe Harbor 3.0  
Project Site