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VIA EMAIL

May 11, 2026

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Re: Appeal Comment for the California Environmental Quality Act Class 32 Categorical Exemption for the Hilton Industrial Facility Project (Master Case No. 18-000053; Tentative Parcel Map No. 18-000005 (TPM No. 19950); Design Review No. 18-000010)

Dear Mayor Warren, Honorable Members of the Fontana City Council, Mr. Quintanilla, and Ms. Key:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") and its members living or working in the City of Fontana ("City"), in support of SAFER's appeal of the California Environmental Quality Act ("CEQA") Class 32 Categorical Exemption, or Infill Exemption ("Exemption"), for the Hilton Industrial Facility Project (Master Case No. 18-000053; Tentative Parcel Map No. 18-000005 (TPM No. 19950); Design Review No. 18-000010) ("Project"). The Project is scheduled to be heard at the Fontana City Council hearing on May 12, 2026. The Fontana Planning Commission approved the Project based on the Infill Exemption at its hearing on March 17, 2026.

As discussed below, substantial evidence shows that the Project will have significant adverse impacts on biological resources. Thus, the Project does not qualify for the Infill Exemption and instead requires an initial study to determine the appropriate level of CEQA review before approval, whether a mitigated negative declaration ("MND") or an environmental impact report ("EIR"). Therefore, SAFER respectfully requests that the City Council grant

SAFER's appeal and find that the Project does not qualify for the Exemption under CEQA.

SAFER's review of the Project has been assisted by expert wildlife ecologist Shawn Smallwood, Ph.D. Dr. Smallwood's comment and CV are attached as Exhibit A and are incorporated herein by reference in their entirety.

PROJECT DESCRIPTION

The Project involves the construction of two new warehouses totaling 71,985 square feet on an approximately 4-acre undeveloped, vacant site. The Project site is located north of Hilton Drive, east of Redwood Avenue, and west of Hemlock Avenue, in the City of Fontana. The site is surrounded by industrial uses. The site is zoned West End Specific Plan (BP3) and has a General Plan land use designation of Light Industrial (I-L).

LEGAL STANDARD

CEQA mandates that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions" throughout California. (Pub. Res. Code § 21001(d) ["PRC"].) A "project" is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (PRC § 21065; 14 Cal. Code Regs. § 15378(a) ["CCR"].) CEQA requires environmental factors to be considered at the "earliest possible stage . . . before [the project] gains irreversible momentum," (*Bozung v. Loc. Agency Formation Com.* (1975) 13 Cal. 3d 263, 284), "at a point in the planning process where genuine flexibility remains." (*Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 ["*Hollywoodland*"].) First, if a project falls into an exempt category, or if it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further evaluation is required under CEQA. (14 CCR § 15002(k)(1).) Second, if the project is not exempt, and there is a possibility the project will have a significant environmental effect, then the agency must perform an initial threshold study. (14 CCR § 15002(k)(2).) Third, if the initial study indicates that there is no substantial evidence that the project may have a significant environmental effect (*id.*), then a MND is required, but if the initial study shows that the project may have a significant environmental effect, then an EIR is required. (14 CCR § 15002(k)(3).) Here, because the City exempted the Project from CEQA entirely, the first step of the CEQA process applies.

CEQA identifies certain classes of projects as exempt from CEQA's provisions. These are called categorical exemptions. (14 CCR §§ 15300, 15354.) "Exemptions to CEQA are narrowly construed and '[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.' [Citations]." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) The determination as to the appropriate scope of a categorical

exemption is a question of law subject to independent, or de novo, review. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 [“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’”].) Here, the City has recommended that the Project is categorically exempt from CEQA’s requirements pursuant to the Class 32 Exemption, or “Infill Exemption.” (14 CCR § 15332.)

Under CEQA’s Infill Exemption, a project is exempt from CEQA’s requirements if the project meets the following five conditions:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The *project site has no value, as habitat for endangered, rare, or threatened species.*
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

(14 CCR § 15332 [emph. added].)

DISCUSSION

I. CEQA’s Infill Exemption does not apply on its face to the Project, thus a full CEQA analysis is required.

The City relies on the CEQA Infill Exemption for the Project. One of the Exemption’s key limitations is that it does not apply if a project has value as habitat for endangered, rare, or threatened species. (14 CCR § 15332(c).) Here, the Project does not qualify for the Infill Exemption because the Project site has value as habitat for several special-status species. Therefore, the City must prepare an initial study to determine the appropriate level of CEQA review before approval, whether an EIR or an MND.

A. There is substantial evidence that the Project will have significant adverse impacts on biological resources, precluding reliance on the Infill Exemption.

Expert wildlife ecologist Dr. Shawn Smallwood, Ph.D. has reviewed the Project, the CEQA Class 32 Categorical Exemption Memorandum (“CE Memo”) prepared by the Lilburn Corporation (“Lilburn”), including the biological resources technical report (“JE Report”) prepared by Jennings Environmental (“JE”), and other relevant documents regarding the Project. As discussed below, Dr. Smallwood concluded that: (1) the Project site provides substantial habitat for multiple special-status species; (2) the CE Memo failed to adequately analyze the

Project's significant adverse impacts on wildlife; and (3) mitigation measures are needed to reduce the Project's significant adverse biological impacts. (Ex. A at 1.)

1. The CE Memo did not fully account for the diversity of species that use the Project site as habitat, including several special-status species.

Dr. Smallwood's associate, biologist Noriko Smallwood, M.S., visited the Project site on March 21, 2026 for a 3.07-hour diurnal survey and on March 24, 2026 for a 1.05-hour diurnal survey and a 3-hour nocturnal survey. (*Id.* at 2.) During her visit, Ms. Smallwood detected 27 species of wildlife at the Project site, including four special-status species. (*Id.* at 3.) These special-status species included: (1) the California Gull, a Bird of Conservation Concern with the U.S. Fish & Wildlife Service and a species on the California Department of Fish & Wildlife Taxa to Watch List; and (2) the Red-Tailed Hawk, (3) the Great Horned Owl, and (4) the American Kestrel, all Birds of Prey protected by California Fish & Game Code § 3503.5. (*Id.* at 9.)

During its single one-hour wildlife survey of the Project site, JE detected only five species of vertebrate wildlife, all of which were birds. (*Id.* at 14.) In contrast, Ms. Smallwood detected over five times the total number of species as JE, including the same five bird species that JE identified. (*Id.*) Furthermore, JE reported its findings without any justification for its minimal survey effort or comparative context to aid in interpretation of its findings. (*Id.* at 14-15.) The City must prepare an EIR so that a sufficient survey effort can be completed.

Dr. Smallwood found other deficiencies in the JE's survey findings as well. For example, he found that JE conducted no breeding-season detection surveys for burrowing owls, nor did the JE conduct any detection surveys for the Crotch's Bumble Bee, a candidate species for listing under the California Endangered Species Act, conflicting with the California Department of Fish & Wildlife's ("CDFW") recommendations. (*Id.* at 17.) Additionally, Lilburn's report that no rare plants were observed on the Project site is unsubstantiated because JE's site survey did not comply with the CDFW's survey guidelines for rare plants. Moreover, Lilburn's own conclusion that "[a]lthough the site is highly disturbed, there is some habitat within the Project site and adjacent area that is suitable for nesting birds in general," means that multiple special-status species of birds have the potential to occur on the Project site, contradicting Lilburn's conclusion that "[t]he site offers no suitable habitat for any rare sensitive species including listed species." (*Id.*; CE Memo at 11.)

Additionally, Dr. Smallwood found that the City's desktop review was incomplete. (Ex. A at 17.) Desktop review includes literature and database reviews and consultation with local experts to inform field surveys and interpret a project's impacts on wildlife. (*Id.*) Here, JE relied on only one database in its desktop review, the California Natural Diversity Data Base ("CNDDDB") and failed to consult other available databases to augment its interpretation of its findings. (*Id.*) CNDDDB is a "positive sighting database" that "does not predict where something may be found." (*Id.*) Dr. Smallwood noted that, by relying only on CNDDDB, JE misused CNDDDB and screened out many special-status species from further analysis in characterizing the Project site's wildlife community. (*Id.* at 17-18.) From his own assessment based on database

reviews and Ms. Smallwood's site visits, Dr. Smallwood estimates that about 138 special-status wildlife species are known to occur close enough to the Project site to warrant analysis of their occurrence potential. (*Id.* at 18.)

CEQA requires government agencies to describe the "environmental setting" of the Project. (CEQA Guidelines § 15063(d)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322.) The "environmental setting" is defined as "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (CEQA Guidelines § 15360; *see* CEQA Guidelines § 21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1192.) By relying on an inadequate desktop review and failing to conduct sufficient wildlife surveys of the Project site, substantiate its survey findings, and provide any comparative context to interpret its survey results, including the fact that the site contains at least four special-status species, the CE Memo and JE Report deficiently described the Project's "environmental setting" and thereby insufficiently analyzed the Project's biological impacts. Dr. Smallwood stated that "without a more accurate characterization of the wildlife community, the basis is inadequate for predicting impacts and formulating appropriate mitigation strategies." (Ex A. at 18.) The City therefore must prepare an EIR to properly characterize the wildlife community of the Project site. (*Id.*)

Given Ms. Smallwood's identification of at least four special-status species on the Project site, as well as the records of the occurrence of multiple other special-status species near the site, Dr. Smallwood deems the site as habitat for special-status species. (*Id.* at 1, 17.) Therefore, the proposed Infill Exemption is improper. Further CEQA review is needed to appropriately assess and reduce the Project's impacts on the wildlife community.

2. The Project will have significant adverse impacts on wildlife that the CE Memo failed to analyze and mitigate.

Dr. Smallwood concluded that the Project will have significant adverse impacts on biological resources, including: (a) habitat loss; (b) interference with wildlife movement; (c) traffic mortality; and (d) cumulative impacts.

- a. The Project will have a significant impact on the reproductive capacity of the Project site as a result of habitat loss.

Dr. Smallwood calculated that the loss of habitat from the Project would cause the loss of 13 bird nesting sites and 18 nesting attempts per year, a loss that "would qualify as significant impacts that have not been analyzed in Lilburn (2026)." (*Id.* at 25.) However, these impacts would not end with this immediate numerical loss of nesting sites, for the reproductive capacity of the Project site would also be permanently lost. Dr. Smallwood estimated that the Project would prevent the production of 52 fledglings and 59 birds per year. (*Id.*) He concluded that "the loss of 59 birds per year would be a loss of significant habitat value," and that "the loss of 59 birds per year would easily qualify as an unmitigated significant impact." (*Id.*) This is a significant adverse impact that must be analyzed and mitigated in an MND or EIR.

- b. The Project will have a significant impact on wildlife as a result of interference with wildlife movement.

Dr. Smallwood concluded that, as one of the last remaining patches of open space in the region, the Project site provides wildlife with essential stopover and staging opportunities, thereby facilitating wildlife movement. (*Id.*) The Project would deprive wildlife of all such opportunities. However, the CE Memo failed to analyze how the Project would interfere with wildlife movement. (*Id.*) An EIR is needed to adequately address the Project's impacts on wildlife movement.

- c. The Project will have a significant adverse impact on wildlife as a result of collisions with the additional traffic generated by the Project.

Dr. Smallwood found that the CE Memo failed to address the Project's potential impacts to wildlife from road collision mortality as a result of increased traffic generated by the Project. (*Id.* at 26.) As Dr. Smallwood explained, vehicle collisions have accounted for the deaths of many thousands of amphibian, reptile, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level. (*Id.*) Dr. Smallwood provided several studies demonstrating significant animal deaths due to traffic collisions in the thousands annually per 100 kilometers of road. (*Id.*) However, CE Memo did not analyze whether increased traffic generated by the Project would result in significant impacts to wildlife.

The CE Memo reports that the Project would generate 625,486 annual vehicle miles traveled ("VMT"). (*Id.* at 28.) Based on this prediction, Dr. Smallwood calculated that the Project would cause approximately 266 vertebrate wildlife fatalities per year due to collisions with Project-generated traffic. (*Id.*) He therefore concluded that "the project-generated traffic would cause substantial, significant impacts on wildlife," an impact that Lilburn failed to address. (*Id.* at 29.) Dr. Smallwood's calculations constitute substantial evidence supporting a fair argument that "the proposed project would result in potentially significant adverse biological impacts. . ." (*Id.* at 29.) An MND or EIR is required to properly analyze and mitigate this impact.

- d. The Project may have significant cumulative impacts that the CE Memo failed to adequately analyze.

Agencies must discuss cumulative impacts and mitigate significant cumulative impacts. (14 CCR § 15130(a).) This requirement flows from CEQA Section 21083, which requires a finding that a project may have a significant effect on the environment if:

The possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(PRC § 21083(b)(2).) A legally adequate cumulative impacts analysis views a particular project

over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

Dr. Smallwood found that Lilburn failed to assess the Project's contributions to cumulative impacts on biological resources. (Ex. A at 30.) Lilburn provided no list of past, ongoing, and future projects in the area and no actual analysis of cumulative impacts. Accordingly, there is no evidence to support a conclusion that the Project will not have significant cumulative impacts on biological resources. An MND or EIR should be prepared to analyze the Project's potentially significant cumulative impacts on biological resources. (*Id.*)

3. Mitigation measures are needed to reduce the Project's significant adverse impacts on biological resources.

CEQA prohibits mitigated categorical exemptions. (*Salmon Protection & Watershed Network v. Cnty. of Marin* (2004) 125 Cal.App.4th 1098, 1102 [*"SPAWN"*].) An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. (*SPAWN* (2004) 125 Cal.App.4th at 1108; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1198-1201 [*"Azusa"*].) Agencies also may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that an exception to a categorical exemption does not apply. If mitigation measures are necessary, then, at a minimum, the agency must prepare an MND to analyze the impacts and determine whether the mitigation measures are adequate to reduce the impacts to below significance. (*SPAWN* (2004) 125 Cal.App.4th at 1108; *Azusa* (1997) 52 Cal.App.4th at 1198-1201.)

Here, the CE Memo expressly states that, as a condition of approval of the Project, in accordance with Mitigation Measure BIO-3 of the Fontana General Plan Final EIR and as recommended in the JE Report, pre-construction nesting bird surveys shall be implemented if construction occurs between February 1 and September 15. (CE Memo at 11.) However, the City's designation of this requirement to conduct pre-construction nesting bird surveys, should construction occur during certain months, as a "condition of approval" does not make it so. The City cannot escape CEQA's prohibition against mitigated categorical exemptions by claiming that the required pre-construction nesting bird surveys are a "condition of approval."

There can be no doubt here that the purpose of implementing pre-construction nesting bird surveys for the Project is to reduce the Project's adverse impacts on nesting birds. Indeed, the CE Memo explains that "a qualified biologist shall conduct a pre-construction survey, in accordance with the CDFG Staff Report on Burrowing Owl Mitigation, to determine the presence or absence of burrowing owls within the proposed area of impact." (*Id.* at 11-12.) The CE Memo further provides that the "results of surveys, including mitigation recommendations (i.e. a Burrowing Owl Mitigation and Monitoring Report) shall be incorporated into the project-level CEQA compliance documentation." (*Id.* at 12.) Thus, the Project's potential impacts to nesting birds would not occur *but for* Project construction. The requirement to conduct pre-construction nesting bird surveys therefore must be considered a mitigation measure, and the

Project cannot be exempt from CEQA. (*See Save the Plastic Bag Coalition v. City and Cnty. of San Francisco* (2013), 222 Cal.App.4th 863, 882-83 [citing *SPAWN*, 125 Cal.App.4th at 1104, 1108; *Azusa*, 52 Cal.App.4th at 1187-88, 1199-1200].)

Nevertheless, Dr. Smallwood identified several flaws in the mitigation measure for the pre-construction nesting bird surveys described in Mitigation Measure BIO-3 of the Fontana General Plan Final EIR and the JE Report. For example, the mitigation language allows a single individual to make subjective decisions, outside the public's view, to determine the buffer area and timing for any given species. (Ex. A at 31.) Additionally, the measure fails to define what constitutes a "qualified biologist" to conduct the pre-construction surveys. (*Id.* at 32.) Dr. Smallwood concluded that this measure lacks objective criteria and is therefore unenforceable. (*Id.* at 31.)

Furthermore, Dr. Smallwood noted that preconstruction surveys for nesting birds would avoid neither the permanent loss of habitat nor the traffic mortality generated by the Project. (*Id.* at 31.) The mitigation measure would only apply to the breeding season of the preconstruction survey, after which there would be no further production of birds from the project site, since the Project's impact on birds would be permanent. (*Id.*) Thus, the conservation benefits of this measure would be minimal compared to the Project's potential impacts on breeding birds. (*Id.*)

Regarding the mitigation measure's language on burrowing owl surveys in particular, Dr. Smallwood found that the language is outdated because it does not adhere to the CDFW's burrowing owl survey and mitigation guidelines and does not indicate whether consultation with the CDFW about whether to obtain an incidental take permit has been initiated. (*Id.* at 33.) He also found that the language misrepresents CDFW's guidelines by implying that preconstruction take-avoidance surveys can replace breeding-season detection surveys. (*Id.*) Dr. Smallwood concluded that breeding-season detection surveys are indeed required in addition to pre-construction take-avoidance surveys. (*Id.* at 34.)

Dr. Smallwood suggests multiple other mitigation measures that the City should implement to effectively reduce the Project's significant adverse impacts on biological resources, should the Project proceed. Potential mitigation measures include compensatory habitat protection, compensatory mitigation for traffic mortality, donations to wildlife rehabilitation facilities, and native plant landscaping. (*Id.* at 34-35.) An MND or EIR is required to address the issues in the City's mitigation measure for pre-construction nesting bird surveys and implement the mitigation measures suggested by Dr. Smallwood.

II. The Project does not qualify for CEQA's Infill Exemption due to the Unusual Circumstances Exception.

The Unusual Circumstances Exception ("Exception") prohibits categorical exemptions where there is a "reasonable possibility" that a project will significantly impact the environment "due to unusual circumstances." (14 CCR § 15300.2(c).) To determine whether the Exception applies, agencies examine (1) whether the project has some feature that distinguishes it from others in the exempt class, such as its size or location, and (2) whether there is a reasonable

possibility of a significant environmental effect due to that unusual circumstance. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098; *IBC Business Owners for Sensible Development v. City of Irvine* (2023) 88 Cal.App.5th 100, 132.) The California Supreme Court has held that “a party may establish an unusual circumstance with evidence that the project will have a **significant environmental effect**.” (*Berkeley Hillside Preservation*, 60 Cal.4th at 1105 [emph. added].) That evidence, if convincing, necessarily also establishes a reasonable possibility that the project will significantly affect the environment due to those unusual circumstances. (*Id.*)

As discussed above, we have submitted substantial evidence that the Project will have significant adverse impacts related to biological resources. The fact that these impacts will occur constitutes an unusual circumstance, thereby precluding the City’s reliance on the Exemption.

CONCLUSION

The City cannot rely on a CEQA Infill Exemption because SAFER has provided substantial evidence showing that the Project will have significant adverse impacts on biological resources. Therefore, SAFER respectfully requests that the City Council find that the Project does not qualify for the Exemption. The City instead must prepare an MND or EIR before Project approval.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca Davis', with a long horizontal flourish extending to the right.

Rebecca Davis
LOZEAU DRURY LLP

EXHIBIT A

Shawn Smallwood, PhD
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Hayley Uno
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612

30 March 2026

RE: Hilton Industrial Facility

Dear Ms. Uno,

I write to comment on potential impacts to biological resources that would result from development of the proposed Hilton Industrial Facility. The project would add two industrial buildings totaling 71,986 sf and 104 parking spaces on 4 acres north of Hilton Drive and west of Hemlock Avenue in Fontana, California. My comments that follow address my concerns that the Class 32 CEQA Infill Exemption proposed by Lilburn Corporation (Lilburn 2026) would be inappropriate for this project because the project site provides substantial habitat value for endangered, rare or threatened species of wildlife, and because cumulative impacts on wildlife would be significant. I am also concerned that the supporting biological resources technical report prepared by Jennings Environmental (JE 2025) mischaracterizes the existing environmental setting, and that JE's and Lilburn's impacts analyses are flawed and their mitigation measures are inadequate.

My qualifications for preparing expert comments are the following. I hold a Ph.D. degree in Ecology from University of California at Davis, where I also worked as a post-graduate researcher in the Department of Agronomy and Range Sciences. My research has been on animal density and distribution, habitat selection, wildlife interactions with the anthrosphere, and conservation of rare and endangered species. I authored many papers on these and other topics. I served as Chair of the Conservation Affairs Committee for The Wildlife Society – Western Section. I am a member of The Wildlife Society, and I've lectured part-time at California State University, Sacramento. I was Associate Editor of wildlife biology's premier scientific journal, The Journal of Wildlife Management, as well as of Biological Conservation, and I was on the Editorial Board of Environmental Management. I have performed wildlife surveys in California for forty-one years. My CV is attached.

THE WILDLIFE COMMUNITY AS A BIOLOGICAL RESOURCE

Most environmental reviews pursuant to the California Environmental Quality Act (CEQA) focus on special-status species because CEQA's Checklist Evaluation of Environmental Impacts Question IV(a) asks specifically whether the project would adversely affect special-status species. However, this narrowly focused question is part of a larger policy goal of CEQA, which is "to prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop

below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” Pub. Res. Code § 21001(c). This policy is not restricted to special-status species; it also applies to wildlife populations and plant and animal communities, as it must because special-status species are integral members of ecological communities. The CEQA Guidelines Section 21155.1 defines wildlife habitat as “the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.” This definition is consistent with the scientific definition of habitat, which is that portion of the environment that is used by members of a species for survival and reproduction (Hall et al. 1997). An essential portion of the environment used by any special-status species is composed of the collection of other species of plants and wildlife, because these species provide for special-status species their forage, refugia and nest substrates, and some serve as ecological mutualists; no special-status species can exist in a vacuum of other wildlife. The CEQA Checklist Evaluation assigns priority to special-status species to balance information and cost, but it does not exclude the need to evaluate environmental impacts to other species, which, after all, are members of the very communities within which special-status species inter-depend for survival and reproduction.

The species I consider to be special-status species are those listed in California’s Special Animals List inclusive of threatened and endangered species under the California and federal Endangered Species Acts, candidates for listing under CESA and FESA, California’s Fully Protected Species, California species of special concern, and California’s Taxa to Watch List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>), continental and region-specific US Fish and Wildlife Service Birds of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>), and naturally rare species such as raptors protected by California’s Birds of Prey laws, Fish and Game Code Sections 3503, 3503.5, 3505 and 3513 (see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

What follows is a summary of a site visit to detect as many of the species of wildlife as possible within the short time available. The survey was also intended to detect as many of the special-status species as possible, but with the understanding that most special-status species are less readily detectable due to rarity and crypticity. Nonetheless, the species detected can indicate the ecological integrity of the site and thus the likelihood of occurrence of special-status species not yet detected.

SITE VISIT

On my behalf, Noriko Smallwood, a wildlife biologist with a Master of Science Degree from California State University Los Angeles, visited the site of the proposed project for 3.07 hours of survey from 06:46 to 09:50 hours on 21 March 2026, for 1.05 hours of diurnal survey and 3 hours of nocturnal survey from 18:04 to 22:07 hours on 24 March 2026. During daylight, Noriko walked the site where accessible, stopping to scan for wildlife with use of binoculars. At night, Noriko affixed a Pettersson M500 acoustic bat detector to a 20-foot pole, and cabled the detector to her computer, which ran SonoBat Live. SonoBat Live identifies bat species based on the bats’ sonograms that are detected

by the M500. Noriko recorded all species of vertebrate wildlife she detected, including those whose members flew over the site or were seen just off site.

Conditions were sunny with no wind and temperatures of 64-74° F on 21 March 2026, and sunny to clear with 9 MPH west wind and temperatures of 81-77° F on 24 March 2026. The site is primarily annual grassland bordered by mature pine and eucalyptus trees (Photos 1 and 2)



Photos 1 and 2. Views of the project site, 21 March 2026. Photos by Noriko Smallwood.

Noriko saw nesting red-tailed hawks (Photo 3), Anna’s hummingbird and California gull (Photos 4 and 5), hooded oriole and bushtit (Photos 6 and 7), Cassin’s kingbird and northern mockingbird (Photos 8 and 9), European starling and black phoebe (Photos 10 and 11), yellow-rumped warbler (Photo 12), mourning dove and house finch (Photos 13 and 14), Botta’s pocket gopher (Photos 15 and 16), Great Basin fence lizard and western side-blotched lizard (Photos 17 and 18), among other species listed in Table 1. Noriko detected 27 species of vertebrate wildlife at or adjacent to the project site, including four species with special status (Table 1).

Noriko Smallwood certifies that the foregoing and following survey results are true and accurately reported.

Noriko Smallwood
Noriko Smallwood



Photo 3. Red-tailed hawk bringing a stick to its nest just off of the project site, 21 March 2026. Photo by Noriko Smallwood.



Photos 4 and 5. Anna's hummingbird (left), and California gull (right) on the project site, 21 March 2026. Photos by Noriko Smallwood.



Photos 6 and 7. Hooded oriole (left), and bushtit (right) just off the project site, 21 March 2026. Photos by Noriko Smallwood.



Photos 8 and 9. Cassin's kingbird (left), and northern mockingbird (right) on the project site, 21 March 2026. Photos by Noriko Smallwood.



Photos 10 and 11. European starling collecting nest material (left), and black phoebe (right) on the project site, 21 March 2026. Photos by Noriko Smallwood.



Photo 12. Yellow-rumped warbler with an insect on the project site, 21 March 2026. Photo by Noriko Smallwood.



Photos 13 and 14. Mourning dove (top), and house finch (bottom) on the project site, 21 March 2026. Photos by Noriko Smallwood.



Photos 15 and 16. *Botta's pocket gopher* on the project site, 21 March 2026. Photos by Noriko Smallwood.



Photos 17 and 18. *Great Basin fence lizard* just off site (left), and *Western side-blotched lizard* on the project site (right), 21 March 2026. Photos by Noriko Smallwood.

Table 1. Species of wildlife Noriko observed during 3.07 hours of survey on 21 March 2026, and during 4.05 hours of survey on 24 March 2026.

| Common name | Species name | Status ¹ | Note |
|------------------------------|---|---------------------|-----------------------|
| Great Basin fence lizard | <i>Sceloporus occidentalis longipes</i> | | Just off site |
| Western side-blotched lizard | <i>Uta stansburiana elegans</i> | | |
| Rock pigeon | <i>Columba livia</i> | Non-native | |
| Eurasian collared-dove | <i>Streptopelia decaocto</i> | Non-native | |
| Mourning dove | <i>Zenaida macroura</i> | | Foraged |
| Anna’s hummingbird | <i>Calypte anna</i> | | Just off site |
| California gull | <i>Larus californicus</i> | BCC, WL | Flocks flew over |
| Red-tailed hawk | <i>Buteo jamaicensis</i> | BOP | Nesting just off site |
| Great horned owl | <i>Bubo virginianus</i> | BOP | Called just off site |
| American kestrel | <i>Falco sparverius</i> | BOP | Called just off site |
| Cassin’s kingbird | <i>Tyrannus vociferans</i> | | Foraged |
| Black phoebe | <i>Sayornis nigricans</i> | | Foraged |
| California scrub-jay | <i>Aphelocoma californica</i> | | Just off site |
| American crow | <i>Corvus brachyrhynchos</i> | | |
| Common raven | <i>Corvus corax</i> | | |
| Bushtit | <i>Psaltriparus minimus</i> | | Foraged just off site |
| Northern mockingbird | <i>Mimus polyglottos</i> | | Foraged |
| European starling | <i>Sturnus vulgaris</i> | Non-native | Nesting along edge |
| House sparrow | <i>Passer domesticus</i> | Non-native | |
| House finch | <i>Haemorphous mexicanus</i> | | Foraged |
| Lesser goldfinch | <i>Spinus psaltria</i> | | |
| White-crowned sparrow | <i>Zonotrichia leucophrys</i> | | |
| Savannah sparrow | <i>Passerculus sandwichensis</i> | | |
| Hooded oriole | <i>Icterus cucullatus</i> | | |
| Yellow-rumped warbler | <i>Setophaga coronata</i> | | |
| House cat | <i>Felis catus</i> | Non-native | |
| Botta’s pocket gopher | <i>Thomomys bottae</i> | | Foraged on site |

¹ Listed on CDFW’s Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as WL = CDFW’s Taxa to Watch List; BCC = U.S. Fish and Wildlife Service’s Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); and BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

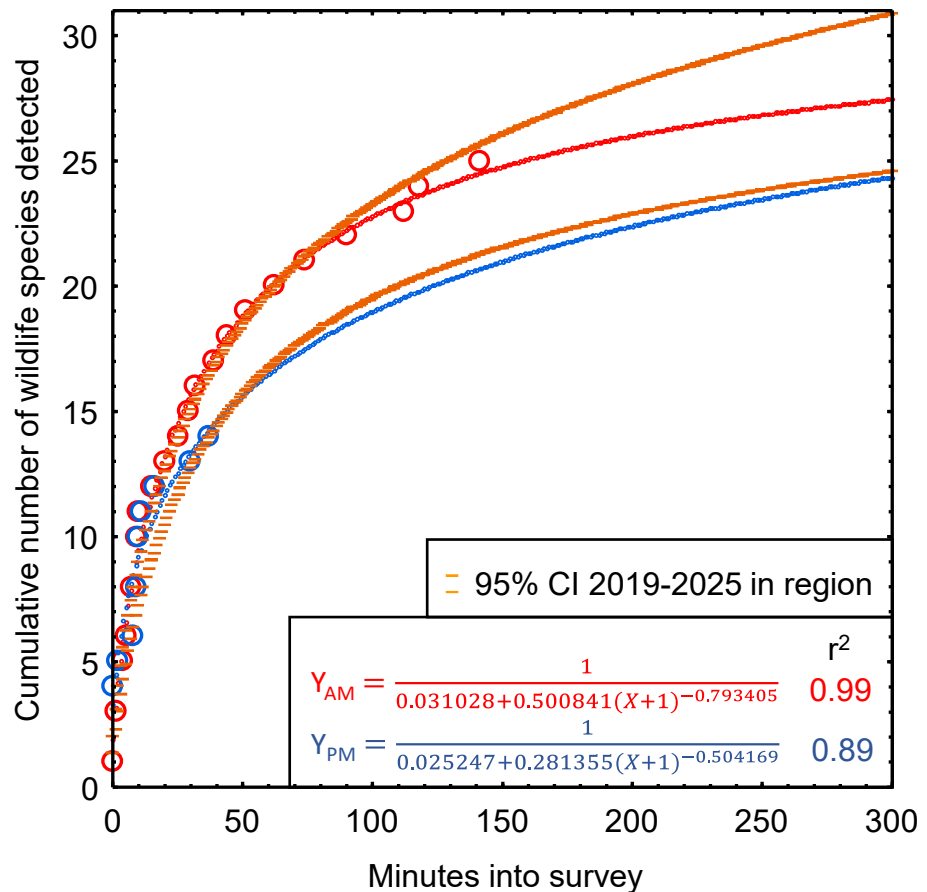
ANALYSIS OF RECONNAISSANCE SURVEY DATA

Noriko detected 27 species of vertebrate wildlife, which was a relatively large number for the brevity of her survey effort. All the species in Table 1 would lose habitat as a result of the project and its replacement of natural ground covers with impervious surfaces. Smallwood and Smallwood (2023) confirmed this habitat loss by measuring the impacts of similar developments on species richness and the abundances of wildlife. Smallwood

and Smallwood (2023) directly compared the species and the numbers of animals observed prior to development to the those observed after development, while they did the same at control sites. The measured losses of these species resulting from development is indicative of habitat loss, because habitat is defined as that portion of the environment that is used for survival and reproduction by members of a species (Hall et al. 1997).

However, the species of wildlife Noriko detected at the project site were not the only species that were present during her survey, as there are always species that are not detected. To demonstrate this, I fit nonlinear regression models to Noriko’s accumulation of first detections of vertebrate wildlife species with time into her daytime surveys to predict the number of species that she would have detected with longer surveys or perhaps with additional biologists available to assist her. The type of model is a logistic growth model, which reaches an asymptote that corresponds with the theoretical maximum number of vertebrate wildlife species that could have been detected during the survey. The model fit to Noriko’s survey data from the morning of 21 March predicts 32 species of vertebrate wildlife were available to be detected, or 7 more species than she detected that morning (Figure 1). Noriko’s rate of species detections followed along the upper bound of the 95% confidence interval estimated from many other morning surveys we have completed in the Inland Empire region, thus indicating the project site is relatively species-rich for the region.

Figure 1. Actual and predicted relationships between the numbers of vertebrate wildlife species detected and the elapsed survey time based on Noriko’s visual-scan surveys at the project site on 21 and 24 March 2026. Note the confidence interval (orange) applies only to the morning survey (red line).



Unknown are the identities of the species Noriko missed, but the species that Noriko did and did not detect on composed only a fraction of the species that would occur at the project site over the period of a year or longer. This is because many species are seasonal in their occurrence, some require more survey effort because they are highly cryptic, and the members of other species would visit the site only periodically while patrolling large home ranges. Surveys on only two days cannot possibly detect all of the species of the local wildlife community.

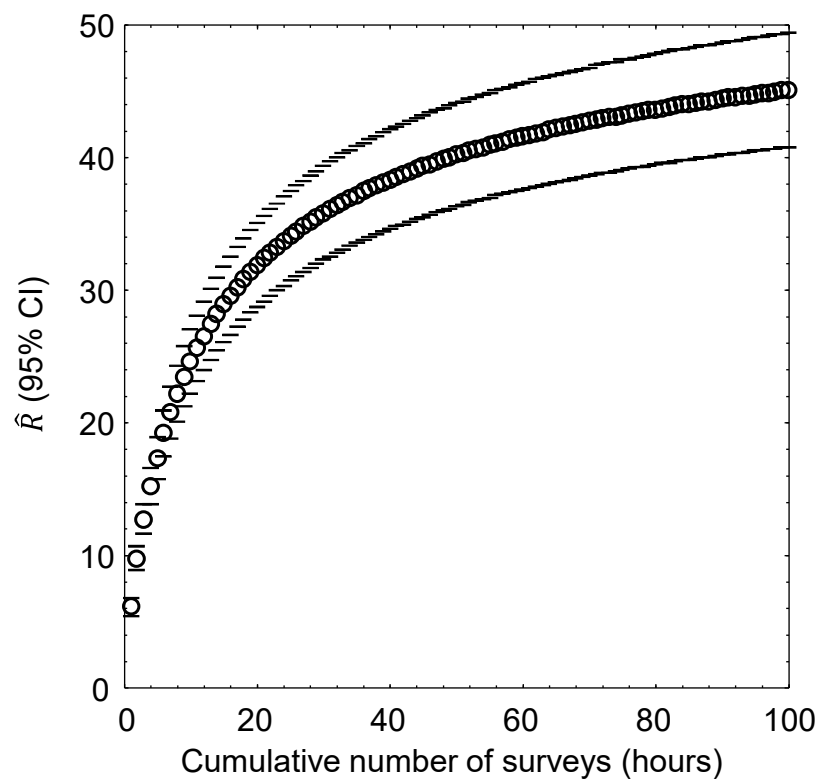
At least a year's worth of surveys would be needed to more accurately report the number of vertebrate species that occur at the project site, but I only have Noriko's one survey. However, by use of an analytical bridge, a modeling effort applied to a large, robust data set from a research site can predict the number of vertebrate wildlife species that likely make use of the site over the longer term. This analytical bridge draws inference from the pattern of species detections more than it does from the research site, and I note that the pattern, i.e., rate, of species detections is consistent from site to site.

As part of my research, I completed a much larger survey effort across 167 km² of annual grasslands of the Altamont Pass Wind Resource Area, where from 2015 through 2019 I performed 721 1-hour visual-scan surveys, or 721 hours of surveys, at 46 stations. I used binoculars and otherwise the methods were the same as the methods I and other consulting biologists use for surveys at proposed project sites. At each of the 46 survey stations, I tallied new species detected with each sequential survey at that station, and then related the cumulative species detected to the hours (number of surveys, as each survey lasted 1 hour) used to accumulate my counts of species detected. I used combined quadratic and simplex methods of estimation in Statistica to estimate least-squares, best-fit nonlinear models of the number of cumulative species detected regressed on hours of survey (number of surveys) at the station: $\hat{R} = \frac{1}{1/a + b \times (Hours)^c}$, where \hat{R} represented cumulative species richness detected. The coefficients of determination, r^2 , of the models ranged 0.88 to 1.00, with a mean of 0.97 (95% CI: 0.96, 0.98); or in other words, the models were excellent fits to the data.

I projected the predictions of each model to thousands of hours to find predicted asymptotes of wildlife species richness. The mean model-predicted asymptote of species richness was 57 after 11,857 hours of visual-scan surveys among the 46 stations of my research site. I also averaged model predictions of species richness at each incremental increase of number of surveys, i.e., number of hours (Figure 2). On average I would have detected 15.5 species over my first 4.12 hours of diurnal surveys at my research site in the Altamont Pass (4.12 hours to match the 4.12 hours Noriko surveyed during daylight hours at the project site), which composed 27% of the predicted total number of species I would detect with a much larger survey effort at the research site. Given the example illustrated in Figure 2, the 26 vertebrate wildlife species Noriko detected after her 4.12 hours of daylight survey at the project site likely represented 27% of the species to be detected after many more visual-scan surveys over another year or longer. With many more repeat surveys through the year, Noriko would likely detect $26/0.27 = 96$ species of vertebrate wildlife in daylight surveys at the site. Assuming Noriko's ratio of special-status to non-special-status species was to hold through the detections of all 96

predicted species, then continued daylight surveys would eventually detect 11 special-status species of vertebrate wildlife.

Figure 2. Mean (95% CI) predicted wildlife species richness, \hat{R} , as a nonlinear function of hour-long survey increments across 46 visual-scan survey stations across the Altamont Pass Wind Resource Area, Alameda and Contra Costa Counties, 2015–2019. Note that the location of the study is largely irrelevant to the utility of the graph to the interpretation of survey outcomes at the project site. It is the pattern in the data that is relevant, because the pattern is typical of the pattern seen elsewhere.



Because my prediction of 96 species of vertebrate wildlife, including 11 special-status species, is derived from daytime visual-scan surveys, and would detect few nocturnal mammals such as bats, the true number of species composing the wildlife community of the site must be larger. Noriko’s reconnaissance survey should serve only as a starting point toward characterization of the site’s wildlife community, but it certainly cannot alone inform of the inventory of species that use the site. More surveys are needed than her one survey to produce an inventory the project site’s wildlife community. Nevertheless, the large number of species I predict at the project site is indicative of a relatively species-rich wildlife community that warrants a serious survey effort.

MISCHARACTERIZATION OF THE EXISTING ENVIRONMENTAL SETTING

CEQA’s primary objectives should guide the design and conduct of CEQA review. Four of CEQA’s primary objectives are to (1) accurately characterize the existing environmental setting, (2) disclose potential project impacts to the public and decision-makers, (3) foster public participation with decision-making over proposed projects, and (4) identify issues and feasible alternative mitigation measures to minimize environmental impacts. The first objective is essential to the other three, because an accurate understanding of the existing environmental setting is needed to predict impacts, provide the public with the means to meaningfully participate with issues of importance, and effectively strategize mitigation and project alternatives (Figure 3). For

biological resources, essential information includes the species composition of the plant and wildlife communities, key ecological interactions, identification of ecological keystone species, determining the presence of special-status species or their habitats, and identifying risk factors that could result in significant direct, indirect and cumulative impacts should the project go forward.

Assess species occurrence likelihoods

1. Desktop review
 - a. Species geographic range overlap or database occurrence records
 - b. Crosswalk habitat associations with mapped ground cover
2. Reconnaissance survey/Habitat assessment
3. Detection surveys for special-status species



Characterize wildlife community

4. Lists of species detected and of those expected but not yet detected, and any known trends



Outcomes

5. Predict impacts
6. Formulate mitigation strategy
7. Determine significance of impacts

Note: Impact predictions and significance determinations have been of unknown accuracy in the absence of experimental measurement

Figure 3. General flow of information from its gathering through characterizing the existing environment to predicting impacts and their significance.

The public and decision-makers need to know which species are susceptible to harm potentially caused by the project and its associated activities, and which are known to be vulnerable to harm once exposed to the environmental changes brought by the project. For these reasons, field studies are needed to identify as many of the species that occur on the project site as reasonably feasible, and to otherwise examine the environmental conditions for their likelihood to support species that are not detected, otherwise known as “habitat assessment.” A review of species occurrence records – also known as “desktop review” – is needed to identify the other species that potentially occur on the site – a process that is also referred to as “habitat assessment.” Because habitat assessments that are based on either or both field study and desktop review are prone to uncertainty, emphasis needs to be directed to adequate field study to reduce the pool of species subjected to habitat assessment, thereby weighing the review more towards certainty. Appropriately weighted reviews are less susceptible to speculation over species occurrence likelihoods. For this reason, protocol-level detection surveys have been formulated for numerous special-status species of plants and wildlife, and otherwise best scientific practices are needed to provide a reasonable likelihood of detection of species that truly occur on the project site. The negative findings of a properly conducted detection survey are the only findings that can support a determination of species absence.

Even among reviews founded on the best of field studies, there is always uncertainty over some of the determinations of species occurrences. The uncertainties of habitat assessments need to be managed to achieve CEQA's primary objectives. This means that the methodological details of both the field studies and desktop review need to be carefully and thoroughly reported, and it means that results need to be reported in context of their uncertainties. For example, the reporting of having detected 10 species in a reconnaissance survey is nearly meaningless without also reporting the numbers of species found in surveys of similar methods and effort levels, and the reporting of the failure to detect a given species is nearly entirely meaningless without also reporting the likelihood that species would be detected given the survey methods and effort level. The same is true of desktop review; that is, there should be some means of validating habitat assessments based on the thousands of habitat assessments that have already been conducted in support of CEQA reviews. If industry standards in environmental review are to be credible, then they must include the use of the comparative method.

In the case of the proposed project, Lilburn (2026) relies on a one-hour reconnaissance survey and an improperly curtailed desktop review, neither of which comports with the findings of Noriko's survey or my desktop review for known occurrences of special-status species of wildlife. Furthermore, neither JE (2025) nor Lilburn (2026) reports anything about the uncertainties of JE's findings, which vastly diminishes the accuracy of the characterization of the existing environmental setting.

Environmental Setting informed by Field Surveys

JE (2025) conducted a reconnaissance survey on 24 January 2026 "to identify the potential for the occurrence of special status species, vegetation communities, or habitats that could support special status wildlife species." JE (2025) deployed one biologist who committed one hour of survey starting at 07:30. In one hour of survey, JE (2025) detected five species of vertebrate wildlife, all five of which were birds. In comparison, Noriko detected these same five bird species within 45 minutes from the start of her survey, because these species tend to be conspicuous due to size, their outsized behaviors, and their diurnal activity patterns. Noriko also detected 20 species of vertebrate wildlife in her first hour of morning survey, or four times the number detected by JE (2025).

Noriko found slightly more species in her one hour than she usually does within the Inland Empire, as her 95% confidence interval of the number of vertebrate wildlife species detected after one hour of survey ranges 16.6 to 19.8 (Figure 1). Noriko's findings were typical for her, but JE (2025) reports no comparison of its findings to the findings it has made at other survey sites.

Relative to the findings of hundreds of reconnaissance surveys completed by other consultants in California, Noriko's survey findings were consistent with the averages among consultants, but JE's (2025) findings came up short (Figure 4). Whereas Noriko found 18% more species of vertebrate wildlife than the consultant average of 22.8 species, JE detected only 22% of the average (left graph of Figure 3). JE's (2025) findings are discrepant from Noriko's, but Noriko's findings are consistent with the

average numbers of species detected by other biological consultants, so the discrepancy can be isolated to JE’s survey performance at the project site. Until a reasonable explanation can be made for why JE (2025) detected so few species, JE’s survey findings cannot be relied upon to represent the wildlife community of the project site.

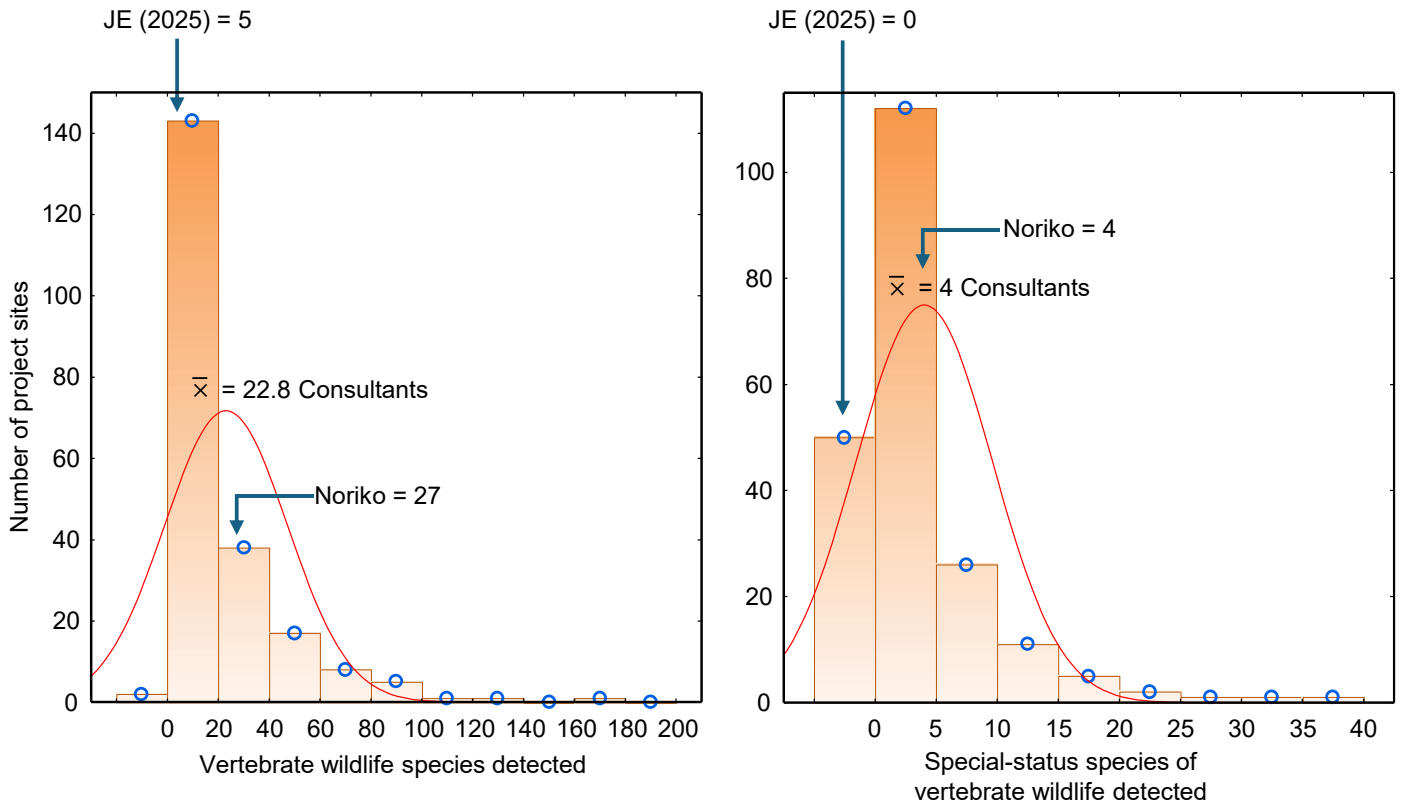


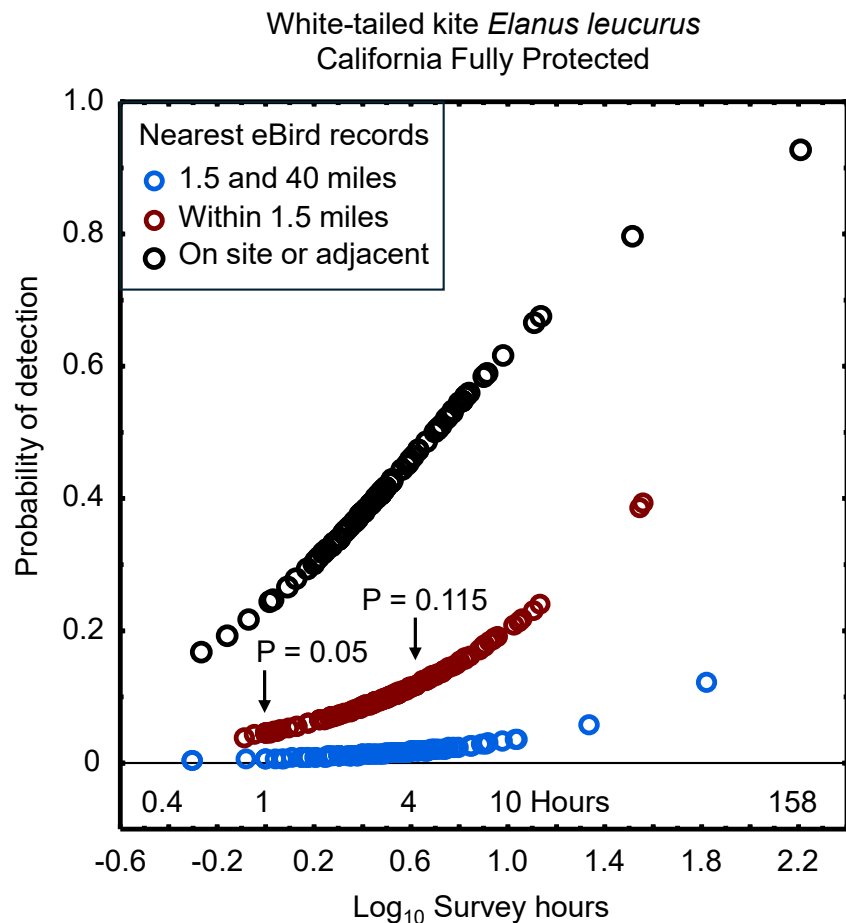
Figure 4. Frequency distributions of the numbers of vertebrate wildlife species (left graph) and special-status species of wildlife (right graph) detected by consulting biologists among project sites that were surveyed in support of CEQA reviews.

In no way does JE (2025) or Lilburn (2026) compare JE’s one hour of survey to typical reconnaissance survey efforts or to any standard minimum level of survey effort. No attempt is made to justify the reconnaissance survey commitment of only 15 minutes per acre. Nor is there any attempt to defend the implication that JE’s survey outcome is definitive of the species composition of the local wildlife community. In fact, Lilburn (2026) portrays without question JE’s finding as definitive.

JE’s survey deficiency is lost on Lilburn (2026). Lilburn (2026:11) reports, “No rare, State and/or federally listed threatened or endangered species are documented/ or expected to occur within the Project site.” However, Lilburn (2026) fails to consider the very low likelihood that special-status species would have been detected in one person-hour of reconnaissance survey. Consider the likelihood of detecting white-tailed kite, as an example. Knowing that the nearest eBird occurrence record of white-tailed kite is within 1.5 miles of the project site, and knowing our rate of detection of white-tailed kite with increasing survey duration (based on hundreds of surveys), Noriko’s first hour of

survey (to match JE’s one hour of survey) afforded her a 5% likelihood of detection of white-tailed kite (Figure 5). Even based on all her daylight survey time, Noriko’s likelihood of detecting white-tailed kite was only 11.5% (Figure 5). Noriko would have needed to conduct many more hours of survey to accumulate a reasonable likelihood of detecting white-tailed kite, but the model fit to our data indicates that with more surveys she would eventually detect white-tailed kite on the project site. Noriko stood a low likelihood of detecting white-tailed kite, and JE stood an even lower likelihood of detecting white-tailed kite, but these low likelihoods of detection do not mean that white-tailed kite is unlikely to occur on the site. There is a fundamental difference in meaning between detection likelihood and occurrence likelihood, but this difference is not mentioned or discussed in Lilburn (2026).

Figure 5. Probability of detection of white-tailed kite as a function of survey effort and proximity of occurrence records to a project site, based on hundreds of reconnaissance surveys Noriko and I completed 2019–2024. The probabilities that Noriko would have detected white-tailed kite are depicted for one hour ($P = 0.05$) and 4.12 hours ($P = 0.115$) of survey.



Lilburn (2026) continues to misrepresent JE’s survey findings as they relate to rare plants.

According to Lilburn (2026:11), “no plant species with the CNPS California Rare Plant Rank (CRPR) of 1 or 2 were observed on-site or documented to occur on-site in the relevant databases.” However, JE (2025) did not implement the available survey guidelines for rare plants (CDFW 2018). A one-hour walk-over survey was unsuitable for detecting rare plants, and this is true even before considering that JE pursued multiple simultaneous survey objectives. That JE detected no rare plants should be of no surprise considering JE’s gross survey deficiency, but this finding has nothing to do with the occurrence likelihoods of rare plants.

Lilburn (2026:11) further states, “The site offers no suitable habitat for any rare sensitive species including listed species.” However, Lilburn did not conduct a survey to support this conclusion. Support for it could have come from multiple reconnaissance surveys conducted at various times of day, or from protocol-level detection surveys. Detection survey guidelines should have been implemented for burrowing owls (CDFW 2012), Crotch’s bumble bees (CDFW 2023), and rare plants (CDFW 2018), and surveys using best scientific practices should have been directed to bats, pocket mice, and kangaroo rats, and other species.

Lilburn (2026:11) concludes, “Although the site is highly disturbed, there is some habitat within the Project site and adjacent area that is suitable for nesting birds in general.” I concur with this conclusion, but it also means that multiple special-status species of birds have the potential to occur on the project site, contrary to Lilburn’s conclusion that “The site offers no suitable habitat for any rare sensitive species including listed species.” Special-status species of birds with potential to occur on the site include burrowing owl, northern harrier, white-tailed kite, California horned lark, loggerhead shrike, and many others. Lilburn’s conclusions are speculative and inconsistent.

Environmental Setting informed by Desktop Review

To establish its pool of special-status species for assessment of occurrence likelihoods, JE (2025) queried the California Natural Diversity Data Base (CNDDDB) for occurrence records within four USGS 7.5’ Quadrangles. However, the CNDDDB is a volunteer positive-sightings database, and as such it can confirm presence but not absence of species because such databases are not designed for this purpose. As noted by CNDDDB, *“The CNDDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present.”* JE (2025) misuses the CNDDDB.

The CNDDDB relies entirely on volunteer reporting from biologists who were allowed access to whatever properties they report from. Many properties have never been surveyed by biologists. Many properties have been surveyed, but the survey outcomes never reported to the CNDDDB. Many properties have been surveyed multiple times, but not all survey outcomes reported to the CNDDDB. Furthermore, the CNDDDB is interested only in the findings of special-status species, which means that species more recently assigned special status will have been reported many fewer times to the CNDDDB than were species assigned special status since the inception of the CNDDDB. Therefore, occurrence records in the CNDDDB are most abundant for species assigned special status decades ago, but fewest for species only recently assigned special status. And because negative findings are not reported to the CNDDDB, the CNDDDB is also inappropriate as a basis for weighting occurrence likelihoods such as absent, not expected, unlikely, low, moderate or high. Whereas the CNDDDB can be confirmatory of species presence, it cannot support absence determinations or assignments of low likelihood of occurrence. And again, the screening out of a species due to lack of occurrence records in the

CNDDDB is the same as an absence determination, and this step is being taken without adequate support of field surveys.

In my assessment based on a database review and site visits, 138 special-status species of wildlife are known to occur near enough to the site to warrant analysis of occurrence potential (Table 2). Not all these species should be expected to occur at the project site, but each of them should be given a closer look to determine occurrence likelihoods and whether additional surveys are needed, or implementation of detection surveys, or whether it would be reasonable to assume presence. Of these 138 species, 4 were recorded on or just off the project site, and another 17 (12%) have been documented within 1.5 miles of the site (Very close), another 74 (54%) between 1.5 and 4 miles (Nearby), and another 39 (28%) between 4 and 30 miles (In region). Two thirds (69%) of the special-status species in Table 2 have been reportedly seen within 4 miles of the project site. The site therefore supports at least four special-status species of wildlife, and it carries the potential for supporting many more special-status species of wildlife based on the proximities of recorded occurrences. Evidence certainly suggests that habitat assessments are needed for these species.

JE (2025) considers the occurrence likelihoods of only 21 (15%) of the special-status species listed in Table 2, which means that 117 (85%) of the special-status species in Table 2 are screened out of the analysis in the first step of JE's desktop review. Of the 21 species considered, JE (2025) determines all are "absent" from the project site, even though one of them was documented within 1.5 miles of the site, another three were documented between 1.5 and 4 miles from the site, and 14 have been documented between 4 and 30 miles from the site. None of the absence determinations are based on detection surveys or anything more than one hour of reconnaissance survey. These absence determinations are inappropriate.

Mischaracterization of the Wildlife Community

JE (2025) reports on a field survey and a desktop review having been performed, but the field survey was much too cursory and its results are interpreted without any context to survey results from elsewhere, and the desktop review starts with an inappropriately small pool of special-status species after misusing the CNDDDB. JE (2025) and Lilburn (2026) often resort to speculation in their analyses of occurrence likelihoods, having not completed surveys appropriate to bats, burrowing owls, rare plants or anything else. Speculated habitat assessments are highly uncertain, which is inappropriate for precious or rare resources such as special-status species (National Research Council 1986). The true wildlife community remains to be described with sufficient accuracy. Without a more accurate characterization of the wildlife community, the basis is inadequate for predicting impacts and formulating appropriate mitigation strategies.

There is at least a fair argument that can be made for the need to prepare an EIR to accurately characterize the wildlife community on the project site as a suitable baseline from which to predict project impacts and to formulate an appropriate mitigation strategy.

Table 2. Occurrence likelihoods of special-status species of wildlife at or near the proposed project site, according to eBird/iNaturalist records (<https://eBird.org>, <https://www.inaturalist.org>), Jennings Environmental (JE 2025), and on-site survey findings, where ‘Very close’ indicates within 1.5 miles of the site, “nearby” indicates within 1.5 and 4 miles, and “in region” indicates within 4 and 30 miles, and ‘in range’ means the species’ geographic range overlaps the site. Entries in bold font identify species detected by Noriko Smallwood during her site visit.

| Common name | Species name | Status¹ | JE 2025 | Records, Surveys |
|-------------------------------|--|---------------------------|----------------|-------------------------|
| Vernal pool fairy shrimp | <i>Branchinecta lynchi</i> | FT | | In region |
| San Diego fairy shrimp | <i>Branchinecta sandiegonensis</i> | FE | | In region |
| Riverside fairy shrimp | <i>Streptocephalus woottoni</i> | FE | | In region |
| Delhi sands flower-loving fly | <i>Rhaphiomidas terminatus abdominalis</i> | FE | Absent | In region |
| Monarch | <i>Danaus plexippus</i> | FC | | Very close |
| Crotch’s bumble bee | <i>Bombus crotchii</i> | CCE | Absent | Nearby |
| Western spadefoot | <i>Spea hammondi</i> | FC, SSC | Absent | In region |
| Southwestern pond turtle | <i>Actinemys pallida</i> | FC, SSC | | In region |
| Coast horned lizard | <i>Phrynosoma blainvillii</i> | SSC | Absent | In region |
| Orange-throated whiptail | <i>Aspidoscelis hyperythra</i> | WL | | In region |
| Coastal whiptail | <i>Aspidoscelis tigris stejnegeri</i> | SSC | | In region |
| San Diegan legless lizard | <i>Anniella stebbinsi</i> | SSC | Absent | Very close |
| California glossy snake | <i>Arizona elegans occidentalis</i> | SSC | Absent | In region |
| Coast patch-nosed snake | <i>Salvadora hexalepis virgultea</i> | SSC | | In region |
| Two-striped gartersnake | <i>Thamnophis hammondi</i> | SSC | Absent | In region |
| South coast gartersnake | <i>Thamnophis sirtalis pop. 1</i> | SSC | | In region |
| Red-diamond rattlesnake | <i>Crotalus ruber</i> | SSC | | Nearby |
| Brant | <i>Branta bernicla</i> | SSC ₂ | | In region |
| Cackling goose (Aleutian) | <i>Branta hutchinsii leucopareia</i> | WL | | In region |
| Redhead | <i>Aythya americana</i> | SSC ₂ | | Nearby |
| Western grebe | <i>Aechmophorus occidentalis</i> | BCC | | Very close |
| Clark’s grebe | <i>Aechmophorus clarkii</i> | BCC | | Nearby |
| Western yellow-billed cuckoo | <i>Coccyzus americanus occidentalis</i> | FT, CE | | In region |
| Black swift | <i>Cypseloides niger</i> | SSC ₃ , BCC | | In region |
| Vaux’s swift | <i>Chaetura vauxi</i> | SSC ₂ | | Nearby |
| Costa’s hummingbird | <i>Calypte costae</i> | BCC | | Nearby |

| Common name | Species name | Status¹ | JE 2025 | Records, Surveys |
|--------------------------|-----------------------------------|---------------------------|----------------|----------------------------|
| Calliope hummingbird | <i>Selasphorus calliope</i> | BCC | | In region |
| Rufous hummingbird | <i>Selasphorus rufus</i> | BCC | | Very close |
| Allen's hummingbird | <i>Selasphorus sasin</i> | BCC | | Very close |
| Mountain plover | <i>Charadrius montanus</i> | SSC2, BCC | | In region |
| Snowy plover | <i>Charadrius nivosus</i> | BCC | | In region |
| Western snowy plover | <i>Charadrius nivosus nivosus</i> | FT, SSC | | In region |
| Long-billed curlew | <i>Numenius americanus</i> | WL | | In region |
| Marbled godwit | <i>Limosa fedoa</i> | BCC | | In region |
| Red knot | <i>Calidris canutus</i> | BCC | | In region |
| Pectoral sandpiper | <i>Calidris melanotos</i> | BCC | | In region |
| Short-billed dowitcher | <i>Limnodromus griseus</i> | BCC | | In region |
| Lesser yellowlegs | <i>Tringa flavipes</i> | BCC | | Very close |
| Willet | <i>Tringa semipalmata</i> | BCC | | In region |
| Laughing gull | <i>Leucophaeus atricilla</i> | WL | | In region |
| Franklin's gull | <i>Leucophaeus pipixcan</i> | BCC | | In region |
| Heermann's gull | <i>Larus heermanni</i> | BCC | | In region |
| Western gull | <i>Larus occidentalis</i> | BCC | | In region |
| California gull | <i>Larus californicus</i> | BCC, WL | | Very close/ On site |
| California least tern | <i>Sternula antillarum browni</i> | FE, CE, CFP | | In region |
| Black tern | <i>Chlidonias niger</i> | SSC2, BCC | | In region |
| Common loon | <i>Gavia immer</i> | SSC | | In region |
| Double-crested cormorant | <i>Phalacrocorax auritus</i> | WL | | Very close |
| American white pelican | <i>Pelacanus erythrorhynchos</i> | SSC1 | | Nearby |
| Least bittern | <i>Ixobrychus exilis</i> | SSC2 | | In region |
| White-faced ibis | <i>Plegadis chihi</i> | WL | | Nearby |
| Turkey vulture | <i>Cathartes aura</i> | BOP | | Very close |
| Osprey | <i>Pandion haliaetus</i> | WL, BOP | | Nearby |
| White-tailed kite | <i>Elanus luecurus</i> | CFP, BOP | | In region |
| Golden eagle | <i>Aquila chrysaetos</i> | BGEPA, CFP, BOP, WL | | Very close |
| Northern harrier | <i>Circus cyaneus</i> | BCC, SSC3, BOP | | Nearby |
| Sharp-shinned hawk | <i>Accipiter striatus</i> | WL, BOP | | Nearby |

| Common name | Species name | Status¹ | JE 2025 | Records, Surveys |
|--------------------------------|-----------------------------------|---------------------------|----------------|----------------------------------|
| Cooper's hawk | <i>Accipiter cooperii</i> | WL, BOP | | Very close |
| Bald eagle | <i>Haliaeetus leucocephalus</i> | CE, BGEPA, BOP | | Nearby |
| Red-shouldered hawk | <i>Buteo lineatus</i> | BOP | | Very close |
| Swainson's hawk | <i>Buteo swainsoni</i> | CT, BOP | | Nearby |
| Red-tailed hawk | <i>Buteo jamaicensis</i> | BOP | | Very close/ On site |
| Ferruginous hawk | <i>Buteo regalis</i> | WL, BOP | | Nearby |
| Zone-tailed hawk | <i>Buteo albonotatus</i> | BOP | | In region |
| Harris' hawk | <i>Parabuteo unicinctus</i> | WL, BOP | | In region |
| Rough-legged hawk | <i>Buteo lagopus</i> | BOP | | In region |
| American barn owl | <i>Tyto furcata</i> | BOP | | Very close |
| Western screech-owl | <i>Megascops kennicotti</i> | BOP | | In region |
| Great horned owl | <i>Bubo virginianus</i> | BOP | | Very close/ Just off site |
| Burrowing owl | <i>Athene cunicularia</i> | BCC, CCE, SSC2, BOP | Absent | Nearby |
| Long-eared owl | <i>Asio otus</i> | BCC, SSC3, BOP | | In region |
| Short-eared owl | <i>Asia flammeus</i> | BCC, SSC3, BOP | | In region |
| Lewis's woodpecker | <i>Melanerpes lewis</i> | BCC | | In region |
| Downy woodpecker | <i>Dryobates pubescens</i> | | | |
| Nuttall's woodpecker | <i>Picoides nuttallii</i> | BCC | | Nearby |
| American kestrel | <i>Falco sparverius</i> | BOP | | Very close/ Just off site |
| Merlin | <i>Falco columbarius</i> | WL, BOP | | Nearby |
| Peregrine falcon | <i>Falco peregrinus</i> | BOP | | Very close |
| Prairie falcon | <i>Falco mexicanus</i> | WL, BOP | | Nearby |
| Olive-sided flycatcher | <i>Contopus cooperi</i> | BCC, SSC2 | | Nearby |
| Willow flycatcher | <i>Empidonax traillii</i> | CE | | In region |
| Southwestern willow flycatcher | <i>Empidonax traillii extimus</i> | FE, CE | | In region |
| Vermilion flycatcher | <i>Pyrocephalus rubinus</i> | SSC2 | | Very close |
| Least Bell's vireo | <i>Vireo bellii pusillus</i> | FE, CE | Absent | Nearby |
| Loggerhead shrike | <i>Lanius ludovicianus</i> | SSC2 | | Nearby |
| Oak titmouse | <i>Baeolophus inornatus</i> | BCC | | Nearby |
| California horned lark | <i>Eremophila alpestris actia</i> | WL | | Very close |

| Common name | Species name | Status¹ | JE 2025 | Records, Surveys |
|--|--------------------------------------|---------------------------|----------------|-------------------------|
| Bank swallow | <i>Riparia riparia</i> | CT | | In region |
| Purple martin | <i>Progne subis</i> | SSC2 | | Nearby |
| Wrentit | <i>Chamaea fasciata</i> | BCC | | Nearby |
| California gnatcatcher | <i>Polioptila c. californica</i> | FT, SSC2 | Absent | In region |
| California thrasher | <i>Toxostoma redivivum</i> | BCC | | Nearby |
| Cassin's finch | <i>Haemorhous cassinii</i> | BCC | | In region |
| Lawrence's goldfinch | <i>Spinus lawrencei</i> | BCC | | Very close |
| Grasshopper sparrow | <i>Ammodramus savannarum</i> | SSC2 | | In region |
| Black-chinned sparrow | <i>Spizella atrogularis</i> | BCC | | Nearby |
| Gray-headed junco | <i>Junco hyemalis caniceps</i> | WL | | In region |
| Bell's sparrow | <i>Amphispiza b. belli</i> | WL | Absent | In region |
| Oregon vesper sparrow | <i>Pooecetes gramineus affinis</i> | SSC2 | | In range |
| Southern California rufous-crowned sparrow | <i>Aimophila ruficeps canescens</i> | WL | | Nearby |
| Yellow-breasted chat | <i>Icteria virens</i> | SSC3 | | Nearby |
| Yellow-headed blackbird | <i>Xanthocephalus xanthocephalus</i> | SSC3 | | Nearby |
| Bullock's oriole | <i>Icterus bullockii</i> | BCC | | Very close |
| Tricolored blackbird | <i>Agelaius tricolor</i> | CT, BCC, SSC1 | Absent | In region |
| Prothonotary warbler | <i>Protonotaria citrea</i> | BCC | | Nearby |
| Lucy's warbler | <i>Leiothlypis luciae</i> | SSC3 | | In region |
| Nashville warbler | <i>Vermivora ruficapilla</i> | | | Nearby |
| Virginia's warbler | <i>Leiothlypis virginiae</i> | WL, BCC | | In region |
| Northern yellow warbler | <i>Setophaga aestiva</i> | SSC2 | | Nearby |
| Prairie warbler | <i>Setophaga discolor</i> | BCC | | In region |
| Summer tanager | <i>Piranga rubra</i> | SSC1 | | In region |
| Little brown bat | <i>Myotis lucifugus</i> | WBWG: M | | In range |
| Yuma myotis | <i>Myotis yumanensis</i> | WBWG: LM | | In region |
| Long-eared myotis | <i>Myotis evotis</i> | WBWG: M | | In region |
| Fringed myotis | <i>Myotis thysanodes</i> | WBWG: H | | In region |
| Long-legged myotis | <i>Myotis volans</i> | WBWG: H | | In range |
| California myotis | <i>Myotis californicus</i> | WBWG:L | | In region |
| Small-footed myotis | <i>Myotis ciliolabrum</i> | WBWG: M | | In region |

| Common name | Species name | Status¹ | JE 2025 | Records, Surveys |
|-------------------------------------|--|---------------------------|----------------|-------------------------|
| Canyon bat | <i>Parastrellus hesperus</i> | WBWG: M | | Nearby |
| Big brown bat | <i>Episticus fuscus</i> | WBWG: L | | In region |
| Silver-haired bat | <i>Lasionycteris noctivagans</i> | WBWG: M | | In range |
| Hoary bat | <i>Lasiurus cinereus</i> | WBWG: M | | In region |
| Western red bat | <i>Lasiurus blossevillii</i> | SSC, WBWG: H | | In region |
| Western yellow bat | <i>Lasiurus xanthinus</i> | SSC, WBWG: H | Absent | In region |
| Spotted bat | <i>Euderma maculatum</i> | SSC, WBWG: H | | In range |
| Townsend's big-eared bat | <i>Corynorhinus townsendii</i> | SSC, WBWG: H | | In region |
| Pallid bat | <i>Antrozous pallidus</i> | SSC, WBWG: H | | In range |
| Mexican free-tailed bat | <i>Tadarida brasiliensis</i> | WBWG: L | | In region |
| Pocketed free-tailed bat | <i>Nyctinomops femorosaccus</i> | SSC, WBWG: M | Absent | In range |
| Western mastiff bat | <i>Eumops perotis</i> | SSC, WBWG: H | Absent | In range |
| San Diego black-tailed jackrabbit | <i>Lepus californicus bennettii</i> | SSC | Absent | In region |
| Long-tailed weasel | <i>Mustela frenata</i> | | | In region |
| Northwestern San Diego pocket mouse | <i>Chaetodipus fallax fallax</i> | SSC | Absent | In region |
| Pallid San Diego pocket mouse | <i>Chaetodipus fallax pallidus</i> | SSC | Absent | In range |
| Stephens' kangaroo rat | <i>Dipodomys stephensi</i> | FT, CT | Absent | In region |
| Los Angeles pocket mouse | <i>Perognathus longimembris brevinasus</i> | SSC | Absent | In region |
| San Diego Bryant's woodrat | <i>Neotoma bryanti intermedia</i> | SSC | Absent | In region |
| Southern grasshopper mouse | <i>Onychomys torridus ramona</i> | SSC | | In range |
| American badger | <i>Taxidea taxus</i> | SSC | | In region |

¹ Listed on CDFW's Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as FT or FE = federal threatened or endangered; FC = federal candidate for listing; CT or CE = California threatened or endangered; CCT or CCE = Candidate California threatened or endangered; CFP = California Fully Protected (California Fish and Game Code 3511); SSC_i = California Species of Special Concern with i = priorities 1, 2 and 3; WL = CDFW's Taxa to Watch List; BGEPA = Bald and Golden Eagle Protection Act; WBWG = Western Bat Working Group with priority rankings, of low (L), moderate (M), and high (H); BCC = U.S. Fish and Wildlife Service's Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); and BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

BIOLOGICAL IMPACTS ASSESSMENT

The impacts analysis in CEQA review involves prediction. Impact predictions are necessary in environmental review because measuring a project's impacts directly could not happen until after the impacts occur, and the timing of this type of measurement would come too late for formulating a mitigation strategy or deciding on a project alternative. As noted earlier, the accuracy of the predictions of impacts and their significance ultimately relies on the degree of accuracy in the characterization of the existing environmental setting (Figure 3). Prediction accuracy also relies on experience, of which development projects subjected to CEQA review have been made amply available (Figure 6). CEQA prohibits the use of speculation to predict that potential project impacts would be less than significant (see CEQA Guidelines section 15145. SPECULATION), so it is experience that must be used. The type of experience proven most effective, and therefore most amenable to achieving CEQA's primary objectives, is scientific inference, as generally depicted in Figure 6. Scientific inference can be drawn from scientific studies or from the many other projects that have undergone CEQA review. The comparative method enables the use of scientific inference to predict impacts and to predict the efficacies of mitigation strategies, the latter of which should be also amply available in the record.

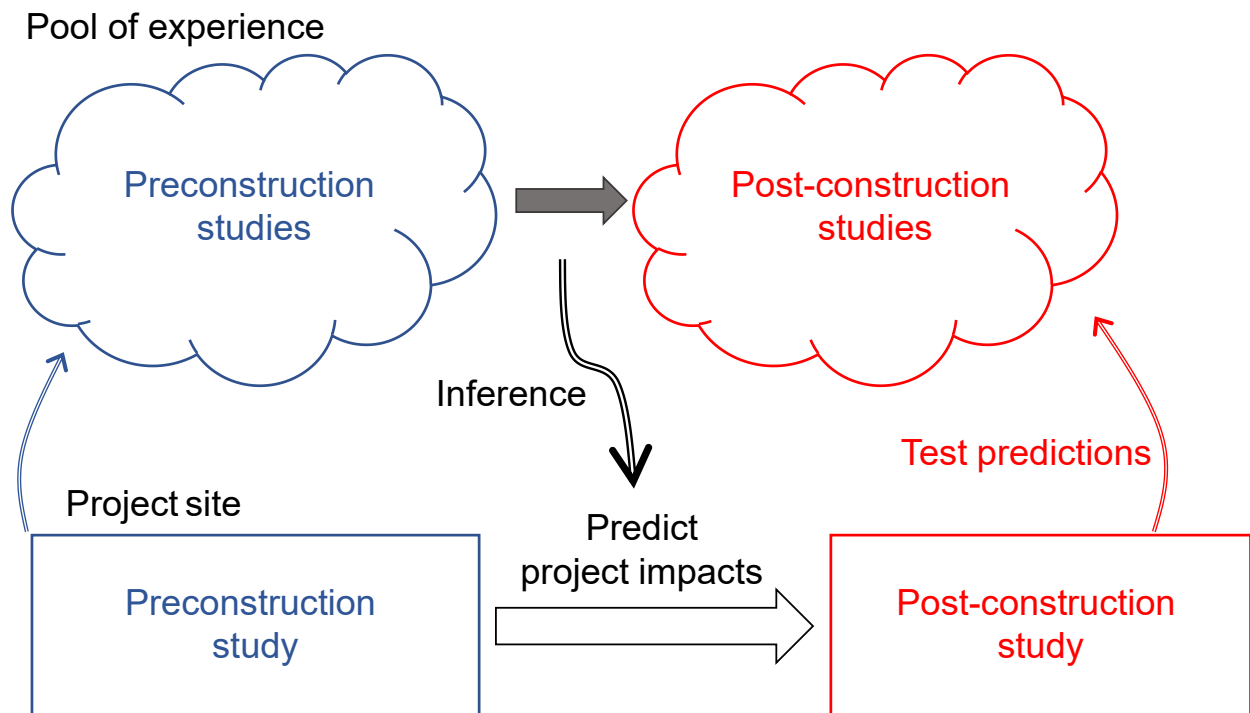


Figure 6. A framework for arriving at predicted project impacts based on experience with other project sites. Ideally, there is a pool of similar projects in similar circumstances where predicted impacts were compared to realized impacts, and into which the proposed project can also contribute to experience.

In the following, I analyze several types of impacts likely to result from the project, none of which are analyzed adequately by Lilburn (2026), and some of which are not analyzed at all.

REDUCED PRODUCTIVE CAPACITY FROM HABITAT LOSS

Habitat loss results in a reduced productive capacity of affected wildlife species. The site is proven to serve as habitat to at least 27 species of vertebrate wildlife which Noriko observed on the site, but the number of avian nest sites remains unknown. The surveys that have been conducted on the project site were unsuitable for detecting all bird nests or for estimating total nest density. The alternative method for estimating avian productive capacity is to infer it from estimates of total nest density elsewhere. Noriko completed studies to estimate total avian nest density in similar environments.

Noriko estimated an average 3.22 nests/acre among three of her grassland study sites in southern California, two of which were in Murrieta. Applying Noriko's average to the 4 acres of the project site predicts 13 nests/year. Assuming 1.39 broods per nest site based on a review of 322 North American bird species, which averaged 1.39 broods per year, then I estimate 18 nest attempts per year. Assuming Young's (1948) study site typifies bird productivity of 2.9 fledged birds per nest attempt, then I predict 52 fledglings/year at the project site.

The loss of 13 nest sites and 18 nest attempts per year would qualify as significant impacts that have not been analyzed in Lilburn (2026). But the impacts would not end with the immediate loss of nest sites. The reproductive capacity of the site would be lost. The project would prevent the production of 52 fledglings per year. Assuming an average bird generation time of 4 years, the lost capacity of both breeders and annual fledgling production can be estimated from an equation in Smallwood (2022):
$$\{(nests/year \times chicks/nest \times number\ of\ years) + (2\ adults/nest \times nests/year) \times (number\ of\ years \div years/generation)\} \div (number\ of\ years) = 59\ birds\ per\ year\ lost\ to\ California.$$

The loss of 59 birds per year would be a loss of significant habitat value that is currently provided by the project site. Most if not all these birds are protected by the federal Migratory Bird Treaty Act and by California's Migratory Bird Protection Act, both of which are intended to most strongly protect breeding migratory birds. The loss of 59 birds per year would easily qualify as an unmitigated significant impact.

INTERFERENCE WITH WILDLIFE MOVEMENT

One of CEQA's principal concerns regarding potential project impacts is whether a proposed project would interfere with wildlife movement in the region. Unfortunately, this concern has not motivated any analysis of whether or how the project would interfere with wildlife movement in the region. As one of the last remaining patches of open space in the region, the site provides wildlife on the move with essential stopover and staging opportunities.

TRAFFIC IMPACTS ON WILDLIFE

Lilburn (2026) neglects to address one of the project's most obvious, substantial impacts on wildlife, and that is wildlife mortality and injuries caused by project-generated traffic. Project-generated traffic would endanger wildlife that must, for various reasons, cross roads used by the project's traffic (Photos 19–22), including along roads far from the project footprint but which would nevertheless be traversed by automobiles head to or from the project's building. Vehicle collisions have accounted for the deaths of many thousands of amphibian, reptile, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level (Forman et al. 2003). Across North America traffic impacts have taken devastating tolls on wildlife (Forman et al. 2003). In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally.

Photos 19 and 20.
A desert cottontail runs across the road in Murietta, California (top), and a great-tailed grackle crosses a road in the Imperial Valley (bottom).





Photos 21 and 22. *Raccoon killed on Road 31 just east of Highway 505 in Solano County (left; photo taken on 10 November 2018), and California kingsnake killed by a vehicle on a rural road in El Dorado County in 2024.*

The nearest study of traffic-caused wildlife mortality was performed along a 2.5-mile stretch of Vasco Road in Contra Costa County, California. Fatality searches in this study found 1,275 carcasses of 49 species of mammals, birds, amphibians and reptiles over 15 months of searches (Mendelsohn et al. 2009). This fatality number needs to be adjusted for the proportion of fatalities that were not found due to scavenger removal and searcher error. This adjustment is typically made by placing carcasses for searchers to find (or not find) during their routine periodic fatality searches. This step was not taken at Vasco Road (Mendelsohn et al. 2009), but it was taken as part of another study next to Vasco Road (Brown et al. 2016). Brown et al.'s (2016) adjustment factors for carcass persistence resembled those of Santos et al. (2011). Also applying searcher detection rates from Brown et al. (2016), the adjusted total number of fatalities was estimated at 9,462 animals killed by traffic on the road. This fatality number projected over 1.25 years and 2.5 miles of road translates to 3,028 wild animals per mile per year. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 188,191 animals killed per 100 km of road per year, or 22 times that of Loss et al.'s (2014) upper bound estimate and 53 times the Canadian estimate. An analysis is needed of whether increased traffic generated by the project site would similarly result in local impacts on wildlife.

For wildlife vulnerable to front-end collisions and crushing under tires, road mortality can be predicted from the study of Mendelsohn et al. (2009) as a basis, although it would be helpful to have the availability of more studies like that of Mendelsohn et al. (2009) at additional locations. My analysis of the Mendelsohn et al. (2009) data resulted in an estimated 3,028 animals killed per mile along a county road in Contra Costa County. The estimated numbers of fatalities were 1.75% birds, 26.4% mammals (many mice and pocket mice, but also ground squirrels, desert cottontails, striped skunks, American badgers, raccoons, and others), 67.4% amphibians (large numbers of California tiger salamanders and California red-legged frogs, but also Sierran treefrogs,

western toads, arboreal salamanders, slender salamanders and others), and 4.4% reptiles (many western fence lizards, but also skinks, alligator lizards, and snakes of various species). VMT is useful for predicting wildlife mortality because I was able to quantify miles traveled along the studied reach of Vasco Road during the period of the Mendelsohn et al. (2009), hence enabling a rate of fatalities per VMT that can be projected to other sites, assuming similar collision fatality rates.

Predicting project-generated traffic impacts on wildlife

Lilburn (2026) predicts the project would generate 625,486 annual VMT. During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road in Contra Costa County daily, so the vehicle miles that contributed to my estimate of non-volant fatalities was $19,500 \text{ cars and trucks} \times 2.5 \text{ miles} \times 365 \text{ days/year} \times 1.25 \text{ years} = 22,242,187.5$ vehicle miles per 9,462 wildlife fatalities, or 2,351 vehicle miles per fatality. This rate divided into the predicted annual VMT would predict 266 vertebrate wildlife fatalities per year due to project-generated traffic.

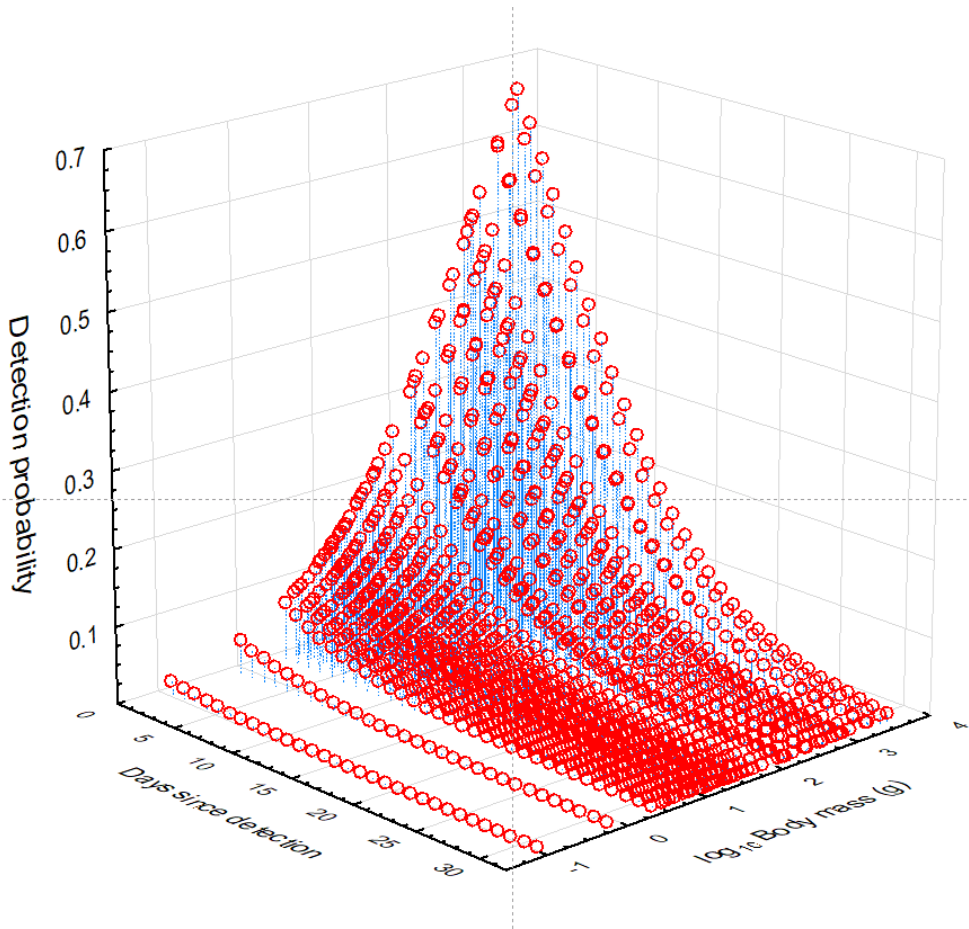
However, some might argue that this prediction relies too much on a study along a road through less-disturbed rangeland that likely supports more non-volant wildlife that is more vulnerable to collision mortality. I would argue that the project-generated traffic would pass through similar rural environments with ample wildlife available to be crushed under automobile tires. Nevertheless, to better represent those reaches of road that are more urban than rural, or that would become more urban with the development of the project, I recently completed my own study of wildlife mortality caused by automobiles along roads that were urban and interfaced between urban and agricultural land uses.

I completed one year of daily pedestrian surveys along 2.7 km (1.713 miles) of local, collector and minor arterial roads in north Davis, California, where I tallied 314 fatalities of 40 species of vertebrate wildlife. Most of the fatalities were small-bodied animals such as Sierran treefrogs, western toads, western fence lizards, 10"- to 16"-long juvenile Pacific gophersnakes, valley gartersnakes and California kingsnakes, as well as bushtits, yellow-rumped warblers, deer mice and California ground squirrels. Most of the animals I found would never have been detected from a moving vehicle, which is why people often underestimate how many wild animals are killed by vehicle traffic.

The animals I found in my study did not include all the animals killed by vehicles on the roads I searched. Many had been removed by scavengers before I could find and count them. (American crows patrol the roads every morning, and so does a large flock of wild turkeys.) Some of the animals are knocked off the road in places where I could never find them, and some were undoubtedly caught and carried away in the grills of vehicles or in tire treads. Most of the Sierran treefrogs disappeared from where I found them within several hours, so daily searches missed many of the fatalities. To adjust for these undetected fatalities, I fit a logit regression model to my fatality finds, all of which transitioned to carcass detection trials after I initially found them. Starting with the first day after each detection, I monitored the carcass trials for 30 days, and I assigned each a body mass estimate based on typical body mass reported in the literature. Predictor

variables were days since detection and \log_{10} body mass. The relationship between carcass detection probability and the predictor variables is depicted in Figure 9. My fatality finds adjusted by the model results in an estimate of 2,126 vertebrate wildlife fatalities over 1.713 miles of roads in one year, or 1,241 vertebrate wildlife fatalities/mile/year. This rate is 40.9% of the rate measured at Vasco Road, or an estimated 5,748 vehicle miles per fatality. Applying this urban fatality rate to the VMT that is predicted for the project would predict 109 vertebrate wildlife fatalities per year in the area around the project that is traveled by project-generated traffic.

Figure 9.
Wildlife carcass detection probability is a function of the number of days since discovery and \log_{10} body mass.



A reasonable range of predicted mortality is therefore 109 to 266 vertebrate wildlife fatalities/year due to project-generated traffic.

Based on my analysis, the project-generated traffic would cause substantial, significant impacts on wildlife. Lilburn (2026) fails to address this potential impact, let alone propose to mitigate it. Mitigation measures to improve wildlife safety along roads are available and are feasible, and they need exploration for their suitability with the proposed project. Given the predicted level of project-generated traffic-caused mortality, and the lack of any proposed mitigation, it is my opinion that the proposed project would result in potentially significant adverse biological impacts, and that these impacts would be unmitigated.

CUMULATIVE IMPACTS

One of CEQA's principal concerns regarding potential project impacts is whether a proposed project would contribute significantly to cumulative impacts of past, present and future projects, or to multiple types of impacts that are cumulatively considerable. Unfortunately, Lilburn (2026) fails to analyze the project's contribution to cumulative impacts on biological resources.

Noriko Smallwood and I performed an experiment to measure the efficacy of permitting requirements and required mitigation measures at avoiding or minimizing project impacts including cumulative impacts. We revisited the project sites we had surveyed as experts to repeat the survey methods at the same time of year, the same start time in the day, and the same methods and survey duration to control these sources of variation to cleanly measure the effects of mitigated development on wildlife. We structured the experiment in a before-after, control-impact experimental design, as some of the sites had been developed since our initial survey and some had remained undeveloped. All the developed sites had included mitigation measures to avoid, minimize or compensate for impacts to wildlife. Nevertheless, we found that mitigated development resulted in a 66% loss of species on site, and 48% loss of species in the project area. Counts of vertebrate animals declined 90%. We found that "Development impacts measured by the mean number of species detected per survey were greatest for amphibians (-100%), followed by mammals (-86%), grassland birds (-75%), raptors (-53%), special-status species (-49%), all birds as a group (-48%), non-native birds (-44%), and synanthropic birds (-28%). Our results indicated that urban development substantially reduced vertebrate species richness and numerical abundance, even after richness and abundance had likely already been depleted by the cumulative effects of loss, fragmentation, and degradation of habitat in the urbanizing environment," and despite all the mitigation measures and existing policies, regulations, and habitat plans. Experimental evidence demonstrates the need to analyze a project's potentially significant contributions to cumulative impacts on wildlife. The environmental review for this project needs to include a cumulative impacts analysis.

There is at least a fair argument that can be made for the need to prepare an EIR to appropriately predict project impacts based on an accurate characterization of the wildlife community, and as a basis for formulating an appropriate mitigation strategy.

FLAWED MITIGATION STRATEGY

The mitigation strategy needs to be based on a sound understanding of the existing wildlife community. It needs to be known which species occur or are likely to occur on the project site as well as the nature of their occurrences. It needs to be known which species are resident and which are migratory. For special-status species, detection surveys should have been completed to either detect the species or to obtain evidence of its absence. Surveys should have been completed to understand how wildlife use the site in their movement patterns. And what was found of wildlife species needs to be carefully interpreted by comparing the findings to the findings from other survey efforts at other sites. Failures to detect species should be interpreted relative to the probabilities of their detections given the survey effort. The mitigation strategy needs to follow the steps

under Assess species occurrence likelihoods and Characterize wildlife community, followed by Step 7: Predict impacts (Figure 3). However, Lilburn's (2026) mitigation strategy does not follow from these steps. This pointed out, my comments follow in regular font the summary of each required mitigation measure in italics.

Condition of Approval (MM BIO-3 in Fontana General Plan FEIR) Pre-Construction Nesting Bird Surveys. *as recommended in the 2025 Biological Resources Assessment [below], nesting bird surveys shall be implemented prior to construction if construction occurs during the period of February 1 through September 15. ... [According to JE (2025),] Nesting bird season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre construction Nesting Bird Surveys (NBS) prior to Project related disturbance to nestable vegetation to identify any active nests. If no active nests are found, no further action will be required. If an active nest is found, the biologist will set appropriate no work buffers around the nest which will be based on the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field -checked weekly by a qualified biological monitor. The approved no work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.*

If the project goes forward, preconstruction surveys for nesting birds should be implemented, but this measure would not avoid the permanent loss of habitat nor the collision mortality with automobiles. Preconstruction, take-avoidance surveys should consist of two steps, both of which are very difficult. First, the biologist(s) performing the survey must identify birds that are breeding. Second, the biologist(s) must locate the breeding birds' nests. The first step is typically completed by observing bird behaviors such as food deliveries and nest territory defense. To be successful, these types of observations typically require many surveys on many dates spread throughout the breeding season even for a single species. To identify and locate the birds of all species nesting on a site would require a much greater survey effort than can be accomplished in time allotted by this measure. Many bird nests would be missed.

I predict the project site supports 13 nest sites in the average year. Even assuming all these nests could be found (not likely), the mitigation measure would apply only to the breeding season of the survey. After the breeding season of the preconstruction survey, there would be no further production of birds from the project site. The project's impact on birds would be permanent. The conservation benefits of this measure would be *de minimis* compared to the project's potential impacts on breeding birds.

Furthermore, the mitigation language allows a single individual to make a subjective decision, outside the public's view, to determine the buffer area and buffer timing for any given species. This measure lacks objective criteria, and it is therefore unenforceable.

Lastly, the mitigation language includes the requirement that the preconstruction nest survey shall be conducted by a qualified biologist, and this requirement carries over to determinations of the buffer areas and buffer timing to avoid take caused by construction activities. Undefined, however, is what qualifies as a “qualified biologist” in these contexts. As mentioned earlier in this letter, Noriko Smallwood and I have been conducting surveys over the past several years to estimate total nest density, which is relevant to a preconstruction, take-avoidance survey because our surveys were likewise directed to all bird species that could be concurrently nesting on a site. Searching for the nests of one species is difficult, but searching for nests of all bird species at once is vastly more difficult. For this reason, there are very few published estimates of total nest density, and there are very few wildlife biologists who have experience with surveys for the nest attempts of all bird species on a given site. A technical way to qualify a wildlife biologist for the tasks outlined in this measure would be to obtain an agency Memorandum of Understanding in which the biologist is named and said to be qualified for conducting the preconstruction survey and for determining the take-avoidance buffer area and timing. However, a more compelling means of qualifying the biologist would be to require that the biologist has achieved demonstrable experience with nest surveys and avian nesting behavior. Without a better definition of what is a qualified biologist in the contexts of these tasks, This measure lacks objective criteria, and it is therefore unenforceable.

Burrowing owls. *Prior to initial grading or clearing of areas of suitable habitat within the Planning Area (e.g., a vacant site with a landscape of grassland or low-growing, arid scrub vegetation or agricultural use or vegetation), a qualified biologist shall conduct a pre-construction survey, in accordance with the CDFG Staff Report on Burrowing Owl Mitigation, to determine the presence or absence of burrowing owl within the proposed area of impact. Results of surveys, including mitigation recommendations (i.e. a Burrowing Owl Mitigation and Monitoring Report) shall be incorporated into the project-level CEQA compliance documentation. Construction grading/clearing of areas of suitable habitat should occur between September 1 and January 31 to avoid impacts to breeding owls. If occupied burrows are discovered, they shall not be removed during nesting season [February 1 through August 31), unless a qualified biologist can determine that either the owls have not laid eggs or are incubating eggs, or that any young from the burrows are able to forage independently. If initial grading is scheduled to occur during nesting season, the following measures shall be implemented.*

If removal of occupied burrows is necessary, passive relocation outside of nesting season shall be implemented under the supervision of the qualified biologist. This shall include covering/excavation of burrows and installation of one-way doors as necessary. One-way doors will allow owls inside the burrow to exit but not allow them to re-enter. The biologist shall wait a minimum of one week before the burrow may be excavated to allow the owls time to leave the area.

This measure is outdated. The burrowing owl is now a candidate for listing under the California Endangered Species Act, which means that this measure cannot be implemented as written. Due to a rapid decline throughout California (Miller 2024), the

California Fish and Game Commission voted unanimously in 2024 to designate the burrowing owl a candidate for listing under CESA. It is therefore imperative to adhere to the CDFW (2012) survey and mitigation guidelines, and to begin consultation with the CDFW about whether and how to obtain an incidental take permit (ITP). There is no indication in Lilburn (2026) that consultation with CDFW has been initiated.

The measure misrepresents CDFW's (2012) survey and mitigation guidelines by insinuating that a preconstruction take-avoidance survey can be substituted for breeding-season detection surveys. A preconstruction take avoidance survey is different from a breeding-season survey effort, and it is the last of three types of survey that are intended to be implemented in sequence.

For the burrowing owl, there are three types of surveys recommended and described in the CDFW's (2012) survey and mitigation guidelines: (1) Habitat assessment, (2) Detection surveys, and (3) Preconstruction survey. The habitat assessment is intended to evaluate the likelihood that the site supports burrowing owls, and to decide whether detection surveys should be performed. The detection survey, otherwise described as either or both breeding-season or non-breeding-season survey, is intended to detect whether the site truly supports burrowing owls, and if so, where and how many. The preconstruction survey, otherwise known as a take-avoidance survey, is intended to determine whether burrowing owls immigrated to the site since completion of the detection survey, or whether they returned to the site since passive or active relocations were performed as mitigation. The three types of survey carry distinct but inter-related purposes, and CDFW (2012) intends them to be completed in chronological order as numbered above.

The first two types of survey support impacts analysis, whereas the third type of survey is a mitigation measure. Burrowing owls can be determined absent at the time of the survey based on evidence derived from the habitat assessment or detection survey, but only if the surveys achieved the minimum standards of CDFW (2012). Whereas an absence determination naturally follows from the negative findings of properly performed detection surveys, the following three questions must be answered negatively to determine absence based on the habitat assessment:

- A) Are there occurrence records nearby the project site?
- B) Is the site's vegetation cover and height typical of where burrowing owls are found?
- C) Are there fossorial mammals present which typically construct burrows useable by burrowing owls, or are there surrogate cavities that can serve as nest sites?

If the answers to these questions are compellingly negative, then detection surveys are not necessary, but they could be implemented to make certain that burrowing owls are absent on the project site. If the answers to these questions are affirmative or not compellingly negative, then it should be assumed that burrowing owl habitat exists on the site until detection surveys prove otherwise.

To question A, the nearest burrowing owl occurrence records are between 1.5 and 4 miles from the project site. These nearby occurrences justify an affirmative answer to question A, and so this part of the habitat assessment warrants a detection survey effort.

To question B, the vegetation on site is typical of the area, and much of it is typical of vegetation where burrowing owls are known to occur. The answer to question B is affirmative, and so this part of the habitat assessment warrants a detection survey effort.

To question C, ground squirrels were not documented on the project site, but the nearest iNaturalist records within one mile from the project site. Ground squirrels construct burrows used by burrowing owls, and these two species mutually alarm-call for predators and survive better together (K. S. Smallwood, unpublished data). The answer to question C should be plausibly affirmative, and so this part of the habitat assessment warrants a detection survey effort.

The answers to all three questions are affirmative. Therefore, breeding-season detection surveys are needed, and these surveys are not to be confused with preconstruction take-avoidance surveys. Breeding-season detection surveys are needed to accurately characterize the existing environmental setting and to publicly disclose potential impacts on the burrowing owl.

As for the measure's requirements concerning passive or active translocation, the applicant needs to consult with CDFW to determine whether an ITP can be issued, and if so, then under what conditions. Without an ITP, translocations of burrowing owls can be interpreted by CDFW as illegal take.

The same issues around what defines a qualified biologist exist for this measure as they do for the first measure.

There is at least a fair argument that can be made for the need to prepare an EIR to formulate an effective mitigation strategy to achieve CEQA's primary objectives.

NEEDED MITIGATION MEASURES

Compensatory Habitat Protection: The project would destroy the productive capacity of the project site for birds and other wildlife. The loss of this capacity would need to be offset by compensatory mitigation as near to the site as possible. I recommend a 5:1 mitigation ratio to achieve a no net loss standard, as a 1:1 ratio would simply ensure a 50% loss of habitat between the project site and mitigation site.

The loss of burrowing owl foraging opportunities would need to be mitigated. The applicant needs to consult with the CDFW to learn what mitigation ratio would be acceptable for loss of burrowing owl habitat on the project site, and whether and where habitat is available to be protected nearby.

Road Mortality: Compensatory mitigation is needed for the increased wildlife mortality that would be caused by collisions with automobiles due to project-generated

road traffic in the region. I suggest that this mitigation can be directed toward funding research to identify fatality patterns and effective impact reduction measures such as reduced speed limits and wildlife under-crossings or overcrossings of particularly dangerous road segments. Compensatory mitigation can also be provided in the form of donations to wildlife rehabilitation facilities (see below).

Fund Wildlife Rehabilitation Facilities: Compensatory mitigation is needed, and it ought to also include funding contributions to wildlife rehabilitation facilities to cover the costs of injured animals that will be delivered to these facilities for care. Many animals would likely be injured during construction and by collisions with automobiles traveling to and from the project site.

Landscaping: If the project goes forward, California native plant landscaping (i.e., grassland and locally appropriate scrub plants) should be considered to be used as opposed to landscaping with lawn and exotic shrubs and trees. Native plants offer more structure, cover, food resources, and nesting substrate for wildlife than landscaping with lawn and ornamental trees. Native plant landscaping has been shown to increase the abundance of arthropods which act as important sources of food for wildlife and are crucial for pollination and plant reproduction (Narango et al. 2017, Adams et al. 2020, Smallwood and Wood 2022.). Further, many endangered and threatened insects require native host plants for reproduction and migration, e.g., monarch butterfly. Around the world, landscaping with native plants over exotic plants increases the abundance and diversity of birds, and it is particularly valuable to native birds (Lerman and Warren 2011, Burghardt et al. 2008, Berthon et al. 2021, Smallwood and Wood 2022). Landscaping with native plants is a way to maintain or to bring back some of the natural habitat and lessen the footprint of urbanization by acting as interconnected patches of habitat for wildlife (Goddard et al. 2009, Tallamy 2020). Lastly, not only does native plant landscaping benefit wildlife, it requires less water and maintenance than traditional landscaping with lawn and hedges.

Thank you for your consideration,



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