

June 11, 2026

Ms. Alexia Barberena  
City of Fontana  
8353 Sierra Avenue  
Fontana CA 92335

**SUBJECT: Responses to Appeal Comments Received in Lozeau Drury LLP's Letter Regarding 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 Alexia:

This letter has been prepared per the City's request for Lilburn Corporation to provide responses to the comment letters from Lozeau Drury LLP's May 11, 2026 Appeal Comment Letter regarding the subject project.

This letter provides responses to the individually numbered comments in the appeal letter, concluding that no new information has been provided to require additional environmental analysis and documents that the Project is exempt from the California Environmental Quality Act (CEQA) under the Class 32 Categorical Exemption (CE) set forth in CEQA Guidelines Section 15332.

The Justification Memorandum, prepared by Lilburn Corporation and in the City's files for the Project, provides an introduction, project description, and evaluation of the Project's consistency with the requirements for a Class 32 CE. The Memorandum further evaluates whether any of the exceptions to categorical exemptions set forth in CEQA Guidelines Section 15300.2 apply to the Project.

CEQA Guidelines Section 15332 states that a Class 32 CE applies when:

- 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.*

As documented in the CE Justification, the Project is an allowable use under the General Plan and Zoning designations and therefore has been evaluated as such in the General Plan EIR. According to the *City of Fontana General Plan Land Use Map*, the Project Site has a land use designation of Light Industrial (I-L) and is zoned as West End Specific Plan. The Project Site is surrounded by a Target warehouse to the north, Vision Communications and Open Door Solutions to the east, Southern California Edison to the west, and a Service Partners, a building supply warehouse to the south. Surrounding uses predominantly consist of industrial uses.

The land uses and zoning designations surrounding the Project Site are as follows:

- *North:* Uses to the north are designated Light Industrial (L-I) and zoned West End Specific Plan (BP3).
- *East:* Uses to the east are designated Light Industrial (L-I) and zoned West End Specific Plan (BP3).
- *South:* Uses to the south are designated Light Industrial (L-I) and zoned West End Specific Plan (BP3).
- *West:* Uses to the west are designated Light Industrial (L-I) and zoned West End Specific Plan (BP3).

### **Comment Letter 1 -Lozeau Drury LLP Letter Dated May 11, 2026**

#### **General Response to Comment Letter 1**

The Lozeau Drury law firm has submitted comments on behalf of Supporters Alliance for Environmental Responsibility (SAFER), a nonprofit led by Southern California District Council of Laborers<sup>1</sup>.

In general, multiple comments provided by Lozeau Drury assert that the technical analyses supporting the CEQA Exemption improperly evaluated the Project's potential environmental impacts. Per the discussion below, these claims are without merit. As documented here, in the CE Justification, and in the studies prepared in support of the Memo, the City has appropriately found the Project exempt from CEQA pursuant to CEQA Guidelines section 15332.

The analytic documents provided by the commenter are acknowledged. However, these analytic documents and supporting remarks at most present evidence a "difference of opinion". The City's factual determination that the Project satisfies the criteria for application of a categorical

---

<sup>1</sup> <https://www.dailyjournal.com/article/379577-union-linked-group-challenges-project-s-ceqa-exemption>

exemption must be upheld if it is supported by substantial evidence. (*San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1021 (“*San Francisco Beautiful*”); *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 267-269 [substantial evidence test governs review of city’s determination that project falls within the Infill Development exemption].)

Substantial evidence includes “facts, reasonable assumptions predicated on facts, and expert opinion supported by facts” and is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines, § 15384.) Substantial evidence does not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts ....” (Pub. Resources Code, § 21082.2, subd. (c); CEQA Guidelines, § 15384.)

In applying this substantial evidence standard, the City does not need to “weigh conflicting evidence,” “determine who has the better argument,” nor will a court set City’s the agency’s decision “on the ground that an opposite conclusion would have been equally or more reasonable.” (*Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 393.) The City “is the finder of fact,” and courts “must indulge all reasonable inferences from the evidence that would support the agency’s determinations and resolve all conflicts in the evidence in favor of the agency’s decision.” (*Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117.) The City’s decision that a project is categorically exempt is to be affirmed unless “there is no basis in the record for its determination that the project was exempt from CEQA.” (*World Bus. Academy v. Cal. State Lands Commn.* (2018) 24 Cal.App.5th 476, 496.)

In *Banker’s Hill Hillcrest Park West Community Preservation Ground v. City of San Diego*, *supra*, 139 Cal.App.4th 249, the Court expressly considered the standard of review that applies to the question of whether the Infill Development Exemption applies, by its own terms, to a project. (CEQA Guidelines, § 15332, subd. (d); *Banker’s Hill*, at pp. 268-269.) The Court held that the Infill Development Exemption “requires the agency to determine that ‘[a]pproval of the project would not result in a significant effect to traffic, noise, air quality, or water quality. Thus, the [exemption] calls for the agency to make a definitive finding, at the preliminary review stage, as to whether or not there will be a significant environmental effect. The use of this language leads us to conclude that the fair argument standard does not apply.” (*Ibid.*) Accordingly, use of the Infill Development Exemption does not depend on whether a project may have a significant effect, but instead depends on if it will have a significant effect. The Court concluded “[w]e inquire whether the record contains substantial evidence to support the City’s finding that the Project will not have a significant effect. If we locate substantial evidence in the record to support that conclusion, we will uphold the City’s determination, even if other evidence arguably supports a different conclusion.” (*Ibid.*)

If substantial evidence in the record supports the agency’s exemption determination, “the burden then shifts to the challenging party to produce evidence showing that one of the exceptions to the

exemption applies.” (*San Francisco Beautiful*, supra, 226 Cal.App.4th at p. 1023.) To satisfy that burden “a party challenging an agency’s exemption decision must produce substantial evidence that the project has the potential for a [significant] adverse environmental impact.” (*Association for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720, 728.)

Accordingly, despite the disagreements expressed by the commenter, and as documented here, in the CE Justification Memo, and in the studies prepared in support of the Memo, substantial evidence supports the City’s findings that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332. As so, no additional environmental review is required.

The Lozeau Drury letter was submitted with an exhibit (A), a letter prepared by Shawn Smallwood, PhD. The Lozeau Drury letter and each of the comments within the exhibit have been numbered and responses are provided herein by letter/comment number.

**Comment 1-1**

This is an introductory comment stating the law firm is providing comments on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) and does not provide any CEQA-related comments.

**Response to Comment 1-1**

The comment is noted for the record and no response is required.

**Comment 1-2**

This comment states that SAFER maintains the Project does not qualify for the Infill Exemption because substantial evidence shows the Project will have significant adverse impacts related to biological resources and therefore the City cannot rely on the Exemption.

**Response to Comment 1-2**

A Categorical Exemption Justification and supporting technical documents (Biological Resources Assessment Letter Report (Jennings Environmental, September 2025), Traffic Memorandum (Ganddini Group, December 9, 2025), Noise Impact Analysis (Ganddini Group, December 23, 2025), Hydrology Study (LDDC, revised July 22, 2024), and Cultural Resources Report (LSA Associates, March 2022) were prepared to evaluate the Project’s consistency with the requirements for a Class 32 CE. The memorandum evaluated whether any of the exceptions to categorical exemptions set forth in CEQA Guidelines Section 15300.2 apply to the Project.

CEQA Guidelines Section 15332 states that a Class 32 CE applies when:

- f) 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.*
- g) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.*
- h) The project site has no value as habitat for endangered, rare or threatened species.*
- i) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*
- j) The site can be adequately served by all required utilities and public services.*

CEQA Guidelines Section 15300.2 lists the following exceptions to categorical exemptions:

- a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.*
- b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.*
- c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*
- d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.*
- e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.*
- f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

As more specifically addressed below, the CE Justification and supporting analyses, as well as this Memo, document that the Project meets all criteria shown above to qualify for an Infill Exemption

and no significant impacts that could not be mitigated to levels of less than significant were identified; the City has made the determination that an Infill Exemption is the appropriate CEQA document to use in approval of the project.

**Comment 1-3**

This comment states that SAFER’s review of the Project was assisted by wildlife ecologist Shawn Smallwood, Ph.D whose credentials and comments are submitted as Exhibit A attached to SAFER’s letter.

**Response to Comment 1-3**

The comment is noted for the record and no response is required. Responses to the referenced Exhibit comments are provided in subsequent responses.

**Comment 1-4**

Comment presents overview of the Project.

**Response to Comment 1-4**

The comment is noted for the record and no response is required.

**Comment 1-5**

This comment points out the three-tiered structure required by CEQA to determine whether a project is exempt from CEQA or if an Initial Study or EIR is required, and states that because the City exempted the Project from CEQA entirely, the first step of the CEQA process applies.

**Response to Comment 1-5**

If substantial evidence in the record supports the agency’s exemption determination, “the burden then shifts to the challenging party to produce evidence showing that one of the exceptions to the exemption applies.” (*San Francisco Beautiful*, supra, 226 Cal.App.4th at p. 1023.) To satisfy that burden “a party challenging an agency’s exemption decision must produce substantial evidence that the project has the potential for a [significant] adverse environmental impact.” (*Association for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720, 728.)

Accordingly, despite the disagreements expressed by the commenter, and as documented here, in the CE Justification, and in the studies prepared in support of the Memo, substantial evidence supports the City’s findings that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332. As so, no additional environmental review is required.

**Comment 1-6**

Commenter summarizes the classes of projects that are exempt from CEQA and highlights that a Class 32 Exemption is applicable to a project site that has no value, as habitat for endangered, rare, or threatened species.

**Response to Comment 1-6**

Comment does not identify any specific deficiencies or errors in the CE Justification for the Project. The comment is noted for the record and no response is required.

**Comment 1-7**

This comment states that the project does not qualify for an infill exemption because the project site has value as habitat for several special-status species, and that an initial study must be prepared. categorical exemptions.

**Response to Comment 1-7**

Based on findings of the experts who prepared Project-specific technical reports in support of the CE Justification, the Project site has no value as habitat for several special-status species, and the Project will not have significant adverse impacts related to biological resources. The City has made the determination that an Infill Exemption is the appropriate CEQA document to use in approval of the project.

**Comment 1-8**

Comment states that there is substantial evidence that the project will have significant adverse impacts on biological resources precluding reliance on the Infill Exemption.

**Response to Comment 1-8**

Refer to General Response to Comments and Response to Comment 1-7.

**Comment 1-9**

The commenter states that Noriko Smallwood visited the site and found special-status species during March 21, 2026 and March 24, 2026 surveys.

**Response to Comment 1-9**

Comment does not identify any specific deficiencies or errors in the CE Justification for the Project. The comment is noted for the record and no response is required.

**Comment 1-10**

Commenter states that their surveyor detected over five times the total number of species as Jennings.

**Response to Comment 1-10**

The Project's potential to serve as habitat for special-status species were evaluated in an update to the Biological Resources Assessment Letter Report prepared for the Project September 10, 2025, by Jennings Environmental, a biological resources consultant with over 13 years of professional experience working for public and private clients throughout Riverside and San Bernardino counties. Mr. Jennings found that, based on a literature review and personal observations made on the Project site and in the immediate vicinity of the Project site, no State and/or federally-listed threatened or endangered species are documented/or expected to occur within the Project site. Additionally, 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. No other sensitive species were observed within the project area or buffer area. The Project Site is highly disturbed. The habitat on-site is ruderal/disturbed vegetation with gravel surfaces. The site offers no suitable habitat for any sensitive species or listed species. The Assessment concludes no further surveys for sensitive species are required.

The Assessment also notes that because the proposed Project is within Fontana it is subject to the City of Fontana General Plan Update 2015-2035. When the City approved the General Plan it adopted the Mitigation Monitoring and Reporting Program for the General Plan Update 2015-2035 Environmental Impact Report (Resolution 2018-096) as a condition of approval of the General Plan Update. The Program includes the following specific requirements as conditions of approval for individual development projects:

**MM-BIO-1**

1. 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.
2. 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.
3. 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.

4. 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.

### **MM BIO-2**

To avoid impacts to nesting birds and to comply with the MBTA, clearing of vegetation and removal of trees should occur between non-nesting (or non-breeding) season for birds (generally, September 1 to January 31). If this avoidance schedule is not feasible, the alternative is to carry out such activities under the supervision of a qualified biologist. This shall entail the following:

1. A qualified biologist shall **conduct a pre-construction nesting bird survey** no more than 14 days prior to initiating ground disturbance activities. The survey will consist of full coverage of the proposed disturbance limits and up to a 500 foot buffer area, determined by the biologist and taking into account the species nesting in the area and the habitat present.
2. If no active nests are found, no additional measures are required.
3. If “occupied” nests are found, their locations shall be mapped, species documented, and, to the degree feasible, the status of the nest (e.g., incubation of eggs, feeding of young, near fledging) recorded. The biologist shall establish a no-disturbance buffer around each active nest. The buffer area will be determined by the biologist based on the species present, surrounding habitat, and type of construction activities proposed in the area.
4. No construction or ground disturbance activities shall be conducted within the buffer until the biologist has determined the nest is no longer active and has informed the construction supervisor that activities may resume.

### **MM-BIO-3**

The City of Fontana Planning Division shall require that all future project applicants prepare a Biological Assessment in conjunction with a project-level analysis. The Biological Assessment shall include a vegetation map of the proposed project area, analysis of the impacts associated with plant and animal species and habitats, and conduct habitat evaluations for burrowing owl, Delhi Sands flower-loving fly, San Diego pocket mouse, western mastiff bat, western yellow bat, and San Diego desert

woodrat. If any of these special status species are determined to be present, then coordination with the U.S. Fish and Wildlife Service and/or California Department of Fish and Game shall be concluded to determine what, if any, permits or clearances are required prior to development.

Each project-level Biological Assessment shall include an analysis of potential impacts to rare plants and rare natural communities in accordance with the California Department of Fish and Game's November 2009 guidance for Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. For those projects located in the Delhi Sands flower-loving fly Recovery Unit, the project-level Biological Assessment shall include focused surveys. The Biological Assessment shall prescribe actions necessary to mitigate the impacts identified for a particular project. Such actions shall include either avoidance of a sensitive resource, or payment of in-lieu fees that shall be used to purchase off-site replacement habitat. In instances where transplantation/relocation, off-site preservation, or fee payment is selected, habitat mitigation ratios shall be a minimum of 1:1, unless a greater ratio is required by a state or federal wildlife agency. The requirements of the Biological Assessment shall be a condition of approval of the individual development project.

As recommended in the 2025 Biological Resources Assessment prepared in accordance with the General Plan's adopted Condition of Approvals, nesting bird surveys shall be implemented prior to construction if construction occurs during the period of February 1 through September 15.

**Comment 1-11**

Commenter discusses other deficiencies found in the Jennings's survey findings.

**Response to Comment 1-11**

See Response to Comment 1-9. As noted in the General Biological Assessment prepared on September 10, 2025, the Project site does not contain suitable habitat for these species and thus no wildlife surveys are justified. Further, CEQA Guidelines section 15332 does not require wildlife surveys, it only queries whether a project site has value as habitat for endangered, rare or threatened species. As the Project site does not provide such habitat, that is the end of the CEQA Guidelines section 15332 inquiry with regard to endangered, rare or threatened species.

**Comment 1-12**

Commenter states they found that the City's desktop review was incomplete.

**Response to Comment 1-12**

The commenter incorrectly states that only one database was used. As noted in the Biological report “The most recent records of the California Natural Diversity Database (CNDDDB) managed by CDFW (CDFW 2025), the USFWS Critical Habitat Mapper (USFWS 2025), and the California Native Plant Society’s Electronic Inventory (CNPSEI) of Rare and Endangered Vascular Plants of California (CNPS 2024) were reviewed”.<sup>2</sup> The findings of which are included in Table 1 in Attachment C of the report. The findings concluded that no habitat for listed or rare species.

The most recent records of these databases were searched for the following quadrangles containing and surrounding the Project site: *Fontana, Devore, Guasti, and Cucamonga Peak* USGS 7.5-minute quadrangles. The *Devore, Guasti, and Cucamonga Peak* quads were included in this search due to the site’s proximity to their borders. Given the developed nature of the surrounding land uses, 5 miles is considered an over estimation. Typically, a 1-mile radius is sufficient for a site location consistent with the Project site. However, the additional radius was included to make the analysis conservative and included all relevant species.

The commentator’s claim that 138 special status species of wildlife occur close to the Project site is incorrect, as the commenter relies on unreliable public, not scientific, databases to offer this occurrence data.

**Comment 1-13**

Commenter states that the CE Memo and Jennings Report deficiently described the Project’s “environmental setting” and thereby insufficiently analyzed the Project’s biological impacts.

**Response to Comment 1-13**

CEQA Guidelines section 15332 does not require analysis of potential impacts to wildlife species, it only queries whether a project site has value as habitat for endangered, rare or threatened species. As the Project site does not provide such habitat, that is the end of the CEQA Guidelines section 15332 inquiry with regard to endangered, rare or threatened species.

Regardless, the following responses are provided for informational purposes:

As documented in the Biological Resources Assessment Letter Report prepared for the Project September 10, 2025, the Project Site is highly disturbed. The habitat on-site is ruderal/disturbed vegetation with gravel surfaces and previous development. The site offers no suitable habitat for any sensitive species or listed species. Therefore, no further surveys are required. The site contains gravel and concrete, imported soils, and is routinely mowed and disked per fire code. The minimal amount of ruderal vegetation that is present on site does not support any sensitive species as it

---

<sup>2</sup> Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025, Page 1

offers no habitat for nesting, roosting, or breeding. Simply seeing an airborne species fly over the site does not determine the site's ability to host said species.

**Comment 1-14**

Commenter deems the site as habitat for special-status species and therefore an Infill Exemption is inappropriate.

**Response to Comment 1-14**

See Responses to Comments 1-9, 1-10, 1-11, 1-12, and 1-13 above. The Project has been adequately evaluated to determine that, per CEQA Guidelines section 15332(c) the project site has no value as habitat for endangered, rare or threatened species. The City concludes that a Categorical Exemption is the appropriate documentation.

**Comment 1-15**

Commenter concludes 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.

**Response to Comment 1-15**

See Responses to Comments 1-9, 1-10, 1-11, 1-12, and 1-13 above. The Project has been adequately evaluated to determine that, per CEQA Guidelines section 15332(c) the project site has no value as habitat for endangered, rare or threatened species.

**Comment 1-16**

Commenter states that the Project will have a significant impact on the reproductive capacity of the Project site as a result of habitat loss.

**Response to Comment 1-16**

Jenning Environmental notes that the Commenter does not explain how their alleged number in the Comment was calculated and what the scientific literature supports the conclusion. Without this information, there is no substantial evidence to support Commenter's estimate. As stated in the 2025 Biological Assessment, there is no suitable habitat for any sensitive species.

**Comment 1-17**

Commenter states 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.

**Response to Comment 1-17**

CEQA Guidelines section 15332 does not require analysis of potential impacts to wildlife species, it only queries whether a project site has value as habitat for endangered, rare or threatened species. As the Project site does not provide such habitat, that is the end of the CEQA Guidelines section 15332 inquiry with regard to endangered, rare or threatened species.

Regardless, the following responses is provided for informational purposes:

As mentioned previously, the Project site is a ruderal site with non-native vegetation and large amounts of disturbance. The site is completely surrounded by developed commercial buildings. Additionally, the site is not mapped within a designated area for wildlife movement as mapped by the California Department of Fish and Wildlife (CDFW)<sup>3</sup>. According to Center for Biological Diversity October 2003 Principles of Wildlife Corridor Design, wildlife movement corridors, also called dispersal corridors or landscape linkages as opposed to linear habitats, are linear features whose primary wildlife function is to connect at least two significant habitat areas.<sup>4</sup> The conditions on site do not support the uses described in the comment as it is within a mostly developed area of Fontana. Furthermore, the proposed Project will have landscaping associated with the project. This landscaping could be used by wildlife post construction.

The commenter states that a certain number of birds would be impacted by the Project, however, that calculation is incorrect and flawed. The commenter's opinion regarding the number of birds suggested is based on flawed analysis (see discussed above) as to the Project site's ability to host said species. The commenter has incorrectly evaluated the site, which does not support high quality habitat as presumed in the commenter. Instead, as discussed above, the Project site contains no such habitat. Therefore, the Project site will not affect the species listed in the comment.

**Comment 1-18**

Commenter states that the Project will have a significant adverse impact on wildlife as a result of collisions with the additional traffic generated by the Project.

**Response to Comment 1-18**

The commenter states that a certain number of wildlife would be impacted by the Project, however, that calculation is incorrect and flawed. Regarding an increase in traffic, The CE Memo rely on daily trip generation of 99 daily trips with 9 trips to occur in the AM peak hour and 11 trips to occur in the PM peak hour. Converting the Project's truck trips to passenger car equivalents results in approximately 150 daily trips with 13 trips occurring during AM peak hours and 15 occurring during PM peak hours.<sup>5</sup> An annual VMT is not used to determine trip generation or traffic patterns.

---

<sup>3</sup> <https://apps.wildlife.ca.gov/bios6/?bookmark=648>

<sup>4</sup> <https://biologicaldiversity.org/publications/papers/wild-corridors.pdf>

<sup>5</sup> Hilton Industrial Facility Project Transportation Screening Assessment, December 9, 2025, Ganddini Group, Inc.

The commenter's opinion regarding the number of animals suggested is also based on flawed analysis (see discussed above) as to the Project site's ability to host said species. The commenter has incorrectly evaluated the site, which does not support high quality habitat as presumed in the commenter. Instead, as discussed above, the Project site contains no such habitat. Therefore, the Project site will not affect the species listed in the comment.

**Comment 1-19**

Comment states that there was no evaluation of cumulative impacts on biological resources as no past, ongoing, or future projects in the area were listed.

**Response to Comment 1-19**

As documented in the CE Justification, cumulative impacts were evaluated under CEQA Guidelines section 15300.2(b). CEQA Guidelines section 15300.2(b) disallows a categorical exemption to be used for a project when the cumulative impact of successive projects "of the same type in the same place over time." It has a narrower definition than the broad definition of cumulative impacts as defined and applied elsewhere in CEQA practice. Further in *Robinson v. City & County of San Francisco* (2012) 208 Cal.App.4th 950, 958, the court of appeal held that the phrase "in the same place" should be interpreted to refer to the area where the environmental impact will occur and that the affected area will depend on the nature of the environmental impact. Here, SAFER has not identified successive projects of the same type in the same area that would result in a significant impact or provided evidence of a significant cumulative biological impact.

Based on findings of the experts who prepared Project-specific technical reports in support of the CE Justification, the Project site has no value as habitat for several special-status species, and the Project will not have significant adverse impacts related to biological resources. Therefore, there is no substantial evidence that the Project would contribute to a significant cumulative biological impact. As explained in *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 799, where a project itself contributes no cognizable environmental impact, adding that impact to the impacts of other projects does not create a cumulative impact.

Further, the Project Site is surrounded by a Target warehouse to the north, Vision Communications and Open Door Solutions to the east, Southern California Edison to the west, and a Service Partners, a building supply warehouse to the south. Surrounding uses predominantly consist of industrial uses and the project area is already built out such that there are no projects proceeding in the same place and no cumulative impacts per CEQA Guidelines section 15300.2(b) could occur.

**Comment 1-20**

Comment states that agencies cannot rely on a Categorical Exemption if to do so would require the imposition of mitigation measures, and further disputes the City's reliance on a Condition of Approval requiring the Applicant to conduct pre-construction surveys for nesting birds.

**Response to Comment 1-20**

The proposed Project is within Fontana and is therefore subject to the City of Fontana General Plan Update 2015-2035. When the City approved the General Plan Update 2015-2035, it adopted the Mitigation Monitoring and Reporting Program for the General Plan Update 2015-2035 Environmental Impact Report (Resolution 2018-096) as a condition of approval. The Program includes the following specific requirements as conditions of approval that must be imposed on future individual development projects such as the Project:

**MM-BIO-1**

1. 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.
2. 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.
3. 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.
4. 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.

**MM BIO-2**

To avoid impacts to nesting birds and to comply with the MBTA, clearing of vegetation and removal of trees should occur between non-nesting (or non-breeding) season for birds (generally, September 1 to January 31). If this avoidance schedule is not feasible, the alternative is to carry out such activities under the supervision of a qualified biologist. This shall entail the following:

1. A qualified biologist shall **conduct a pre-construction nesting bird survey** no more than 14 days prior to initiating ground disturbance activities. The survey will consist of full coverage of the proposed disturbance limits and up to a 500 foot buffer area, determined by the biologist and taking into account the species nesting in the area and the habitat present.
2. If no active nests are found, no additional measures are required.
3. If “occupied” nests are found, their locations shall be mapped, species documented, and, to the degree feasible, the status of the nest (e.g., incubation of eggs, feeding of young, near fledging) recorded. The biologist shall establish a no-disturbance buffer around each active nest. The buffer area will be determined by the biologist based on the species present, surrounding habitat, and type of construction activities proposed in the area.
4. No construction or ground disturbance activities shall be conducted within the buffer until the biologist has determined the nest is no longer active and has informed the construction supervisor that activities may resume.

Although significant biology impacts will be mitigated to less than significant levels through implementation of the above mitigation measures, the following mitigation measures are considered as best practices to be applied to future projects as may be necessary to reduce impacts to less than significant levels. This following list of mitigation measures is not all inclusive of mitigation measures that may be adopted for future projects but serve as a guide and performance standards that constitute the minimum level of measures to reduce environmental impacts to acceptable levels.

### **MM-BIO-3**

The City of Fontana Planning Division shall require that all future project applicants prepare a Biological Assessment in conjunction with a project-level analysis. The Biological Assessment shall include a vegetation map of the proposed project area, analysis of the impacts associated with plant and animal species and habitats, and conduct habitat evaluations for burrowing owl, Delhi Sands flower-loving fly, San Diego pocket mouse, western mastiff bat, western yellow bat, and San Diego desert woodrat. If any of these special status species are determined to be present, then coordination with the U.S. Fish and Wildlife Service and/or California Department of Fish and Game shall be concluded to determine what, if any, permits or clearances are required prior to development.

Each project-level Biological Assessment shall include an analysis of potential impacts to rare plants and rare natural communities in accordance with the California Department of Fish and Game’s November 2009 guidance for Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. For those projects located in the Delhi Sands flower-loving fly Recovery Unit, the project-level Biological Assessment shall include focused surveys. The

Biological Assessment shall prescribe actions necessary to mitigate the impacts identified for a particular project. Such actions shall include either avoidance of a sensitive resource, or payment of in-lieu fees that shall be used to purchase off-site replacement habitat. In instances where translocation/relocation, off-site preservation, or fee payment is selected, habitat mitigation ratios shall be a minimum of 1:1, unless a greater ratio is required by a state or federal wildlife agency. The requirements of the Biological Assessment shall be a condition of approval of the individual development project.

The General Plan Update applies to all development in the City; its provisions constitute regulations of general applicability. Thus, the City's imposition as a condition of approval of one of these regulations of general applicability is not the imposition of a project-specific mitigation measure, and does not preclude the City from finding the Project categorically exempt from CEQA.

**Comment 1-21**

Commenter reiterates their position that mitigation is being provided in the CE to reduce impacts and therefore the project cannot be exempt from CEQA.

**Response to Comment 1-21**

Refer to Response to Comment 1-20.

**Comment 1-22**

Commenter believes that the nesting bird surveys described in the General Plan are flawed.

**Response to Comment 1-22**

Per the City's adoption of the Mitigation Monitoring and Reporting Program for the General Plan Update 2015-2035 Environmental Impact Report (Resolution 2018-096) as a condition of approval of the General Plan Update, the Project, as an individual development project, is subject to General Plan MMs BIO-1, 2 and 3, including the provisions which provides that "the requirements of the Biological Assessment shall be a condition of approval of the individual development project." The City disagrees that the recommendation is flawed, as the condition meets the intent of protecting migratory and nesting birds protected by the federal Migratory Bird Treaty Act (MBTA) while conforming to CDFW guidelines and recommendations.

Further, typically, minimum qualifications for a Qualified Biologist include a bachelor's degree in biological or environmental science, natural resources management, or related discipline; field experience in the habitat types that may occur at the project site; familiarity with the Covered Species (or closely related species) that may occur at the project site; and prior preconstruction survey, construction monitoring, or construction oversight experience.

**Comment 1-23**

Commenter states “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.)”

**Response to Comment 1-23**

See Response to Comment 1-22.

**Comment 1-24**

Regarding the text 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.

**Response to Comment 1-24**

As stated in the Biological Report, the conditions present on-site are not suitable for BUOW. California ground squirrels, a burrow surrogate species, were not observed on-site. No evidence of BUOW was found in the survey area. No burrows of appropriate size, aspect, or shape were located and no BUOW pellets, feathers, or whitewash were found. No burrowing owl individuals were observed.<sup>6</sup> Additionally, the site does not contain friable soils, as evidence of gravel and cobble fill was found on-site. These factors preclude this species from the site. Therefore, no further surveys or mitigation measures are required or recommended.

**Comment 1-25**

Commenter 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.

---

<sup>6</sup> Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025 (pp. 3-4; Attachment C, Table 1, p. 15.)

**Response to Comment 1-25**

See Response to Comment 1-24.

**Comment 1-26**

Commenter states that the Project does not qualify for CEQA's Infill Exemption due to the Unusual Circumstances Exception.

**Response to Comment 1-26**

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).) This exception applies only when **both** unusual circumstances and a significant impact as a result of those unusual circumstances are shown. (*Berkeley Hillside Preservation v City of Berkeley "Berkeley Hillside"* (2015) 60 Cal.4th 1086, 1104) As the Supreme Court explained in *Berkeley Hillside*, the City's determination whether this exception applies involves two distinct questions: (1) whether the project presents unusual circumstances, and (2) if the project presents unusual circumstances, whether there is a reasonable possibility that a significant environmental impact will result from those unusual circumstances. (60 Cal.4th at 1098.) The City considers the second prong of this two part test only if it first finds that some circumstance of the project is unusual. If the City finds that the project does not present unusual circumstances, the exception is inapplicable, and the City need not reach the second prong of the two part test.

Here, as documented in the CE Justification, the City's determination whether the Project presents unusual circumstances involves a factual inquiry under which the City weighed the relevant evidence to determine if those circumstances are unusual in comparison with other projects in the CEQA Guidelines Section 15332. It determined that the Project would not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances and involves construction activities typical for other similar projects in the City that have been approved pursuant to the CEQA Guidelines section 15332 exemption. An example of a similar project approved by the City pursuant to the CEQA Guidelines Section 15332 exemption is the warehouse project (MCN22-057), which was approved by the Fontana Planning Commission on December 20, 2022. As such the Project does not present unusual circumstances and the City need not reach the second prong of the two part test.

**Comment 1-27**

Commenter states that they 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.

Ms. Alexia Barberena

June 11, 2026

Page 20

**Response to Comment 1-27**

See Response to Comment 1-26.

**Comment 1-28**

Concluding comment that 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.

**Response to Comment 1-28**

Comment noted; refer to prior responses. The City has determined that a Class 32 Exemption is appropriate for the Project.

### **Comment Letter 1A – Exhibit A to Lozeau Drury Letter**

This letter dated March 30, 2026 was prepared by Shawn Smallwood, PhD and addresses biological resources impacts associated with the Project.

#### **Comment 1A-1**

The commenter states that they have concerns regarding use of the Class 32 CEQA Exemption because the site supports substantial habitat for endangered, rare or threatened species and cumulative impacts would be significant. Commenter believes the biological technical report mischaracterizes the existing environment. Also provides is their qualifications and experience and states

#### **Response to Comment 1A-1**

Comment noted. Comment is introductory, does not address specifics of CEQA-related concerns and does not require a response.

#### **Comment 1A-2**

The Commenter provides his opinion as to CEQA's requirements with regard to the protection of wildlife species.

#### **Response to Comment 1A-2**

Comment noted. Comment does not present any comments specific to the Project. No further comment is required.

#### **Comment 1A-3**

Comment states that the site was surveyed and a summary of Commenter's site visit follows.

#### **Response to Comment 1A-3**

Comment noted. No response required to introductory comment.

#### **Comment 1A-4**

Comment provides an introduction to two surveys commenter states were conducted at the Project site by Noriko Smallwood, wildlife biologist, during March of 2026 and states how the surveys were conducted.

**Response to Comment 1A-4**

Comment noted. No response required to introductory comment.

**Comment 1A-5**

The Commenter states the weather conditions at the site during the two March 2026 surveys.

**Response to Comment 1A-5**

Comment noted. No response required.

**Comment 1A-6**

The Commenter states that vegetation found at the site was primarily annual grassland bordered by mature pine and eucalyptus trees. Commenter provides two photos of the site.

**Response to Comment 1A-6**

The types of vegetation cited by commenter are not what was found by the Jennings Environmental biologists (Project Biologist) in September 2025. The Project Site is highly disturbed. The habitat on-site is ruderal/disturbed vegetation with gravel surfaces.

**Comment 1A-7**

The comment lists a number of species allegedly found at or adjacent to the site by Ms. Smallwood and provides photographs of these species, stating these photographs were taken at the Project site. Comment also includes sonograms of canon bat and possible western red bat detected allegedly at the site.

**Response to Comment 1A-7**

While the photos submitted by the commenter show some of the species that were documented on site, Jennings Environmental has advised that the photos do not show these species actively using the Project site for any nesting, roosting, or breeding. An airborne species may fly over a site at any time, but that does not constitute the occupation of the site by that species. Simply seeing a species fly over the site does not indicate habitat suitability or occupation of the site.

The Commenter also includes a photo of a red-tailed hawk that was not found during either site visit conducted by Jennings Environmental. The Project will be required to follow all previously adopted Conditions of Approval that were approved as part of the City's approval of its General Plan 2015-2035 Draft and Final EIR, including pre-construction survey for birds prior to removing any trees within the City (see Response to Comment 1-10). Therefore, no impacts to any nesting birds are anticipated.

**Comment 1A-8**

Certification Comment.

**Response to Comment 1A-8**

No response required.

**Comment 1A-9**

Commenter states that during their surveys, 27 species of vertebrate wildlife were detected and that the species listed in their Table 1 would lose habitat as a result of the project and its replacement of natural ground covers with impervious surfaces. They further state that they confirmed this habitat loss by measuring the impacts of similar developments on species richness and the abundances of wildlife by comparing 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.

**Response to Comment 1A-9**

The comment conflates data with actual observations on the Project site. The graph included with this Comment indicate that it can be applied to any site, with any conditions, under normal circumstances. Jennings Environmental has reviewed this claim and concludes that it is false, and a prime example of causation without correlation. The Comment does not provide the input data or the relevant information to support the model. Therefore, there is no support for the veracity of the claims made based on the model. Jennings Environmental's opinion, based on 13 years of experience with studying wildlife, a single model cannot be applied all of the various types of habitats present with the City, within the County, or within the State. Each site with the City must be evaluated based on current conditions and suitability for sensitive species. The data presented in this Comment lacks a factual foundation upon which to reach any conclusion regarding the Project site. Additionally, the first sentence in the comment refers to Grassland Habitat in Altamount Pass Wind Resource Area. This area is a diverse and species rich habitat. So, applying this model to a vacant lot in an industrial area of Fontana is not only inaccurate but inappropriate.

**Comment 1A-10**

Commenter alleges that 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.

**Response to Comment 1A-10**

Again, the commentor incorrectly and drastically over states the available uses of the site for any wildlife species. The site is not within a sensitive area, is completely surrounded by development, exposed to ongoing disturbances, and consists of imported soil material. There is no suitable habitat for any listed species (Refer to Biological Resources Assessment Letter Report (Jennings Environmental, September 2025, Appendix C, Table 1) and therefore, no impacts will occur.

**Comment 1A-11**

Commenter alleges that 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, and that although they conducted only one survey, the 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.

**Response to Comment 1A-11**

See Response to Comment 1A-9.

**Comment 1A-12**

Commenter presents their modeling and results.

**Response to Comment 1A-12**

The comment conflates data with actual observations on the Project site. The graph included with this Comment indicate that it can be applied to any site, with any conditions, under normal circumstances. Jennings Environmental has reviewed this claim and concludes that it is false, and a prime example of causation without correlation. The Comment does not provide the input data or the relevant information to support the model. Therefore, there is no support for the veracity of the claims made based on the model. Jennings Environmental's opinion, based on 13 years of experience with studying wildlife, a single model cannot be applied all of the various types of habitats present with the City, within the County, or within the State. Each site with the City must be evaluated based on current conditions and suitability for sensitive species. The data presented in this Comment lacks a factual foundation upon which to reach any conclusion regarding the Project site. Additionally, the first sentence in the comment refers to Grassland Habitat in Altamount Pass Wind Resource Area. This area is a diverse and species rich habitat. So, applying this model to a vacant lot in an industrial area of Fontana is not only inaccurate but inappropriate.

**Comment 1A-13**

Commenter provides their interpretation of CEQA and how species occurrence likelihood should be evaluated.

**Response to Comment 1A-13**

See Response to 1-10 thru 1-12.

**Comment 1A-14**

Commenter states that 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” and that 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.

**Response to Comment 1A-14**

The commenter again conflates the database occurrences with the occupation of the site. Jennings Environmental has reviewed this Comment and notes that the broad search, up to 30 miles away from the Project site, that is recommended by commenter presents an inaccurate picture of the potential for species to occur on-site. Additionally, the data presented in Comment is from public observation databases (eBird and iNaturalist). Because these databases are based on the self-certification of public observations, they cannot be relied upon to provide accurate information. Instead, biological experts reference the California Natural Diversity Database (CNDDDB) and the US Fish and Wildlife (USFWS) Species Occurrence GIS Layer. Both are databases from scientific sources, and the occurrence data is verified prior to publishing. A record of the CNDDDB and USFWS Species Occurrence GIS Layer is provided in Table 1 of Appendix C of the Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025, Page 1.

Further, Dr. Smallwood does not provide an explanation of the suitable habitat elements for each species listed, and as such, the data presented does not address the site’s actual suitability to host these species. As noted in the Table 1 of Attachment C of the Biological Assessment performed by Jennings Environmental, the Project site does not contain suitable habitat for any sensitive species.

**Comment 1A-15**

Commenter states that Jennings relied on a one-hour reconnaissance survey and an improperly curtailed desktop review, neither of which comports with the findings of Commenter’s survey or desktop review for known occurrences of special status species of wildlife. Furthermore, project reports vastly diminishes the accuracy of the characterization of the existing environmental setting.

**Response to Comment 1A-15**

See response to Comment 1A-9 thru 1A-14.

**Comment 1A-16**

Commenter states that their surveys identified more species than that of Jennings who reported no comparison of his findings to the findings made at other survey sites.

**Response to Comment 1A-16**

The survey conducted by Dr. Smallwood occurred at a different time of day, during a different time of year. So naturally the species documented on-site can change from season to season. But Dr. Smallwood still did not document any sensitive, listed, rare, or endangered species which is the issue the City considered when determining that the Project is categorically exempt.

**Comment 1A-17**

Commenter disputes the findings of Jennings and states that the data cannot be relied upon to represent the wildlife community of the project site.

**Response to Comment 1A-17**

See Response to Comment 1A-16.

**Comment 1A-18**

Commenter states that the one hour of Jennings's survey was not compared to typical reconnaissance survey efforts or to any standard minimum level of survey effort. Further there was no attempt in the CE Justification to defend the implication that Jennings's survey outcome is definitive of the species composition of the local wildlife community.

**Response to Comment 1A-18**

See Response to Comment 1A-9 thru 1A-14.

**Comment 1A-19**

Commenter states the CE Justification fails to consider the very low likelihood that special-status species would have been detected in one person hour of reconnaissance survey and that there is a fundamental difference in meaning between detection likelihood and occurrence likelihood, but this difference is not mentioned or discussed in the CE Justification.

**Response to Comment 1A-19**

See Response to Comment 1A-9 thru 1A-14.

**Comment 1A-20**

Commenter again disputes the findings of Jennings report related to the occurrence likelihoods of rare plants.

**Response to Comment 1A-20**

There are no rare plants because, as documented in the experts studies prepared for the project and referenced in this Memo<sup>7</sup>, there is no suitable habitat for any rare plants on site. Protocol Surveys are not required if there is no habitat, as such none were conducted for this site. The commenter continues to be incorrect in the assumption that this site is anything more than a vacant lot in the middle of an industrial area.

**Comment 1A-21**

Commenter states that the CE Justification determines “The site offers no suitable habitat for any rare sensitive species including listed species” With no survey to conducted to support this conclusion.

**Response to Comment 1A-21**

See Response to Comment 1-9. As noted in the General Biological Assessment prepared on September 10, 2025, the Project site does not contain suitable habitat for these species and thus no wildlife surveys are justified. Further, CEQA Guidelines section 15332 does not require wildlife surveys, it only queries whether a project site has value as habitat for endangered, rare or threatened species. As the Project site does not provide such habitat, that is the end of the CEQA Guidelines section 15332 inquiry with regard to endangered, rare or threatened species.

**Comment 1A-22**

Commenter alleges 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 which are not mentioned in Jennings report.

**Response to Comment 1A-22**

A record of the CNDDDB and USFWS Species Occurrence GIS Layer is provided in Table 1 of Appendix C of the Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025, Page 1. The commenter’s named special-status species nor their habitat are at the site.

---

<sup>7</sup> Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025, Page 1

**Comment 1A-23**

Commenter alleges that Jennings misuses the CNDDDB.

**Response to Comment 1A-23**

See Response to Comments 1A-14.

**Comment 1A-24**

Commenter alleges that based on other surveys, the site 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 therefore suggests that habitat assessments are needed for these species.

**Response to Comment 1A-24**

See Response to Comment 1A-14.

**Comment 1A-25**

Commenter again disputes methodology employed by Jennings.

**Response to Comment 1A-25**

See Response to Comments 1A-14.

**Comment 1A-26**

Commenter again claims Jennings misuses CNDDDB.

**Response to Comment 1A-26**

See Response to Comments 1A-14.

**Comment 1A-27**

Commenter argues 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.

**Response to Comment 1A-27**

The Project site does not contain suitable habitat for any sensitive species<sup>8</sup>. There is no need for further mitigation other than that provided in the Fontana General Plan EIR. The City concludes that a Categorical Exemption is the appropriate documentation.

**Comment 1A-28**

Commenter disputes the CE findings as 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 and a comparative method is provided to enable the use of scientific inference to predict impacts and the efficacies of mitigation strategies, the latter of which should be also amply available in the record. Commenter provides in subsequent comments how they analyzed several types of impacts likely to result from the project.

**Response to Comment 1A-28**

Introductory comment to subsequent comments regarding prediction modeling. Responses below.

**Comment 1A-29**

Commenter discusses their determination of the loss of 13 nest sites and 18 nest attempts per year which would qualify as significant impacts that were not been analyzed in the biological assessment or CE Justification.

**Response to Comment 1A-29**

Jennings has reviewed the Comment and concludes that the data is inaccurate because the estimate used was for a grassland in a different county. The Project site is within San Bernardino County and in a largely developed area. The Project site does not contain grassland habitat. Additionally, the information in the Comment does not explain how the estimate was obtained. It simply asserts that this was the number that was used. Additionally, Jennings notes that the Commenter does not explain how that number in the Comment was calculated and what the scientific literature supports the conclusion. Without this information, there is no substantial evidence to support Commenter's estimate. As stated in the 2025 Biological Assessment, there is no suitable habitat for any sensitive species. Refer to Response to Comment 1-10.

**Comment 1A-30**

Commenter asserts that how the project would interfere with wildlife movement in the region was not discussed in the CE Justification.

---

<sup>8</sup> Biological Resources Assessment Letter Report, Jennings Environmental, September 10, 2025

**Response to Comment 1A-30**

The commentor asserts that the site is used for stop over opportunities, but fails to say how a terrestrial species would access the site since it completely surrounded by industrial buildings. Any airborne species can and will simply find an alternative or use the surrounding landscaping within the area. Also see response to comment 1A-14.

**Comment 1A-31**

Commenter asserts that Project-generated traffic would endanger wildlife citing U.S. and Canadian data.

**Response to Comment 1A-31**

As stated multiple times and shown to the commentor during their site visit, the Project is within an industrial area. Traffic is already using the existing roads, freeways, alleyways, etc. The Project will utilize these existing roads and does not present a new or heightened threat to any species. The Project's estimated daily trip generation of 99 daily trips with 9 trips to occur in the AM peak hour and 11 trips to occur in the PM peak hour is not considered a significant increase.<sup>9</sup> Additionally, the report from Dr. Smallwood shows photos of animals in a roadway; some are even killed in the roadway. But as he clarifies under the photo captions, these photos are not from the site. They are not even from the same County. So, to incorrectly relate project impacts of this specific Project to another project outside the County is unfounded and incorrect.

**Comment 1A-32**

Commenter cites additional data related to wildlife and traffic collisions.

**Response to Comment 1A-32**

See Response to Comments 1-18 and 1A-31.

**Comment 1A-33**

Commenter states that using their predictions and the traffic estimated to be generated by the project, would predict 266 vertebrate wildlife fatalities per year due to project-generated traffic.

**Response to Comment 1A-33**

See Response to Comment 1A-32.

---

<sup>9</sup> Hilton Industrial Facility Project Transportation Screening Assessment, December 9, 2025, Ganddini Group, Inc.

**Comment 1A-34**

Commenter details results of a survey conducted of wildlife fatalities on arterial roads in Davis, California.

**Response to Comment 1A-34**

See Response to Comment 1A-32.

**Comment 1A-35**

Commenter states that based on his analysis, the project-generated traffic would cause substantial, significant impacts on wildlife which was not addressed or mitigated in the CE Justification.

**Response to Comment 1A-35**

See Response to Comment 1A-32.

**Comment 1A-36**

Commenter states that the CE Justification fails to analyze the project's contribution to cumulative impacts on biological resources.

**Response to Comment 1A-36**

See Responses to Comments 1A-7 through 1A-35.

**Comment 1A-37**

Commenter states that the environmental review for the project needs to include a cumulative impacts analysis.

**Response to Comment 1A-37**

See Responses to Comments 1A-7 through 1A-35.

**Comment 1A-38**

Commenter states that there is at least a fair argument that can be made for the need to prepare an EIR.

**Response to Comment 1A-38**

See Responses to Comments 1A-7 through 1A-35. Based on the substantial evidence in the record, the City concludes that a Categorical Exemption is the appropriate documentation.

**Comment 1A-39**

Commenter states that the mitigation strategy needs to follow the steps under Assess species occurrence likelihoods and Characterize wildlife community, followed by Step 7: Predict impacts which is not followed in the CE Justification.

**Response to Comment 1A-39**

Compensatory mitigation is only required when impacting habitat of a listed species. Since, as discussed above, no listed species were observed on the Project site, and none are expected to occur, no mitigation is required.

**Comment 1A-40**

Commenter states that 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.

**Response to Comment 1A-40**

See Response to Comment 1-10.

**Comment 1A-41**

Commenter discusses number of nests on-site and states that 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.

**Response to Comment 1A-41**

See Response to Comment 1A-29.

**Comment 1A-42**

Commenter asserts that 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.

**Response to Comment 1A-42**

See Response to Comment 1-10.

**Comment 1A-43**

Commenter states that what qualifies as a “qualified biologist” is not defined.

**Response to Comment 1A-43**

The term “qualified biologist” is subject to discretion. Depending on the agency, it will carry different qualifications. The term “qualified biologist” is industry standard and is used by federal, state, and local agencies. Nothing further is required.

**Comment 1A-44**

Commenter believes that the mitigation measure for Burrowing owl is outdated.

**Response to Comment 1A-44**

As stated in prior Responses to Comments, and in the Biological Report, there is no habitat for any listed or sensitive species. This includes Burrowing Owls. A habitat assessment was completed and it was determined that the site is not suitable for this species and therefore no mitigation was recommended.

**Comment 1A-45**

Commenter provides their additional opinions regarding what is needed for and protection of burrowing owl.

**Response to Comment 1A-45**

The commentor continues to incorrectly state that simply because a species is found a certain distance away, then any site within that range must host the species. As any biologist familiar with the local region knows, burrowing owl will not occur in areas that do not have suitable habitat. Therefore, no mitigation is required and no further surveys are warranted or recommended.

**Comment 1A-46**

Commenter states that the applicant needs to consult with CDFW to determine whether an ITP can be issued for burrowing owl.

**Response to Comment 1A-46**

See Response to Comment 1A-45.

**Comment 1A-47**

Commenter again asks what defines a qualified biologist.

**Response to Comment 1A-47**

See Response to Comment 1A-43.

**Comment 1A-48**

Commenter again states that there is a fair argument for the need to prepare an EIR to formulate an effective mitigation strategy.

**Response to Comment 1A-48**

See Response to Comment 1A-45. Substantial evidence supports the City's conclusions that a Categorical Exemption is the appropriate documentation.

**Comment 1A-49**

Commenter states that compensatory mitigation as near to the site as possible is needed for destruction of birds and other wildlife.

**Response to Comment 1A-49**

See Responses to Comments 1A-9 and 1A-48.

**Comment 1A-50**

Commenter reiterates that loss of burrowing owl foraging opportunities would need to be mitigated.

**Response to Comment 1A-50**

See Responses to Comments 1A-9 and 1A-48.

**Comment 1A-51**

Commenter states that compensatory mitigation is needed for the increased wildlife mortality that would be caused by collisions with automobiles due to project-generated road traffic.

**Response to Comment 1A-51**

See Responses to Comments 1A-9 and 1A-48.

**Comment 1A-52**

Commenter states that 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 as a result of the project.

**Response to Comment 1A-52**

Compensatory mitigation is only required when impacting habitat of a listed species. Since no listed species were observed on the Project site, and none are expected to occur, no mitigation is required.

**Comment 1A-53**

Commenter states that 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.

**Response to Comment 1A-53**

Landscaping will be in compliance with the General Plan and the City of Fontana's Landscape Ordinance (ORDINANCE NO. 1734).

Ms. Alexia Barberena

June 11, 2026

Page 36

### **Lilburn Corporation Conclusion**

As detailed above, based the CE Justification Memo as well as expert review of the Appeal and supporting comment letters, substantial evidence supports the City's determination that the Project is categorically exemption under CEQA Guidelines section 15332.

The Appeal and its supporting comment letters provide: 1) no new information regard significant impacts; 2) no evidence to support the need to conduct additional environmental; and 3) no substantial evidence supporting the preparation of additional environmental review.

If you should have any questions or require additional information, please do not hesitate to give us a call.

Sincerely,

A handwritten signature in cursive script, reading "Cheryl A. Tubbs", enclosed in a thin yellow rectangular border.

Cheryl A. Tubbs  
Vice President