Exhibit N – Comments Letters and Responses to Environmental Assessment Notice

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April 4, 2022

VIA EMAIL & UNITED STATES MAIL

Phillip Siegrist, Supervising Planner
CITY OF FRESNO
Planning & Development Department
2600 Fresno Street, Room 3043
Fresno, CA 93726

Re: Initial Study/Mitigated Negative Declaration
Plan Amendment/Rezone Application No. P20-04209
Development Permit Application No. P20-04211
Busseto Foods Project

Dear Mr. Siegrist:

I represent several entities (collectively, the "Elm Avenue Landowners") that own fully-developed land between S. Elm Avenue, E. Vine Avenue, State Route 41, and the Samson Avenue alignment (the "Elm Avenue Properties"). On their behalf, I am submitting this letter concerning the Busseto Foods project, Plan Amendment/Rezone Application No. P20-04209, Development Permit Application No. P20-04211 (collectively, the "Busseto Project"), and the related Initial Study/Negative Declaration (the "IS/ND").

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A. The Elm Avenue Project

The Elm Avenue Landowners invested millions of dollars in the mid-2000s to develop clean light industrial uses on the Elm Avenue Properties, created hundreds of good paying local jobs, remediated pre-existing contamination on some of the properties, and contributed to the improvement of local infrastructure, including nearby roadways.

Despite the Elm Avenue Landowners' investment in the City of Fresno (the "City"), in 2017 the City changed the land use designation and zoning of the Elm Avenue Properties from Light Industrial ("IL") to Neighborhood Mixed Use ("NMX") as part of the Southwest Specific Plan ("SWSP"). The Elm Avenue Landowners never received notice that the zoning of their properties would change, and were only apprised of the change when one of the landowners subsequently sought to move in a new tenant.

The change of zoning had significant negative consequences for the Elm Avenue Landowners:

- The value of the Elm Avenue properties dropped in half overnight.
- The inconsistent zoning diminished the ability to attract the reputable, responsible, and well-capitalized businesses the community deserves, such as GlaxoSmithKline.
- The inconsistent zoning has made it nearly impossible to receive conventional financing (including financing for capital improvements necessary for ongoing maintenance, beautification, and clean energy improvements).
- The inconsistent zoning has put the Elm Avenue Landowners at risk of default under their existing loans.
- If a building is unused for a moderate period due to an economic downturn (such as the recent recession), the landowners will lose their legal nonconforming status under the code.
- It is far more difficult to sell properties with legal nonconforming status.

Due to these significant impacts, the Elm Avenue Landowners have for several years sought to work cooperatively with the City to reach a long-term solution that would preserve the long-term viability of their uses and providing assurances to the surrounding community that the clean light industrial uses that currently exist on the properties would not be replaced by heavy industrial uses. Unfortunately, these issues have not yet been resolved.

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B. The Busseto Project

The Elm Avenue Landowners support economic investment in Southwest Fresno and the City of Fresno generally. The Elm Avenue Landowners likewise support the Busseto Project, which contemplates the development of its new "477,470 square foot two (2) story food production, warehousing, and distribution facility" at 2325 South West Avenue and 995 West Church Avenue (the "Project Site"). The Elm Avenue Landowners are also sympathetic about the fact that the Project Site—like the Elm Avenue Properties—was rezoned from IL to NMX as part of the SWSP, and that the Busseto Project requires a rezone.

The Elm Avenue Landowners support efforts by the City to restore IL zoning in Southwest Fresno, particularly where the City did not engage with the underlying landowners as stakeholders in the process or otherwise provide affected landowners actual notice of the fact that their zoning would change. However, rather than first restoring zoning to facilitate the construction of new industrial uses, the City should instead restore the zoning for existing facilities that do not seek to expand and whose environmental footprint will not change. At the very least, the Busseto Project and the rezoning of the Elm Avenue Properties should proceed concurrently.

In addition, the Elm Avenue Landowners have reviewed the IS/ND prepared for the Busseto Project. In its discussion of Population/Housing, the IS/ND addresses Senate Bill (SB) 330 compliance as follows:

> [B]ecause the Project proposes a change in land use and zoning that would reduce residential density, the Project is subject to Senate Bill (SB) 330 (Housing Crisis Act of 2019) and the City is required to upzone an equivalent amount of residential density elsewhere within the city of Fresno (i.e., achieve a "no net loss"). This requirement is subject to review and approval by the City prior to development approval. Thus, through compliance with SB 330, a less than significant impact would occur as a result of the Project.

(IS/ND at 171.)

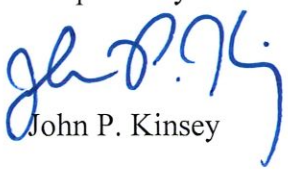
Based on the foregoing, it appears the City is asserting that "upzoning" properties to residential is ***not*** a part of the Busseto Project for purposes of CEQA, (*cf.* CEQA Guidelines, § 15378), and that this upzoning does not need to be addressed as part of the IS/ND or identified as a Requires Project Approval under Section 2.15 of the IS/ND. It also appears the City is acknowledging the applicant's compliance with SB 330 should not be included as a "mitigation measure" to avoid or less a potentially significant effect on population and housing, or any other resource. It further appears that the City—and not the applicant—is taking the burden of locating and upzoning replacement residential properties to achieve "no net loss." To the extent the same approach applies to the Elm Avenue Properties, the Elm Avenue Landowners agree

with the City's approach here. However, to the extent the City seeks to impose more restrictive and onerous standards on the Elm Avenue Landowners than those applied to the Busseto Project, the standards applicable to Elm Avenue should apply to the Busseto Project.

C. Conclusion

The Elm Avenue Landowners support any efforts by the City to restore IL zoning to landowners in Southwest Fresno who were not provided reasonable notice or included as stakeholders when the City changed the zoning in 2017. However, the City should first focus on those landowners—such as the Elm Avenue Landowners—who are fully built out and are not seeking to expand operations. The City should likewise apply the same rules and methodologies to all landowners who were downzoned from IL zoning as part of the SWSP as they seek to restore their zoning.

Respectfully submitted,



John P. Kinsey

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

April 14, 2022

Phillip Siegrist
City of Fresno
Department of Public Works
2600 Fresno St. Room 4016
Fresno, CA 93721

Project: Draft Initial Study/Negative Declaration for Busseto Foods Processing, Warehousing, and Distribution Facility Project

District CEQA Reference No: 20220264

Dear Mr. Siegrist:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Initial Study/Negative Declaration (Draft ND) for the project referenced above from the City of Fresno (City). The project consists of constructing a 477,470 square foot two story, food processing, warehousing, and distribution facility for manufacturing and marketing Italian-style specialty meats (Project). The Project is located at 2325 South West Avenue, in Fresno, CA (APN 477-030-20/477-030-21) and lies within one of the communities in the State selected by the California Air Resources Board (CARB) for investment of additional air quality resources and attention under Assembly Bill (AB) 617 (2017, Garcia) in an effort to reduce air pollution exposure in impacted disadvantaged communities.

The District offers the following comments:

1) <u>Assembly Bill 617</u>

Assembly Bill 617 requires CARB and air districts to develop and implement Community Emission Reduction Programs (CERPs) in an effort to reduce air pollution exposure in impacted disadvantaged communities, like those in which the Project is located. The South Central Fresno AB 617 community is one of the three Valley communities selected by CARB for investment of additional air quality resources and attention under AB 617.

Samir Sheikh
Executive Director/Air Pollution Control Officer

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The CERP for the South Central Fresno was developed through an extensive community engagement process, which included input from members of a Community Steering Committee. The South Central Fresno CERP was adopted by the District's Governing Board in September 2019 and by CARB in February 2020. The CERP identifies a wide range of measures designed to reduce air pollution and exposure, including a number of strategies to be implemented in partnership between agencies and local organizations. The Community Steering Committee has developed, through a collaborative process, a series of emission reduction strategies with the goal to improve community health by reducing exposure to air pollutants. Such emission reduction strategies include, but are not limited to, enhanced community participation in land use processes, the deployment of zero and near-zero emission Heavy Heavy-Duty (HHD) trucks, HHD truck rerouting analyses, and incorporating vegetative barriers and urban greening. The District appreciates the City's involvement in this program, and encourages the City to further assess the emission reductions measures and strategies included in the CERP, and address them in the Project as appropriate.

2) Project Emissions

2a) Construction Emissions

The District recommends the City consider the feasibility of utilizing the cleanest reasonably available off-road construction fleets and practices (i.e. eliminating unnecessary idling) to further reduce impacts from construction-related exhaust emissions and activities.

2b) Operational Emissions

Based on the Draft ND specifically pages 12 and 13 state the Project is *"to facilitate the development of a food processing, warehousing, and distribution facility for Busseto Foods, Inc... in the city of Fresno"* with truck trips to be between 10 and 13 trips per day. The California Emissions Estimator Model (CalEEMod) air quality modeling results in the Draft ND includes a 7.3 mile trip length for quantifying Project operational air quality emissions from HHD Truck travel. This value represents the default CalEEMod trip length. It is important to note, projects that consist of warehouse or distribution have the ability generate HHD truck trips that generally travel further distances (e.g. trip length) for distribution. Therefore, the District recommends the Draft ND be revised to justify the use of the default 7.3 mile trip length for this Project. If the default value is determined not appropriate, the Draft ND and supporting CalEEMod air quality modeling results should be revised to reflect an appropriate trip length distance that is supported by the project- specific factors.

2c) Recommended Feasible Mitigation for Operational Air Quality Impacts

The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from HHD trucks, the

single largest source of NOx emissions in the San Joaquin Valley. The District recently adopted the 2018 PM2.5 Plan, which includes significant new reductions from HHD trucks, including emissions reductions by 2023 through the implementation of the California Air Resources Board (CARB) Statewide Truck and Bus Regulation, which requires truck fleets operating in California to meet the 2010 0.2 g/bhp-hr NOx standard by 2023. Additionally, to meet the federal air quality standards by the 2020 to 2024 attainment deadlines, the District's Plan relies on a significant and immediate transition of heavy duty truck fleets to zero or near-zero emissions technologies, including the near-zero truck standard of 0.02 g/bhp-hr NOx established by the California Air Resources Board.

The Project consists of processing, warehousing, distribution, and is expected to generate 10-13 HHD truck trips per day. To reduce impacts from operational mobile source emissions, the District recommends that the following mitigation measures be considered for inclusion in the Draft ND:

- Require fleets associated with Project operational activities to utilize the cleanest available HHD truck technologies, including zero and near-zero (0.02 g/bhp-hr NOx) technologies as feasible.

- Require all on-site service equipment (cargo handling, yard hostlers, forklifts, pallet jacks, etc.) to utilize zero-emissions technologies as feasible.

3) Health Risk Assessment

In order for the District to provide a complete review of the Project's Health Risk Assessment (HRA), the District requests the City provide the electronic modeling files (input and output). As such, the District is unable to verify the Project HRA results, and could not confirm the Project-related health impacts.

4) Truck Routing

There are sensitive receptors (e.g. single family residence) located southeast and west of the Project. Truck routing involves the path/roads heavy-duty trucks take to and from their destination. The air emissions from heavy-duty trucks can impact residential communities and sensitive receptors.

The District recommends the Draft ND evaluate Project heavy-duty truck routing patterns to help limit emission exposure to residential communities and sensitive receptors. More specifically, this measure would require study of current truck routes, in consideration of the number and type of each vehicle, destination/origin of each vehicular trip, time of day/week analysis, vehicle miles traveled and emissions. The truck routing study would also identify alternative truck routes and their impacts on VMT and air quality.

5) Electric Vehicle Chargers

Based on the Draft ND, electric vehicle chargers will be incorporated into the Project for employee to use. To support the installation of electric vehicle charging infrastructure and development of required infrastructure, the District offers incentives to public agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of the District's Charge Up! Incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles. Please visit: www.valleyair.org/grants/chargeup.htm for more information.

6) Vegetative Barriers and Urban Greening

Based on the Draft ND, the Project will include shrubs, trees, and ground cover along South West Avenue and West Church Avenue. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, vegetative barriers have been shown to be an additional measure to potentially reduce a population's exposure to air pollution through the interception of airborne particles and the update of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low-maintenance greenery.

7) District Rules and Regulation

The District issues permits for many types of air pollution sources and regulates some activities not requiring permits. A project subject to District rules and regulation would reduce its impacts on air quality through compliance with regulatory requirements. In general, a regulation is a collection of rules, each of which deals with a specific topic. Here are a couple of example, Regulation II (Permits) deals with permitting emission sources and includes rules such as District permit requirements (Rule 2010), and New and Modified Stationary Source Review (Rule 2201).

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

7a) District Rule 9410 (Employer Based Trip Reduction)

The Project may be subject to District Rule 9410 (Employer Based Trip Reduction) if the Project would result in employment of 100 or more "eligible" employees. District Rule 9410 requires employers with 100 or more "eligible" employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes. Under an eTRIP plan, employers have the flexibility to select the options that work best for their worksites and their employees.

Information about how District Rule 9410 can be found online at:
www.valleyair.org/tripreduction.htm

For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at etrip@valleyair.org

7b) District Rule 9510 – Indirect Source Review

The purpose of District Rule 9510 is to reduce the growth in both NOx and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The Rule requires developers to mitigate their NOx and PM emissions by incorporating clean air design elements into their projects. Should the proposed development project clean air design elements be insufficient to meet the required emission reductions, developers must pay a fee that ultimately funds incentive projects to achieve off-site emissions reductions.

The Project is subject to District Rule 9510 when it receives a project-level discretionary approval from a public agency and will equal or exceed 2,000 square feet of commercial space. When subject to the rule, an Air Impact Assessment (AIA) application is required no later than applying for project-level approval from a public agency. In this case, if not already done, please inform the project proponent to immediately submit an AIA application to the District to comply with District Rule 9510.

Information about how to comply with District Rule 9510 can be found online at:
http://www.valleyair.org/ISR/ISRHome.htm.

The AIA application form can be found online at:
http://www.valleyair.org/ISR/ISRFormsAndApplications.htm.

District staff is available to provide assistance with determining if future development projects will be subject to Rule 9510, and can be reached by phone at (559) 230-5900 or by email at ISR@valleyair.org.

7c) Other District Rules and Regulations

The Project may also be subject to the following District rules: Regulation VIII, (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

8) District Comment Letter

The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please contact Harout Sagherian by e-mail at Harout.Sagherian@valleyair.org or by phone at (559) 230-5860.

Sincerely,

Brian Clements
Director of Permit Services

For Mark Montelongo
Program Manager

City of FRESNO

Planning and Development Department

2600 Fresno Street, Room 3043
Fresno, California 93721-3604
(559) 621-8277
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Jennifer K. Clark, AICP, HDFP
Director

May 12, 2022

Please reply to:
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559-621-8061
Phillip.Siegrist@fresno.gov

Brian Clements
SJVAPCD
Brian.Clements@valleyair.org
(Sent via email only)

SUBJECT: RESPONSE TO COMMENT LETTER RECEIVED FROM SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT ON THE INITIAL STUDY/NEGATIVE DECLARATION FOR THE BUSSETO PROCESSING, WAREHOUSING, AND DISTRIBUTION PROJECT (DEVELOPMENT PERMIT APPLICATION NO. P20-04211; PLAN AMENDMENT AND REZONE APPLICATION NO. P20-04209)

Dear Mr. Clements:

On behalf of the City of Fresno, Precision Civil Engineering, Inc. (PCE) has prepared the following letter in response to the comment letter received from the San Joaquin Valley Air Pollution Control District (SJVAPCD) on April 14, 2022, about the Initial Study and Negative Declaration (IS/ND) for the Busseto Processing, Warehousing, and Distribution Project (Development Permit Application No. P20-04211; Plan Amendment and Rezone Application No. P20-04209).

Comments received from SJVAPCD are focused on the following subjects which include bt are not limited to: Assembly Bill 617, Project Emissions, Health Risk Assessment, Truck Routing, Electric Vehicle Chargers, Vegetative Barriers and Urban Greening, and District Rules and Regulations. Therefore, the responses on the following pages are concentrated on such impact areas.

Busseto Response to San Joaquin Valley Air Pollution Control District Comments

Response to APCD-1

The District's comments on Assembly Bill 617 and the Community Emission Reduction Program (CERPs) is acknowledged. The California Air Resources Board's (CARB) Land Use Handbook provides siting guidance for locating sensitive receptors near facilities that have more 100 trucks per day or 200 truck trips or more than 40 trucks or 80 truck trips for truck refrigeration units (TRUs). The project will locate into an area where there is open space or similar land uses. The project involves a minimal number of Heavy Heavy-Duty Diesel (HHD) truck trips per day, ranging from 10 to 13 truck trips per day.

As described in the Draft Negative Declaration (ND), the project will serve to consolidate all Fresno-based Busseto Foods facilities under one roof. As discussed in the Draft ND, the proposed site circulation will reduce surface vehicular traffic in Southwest Fresno by consolidating four (4) existing locations into one combined facility/campus. The net effect is the permanent elimination of at least 40 truck trips per week and consequently, improve air quality, reduce noise impact, and elevate livability. All new arriving truck traffic will be required to travel on Jensen Avenue towards West Avenue (existing designated truck routes, City of Fresno 2005), then turn northbound on West into the Project site. All new departing truck traffic will be required to exit the site onto West Avenue, turn southbound and travel to Jensen Avenue. Although the air quality and transportation assessment did not quantify the benefits specifically, consolidating facilities would reduce vehicle miles (VMT) and emissions and have a net benefit to air quality by reducing emissions consistent with the CERPs. The project will also incorporate landscaping that will serve as vegetative barriers consistent with best management practices for reducing pollutant exposure. Lastly, as the District has noted in their comment letter, HHD truck regulations are becoming more stringent with the CARB Statewide Truck and Bus Regulation which generates significant new reductions by 2023, the first year assumed for the project's operations. Trucks used by the facility would be required to comply with the new regulatory standards that would serve to reduce emissions.

The project would reduce HHD trucks by consolidating uses, would locate in an area where there are similar land uses and open space to create a buffer between these types of land uses, would include vegetative landscaping, and HHD trucks accessing the site would follow designated truck routes and be subject to increased regulations reducing emissions. In summary, the project would be consistent with CERPs strategies to reduce emissions.

Response to APCD-2a

The City acknowledges the District's recommendation to use clean offroad construction equipment and minimize idling. CEQA requires lead agencies to impose feasible mitigation measures as part of the approval of a "project" in order to substantially lessen or avoid the significant adverse effects of the project on the physical environment. The project's construction emissions were determined to

be less than significant based on the District's thresholds of significance, as such no mitigation was required under CEQA.

The project will be required to comply with the District's Rule 9510, which requires a 20 percent reduction in onsite construction NOx emissions and a 45 percent reduction in PM10 exhaust emissions either through clean construction equipment or payment of offsite mitigation fees. The District developed Rule 9510 to achieve reductions in the ozone and PM10 attainment plans. Compliance with Rule 9510 will ensure that the appropriate emission reductions are achieved to facilitate future ozone attainment and maintain PM10 attainment.

Unnecessary idling will be addressed through State regulations that prohibit idling for more than five minutes and through best management practices on a construction site. Excessive idling results in increased fuel waste and costs to the contractors, as such idling is limited for both environmental and financial reasons.

Response to APCD-2b

As discussed in the Draft ND, the project would generate between 10 to 13 truck trips per day and would operate Monday through Friday. Project-specific trip generation rates were applied to the CalEEMod modeling using the default fleet mix and trip length. Additionally, the CalEEMod default trip rates for light industrial were used for Saturday and Sunday, thus generating additional emissions for worker trips and truck trips.

The default CalEEMod fleet mix assumes approximately two percent of the fleet mix is HHD, additionally another four percent is assumed to be composed of Light Heavy-Duty Trucks (LHD1) to Medium Heavy-Duty (MHD) Trucks. As such, the CalEEMod estimates of vehicle types overestimates the number of truck trips, thus the default trip length is appropriate (see Table 1 below). Notably, although the project description describes the project as warehouse distribution, it is primarily a food processing plant with some local distribution as compared to a traditional warehouse distribution project that would have a many more truck trips. Additionally, the proposed project will result in the elimination of at least 40 truck trips per week through the consolidation of facilities, which was not reflected in the emissions estimate. As such the emissions estimate provided a conservative analysis by overestimating the number of HHD and LHD1 to MHD vehicle trips, thus the default trip length is appropriate. No revisions to the modeling is required.

Table 1: CalEEMod Modeling Truck Trips

Total Vehicle Trips		**CalEEMod HHD Truck Trips**	**CalEEMod LHD1, LHD2, MHD VehicleTrips**
Monday – Friday	2,368.25	52	113

Saturday	3065.35	68	146
Sunday	2,430.2	54	113

Notes:
Monday through Friday trip rate from JLB Traffic Engineering Traffic Study, 2021
ITE Light Industrial trip rate used for Saturday and Sunday

Response to APCD-2c

The City appreciates the District's comments on the challenges the Air Basin faces to meet health-based federal air quality standards and the focus on reducing NOx emissions from HHD.

As discussed previously, CEQA requires lead agencies to impose feasible mitigation measures as part of the approval of a "project" to substantially lessen or avoid the significant adverse effects of the project on the physical environment. When imposing mitigation, lead agencies must ensure there is a "nexus" and "rough proportionality" between the measure and the significant impacts of the project. (CEQA Guidelines Section 15126.4, subd.(a)(4)(A)–(B), citing *Nollan v. Ca. Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374.)

The proposed project would have a less than significant impact on air quality based on the District's thresholds of significance, as such no mitigation is required under CEQA.

The District has adopted Rule 9510 to assist with attainment of ozone and PM10. The project would comply with Rule 9510 through submission of an air impact assessment application and will be required to achieve the operational emission reductions from NOx and PM10 of 33 percent and 50 percent, respectively either through on-site measures or payment of offsite fees. Accordingly, although the project would have less than significant impacts under CEQA it would still assist with attainment of ozone and PM10 health-based standards through compliance with District regulations.

Response to APCD-3

The Health Risk Assessment (HRA) was prepared in conformance with the District and the Office of Environmental Health Hazard Assessment (OEHHA) guidance. The modeling files have been provided to the District for verification of results.

Response to APCD-4

As described in the Draft ND, trucks would access the project via Jensen and West Avenues, which are existing truck routes in the City of Fresno (City of Fresno, 2005). The Draft ND evaluated the potential impact of diesel particulate matter (DPM) from trucks traveling to and from the project site. As discussed in the air quality study prepared for the project, the project site is located within 1,000 feet from existing sensitive receptors that could be exposed to diesel emission exhaust during the

construction and operational periods. The nearest sensitive receptors are residents occupying a single-family home approximately 150 feet east of the project site. To estimate the potential cancer risk associated with the proposed project from equipment exhaust (including DPM), a dispersion model was used to translate an emission rate from the source location to concentrations at the receptor locations of interest (i.e., receptors at nearby residences).

The location of the maximally exposure individual receptor (MEIR) is located on West Ave., east of the project site. The AERMOD dispersion model was used to predict concentrations of DPM and PM2.5 at sensitive receptors within 1,000 feet of the project site, as recommended by the SJVAPCD.

Response to APCD-5

The District's comment regarding incentives for the installation of electric vehicle charging facilities is appreciated. The information has been distributed to the applicant for consideration.

Response to APCD-6

The District's comment regarding the benefit of vegetative barriers is acknowledged. Studies have shown that landscaping and barriers can reduce roadway-generated pollutant exposure for nearby people in two main ways: deposition and dispersion.[1] Vegetation reduces exposure by both capturing pollutants and by forcing particles vertically up the barrier, potentially reducing the concentration of a given pollutant. Although incorporation of vegetation has been shown to reduce exposure, the air quality assessment for the project did not take any reductions for the inclusion of landscaping and vegetative barriers as part of the project design.

Response to APCD-7

The comment regarding the District's Rules and Regulations is acknowledged. The City appreciates the information regarding potential rules that the project may be subject and has provided the information on permitting and rules that may be applicable to the project to the applicant.

Response to APCD-7a

The comment regarding the applicability of the District's Rule 9410 Employer Based Trip Reduction is acknowledged. The project is estimated to employ approximately 160 employees, including 20-50 temporary/part-time employees and is classified as a Tier 1 facility under Rule 9410. Prior to operation, the facility will register with the District and submit an Employer Trip Reduction

[1] Sacramento Metropolitan Air Quality Management District (SMAQMD). Landscaping Guidance for Improving Air Quality Near Roadways. http://www.airquality.org/LandUseTransportation/Documents/LandscapingGuidanceforImprovingAirQualityNearRoadwaysMay2020V2.pdf.

Implementation Plan (ETRIP).

Response to APCD-7b

The comment regarding the applicability of the District's Rule 9510 Indirect Source Review is acknowledged. The project will submit an Air Impact Assessment application before the final discretionary approval from the City is requested.

Response to APCD-7c

The comment regarding other District rules that the project may be subject to is acknowledged. The project does not involve the demolition of an existing building. The project will prepare a dust control plan in conformance with the District's Regulation VIII. Building paint and paving of the parking lot will also be done in compliance with District Regulations.

Response to APCD-8

The comment regarding providing this comment letter to the project proponent is acknowledged by the City. The comment letter from the SJVAPCD was provided to the project proponent on April 14, 2022; therefore, no additional action is necessary. The City acknowledges and appreciates SJVAPCD's contact information regarding further questions on the comment letter.

If you have any questions regarding this letter, feel free to give me a call at the number listed above.

Sincerely,

Phillip Siegrist

Phillip Siegrist, Planner
Development Services Division

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April 4, 2022

Phillip Siegrist, Supervising Planner
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City of Fresno
Planning and Development Department
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Re: Comment on the Initial Study/Negative Declaration for the Busseto Processing, Warehousing, and Distribution Project (Development Permit Application No. P20-04211; Plan Amendment and Rezone Application No. P20-04209)

Dear Mr. Siegrist and City of Planning and Development:

I am writing on behalf of Laborers International Union of North America, Local Union No. 294 ("LIUNA") regarding the Initial Study and Negative Declaration ("IS/ND") prepared for the proposed Busseto Processing, Warehousing, and Distribution Project, Development Application No. P20-04211 and Plan Amendment and Rezone Application No. P20-0409, including all actions related or referring to the proposed construction, use, and maintenance of a new food processing, warehousing, and distribution facility for Busseto Foods, Inc., a manufacturer and marketer of Italian-style specialty meats, totaling 477,470-square feet, at 2325 South West Avenue and 995 West Church Avenue in Fresno, California ("Project").

After reviewing the IS/ND, we conclude the IS/ND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Fresno ("City") prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

This comment has been prepared with the assistance of wildlife biologist Dr. Shawn

Smallwood, Ph.D. Dr. Smallwood's comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety.

I. PROJECT DESCRIPTION

The proposed Project includes a General Plan Amendment/Rezone (Plan Amendment/Rezone Application No. P20-04209) and Development Permit (Development Permit Application No. P20-04211) to facilitate the development of a food processing, warehousing, and distribution facility for Busseto Foods, Inc., a manufacturer and marketer of Italian-style specialty meats, in the City of Fresno. The Project would allow for the construction of a 477,470-square foot (SF) facility that consists of two stories with a ground floor of approximately 470,730-SF and second floor for 6,740-SF in addition to two 121-SF security kiosks. The Project will allow Busseto Foods, Inc. to consolidate all Fresno based facilities and operations under one roof. A majority of operations including the processing, warehousing, and distribution activities are located on the ground floor with administrative activities located on the second floor. The Project site comprises two parcels totaling approximately 18.90-acres located at 2325 South West Avenue and 995 West Church Avenue on the southeast corner of South West Avenue and West Church Avenue in Fresno, CA (APNs 477-030-20 and 477-030-21). The Project site is located approximately two miles west of State Route-41 (SR-41) and State Route-99 (SR-99) and two miles south of State Route-180 (SR-180). The site is vacant and undeveloped and therefore, there would be no structures demolished as part of the Project. The Project would require a plan amendment and rezone to allow industrial uses.

II. LEGAL STANDARD

As the California Supreme Court has held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505).) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Res. Code ("PRC") § 21068; *see also* 14 CCR § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial*."* (*No Oil, Inc.*, 13 Cal.3d at 83.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield (*2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before

they have reached the ecological points of no return." (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (PRC § 21080(d); *see also Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. (PRC §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Mitigation measures may not be construed as project design elements or features in an environmental document under CEQA. The MND must "separately identify and analyze the significance of the impacts … before proposing mitigation measures …." (*Lotus vs. Department of Transportation* (2014) 223 Cal.App.4th 645, 658.) A "mitigation measure" is a measure designed to minimize a project's significant environmental impacts, (PRC § 21002.1(a)), while a "project" is defined as including "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines § 15378(a).) Unlike mitigation measures, project elements are considered prior to making a significance determination. Measures are not technically "mitigation" under CEQA unless they are incorporated to avoid or minimize "significant" impacts. (PRC § 21100(b)(3).)

To ensure that the project's potential environmental impacts are fully analyzed and disclosed, and that the adequacy of proposed mitigation measures is considered in depth, mitigation measures that are not included in the project's design should not be treated as part of the project description. (*Lotus*, 223 Cal.App.4th at 654-55, 656 fn.8.) Mischaracterization of a mitigation measure as a project design element or feature is "significant," and therefore amounts to a material error, "when it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures." (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on

the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (PRC §§ 21064.5, 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (14 CCR § 15064(f)(1); *Pocket Protectors,* 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors,* 124 Cal.App.4th at 928.)

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in their decision making. Ordinarily, public agencies weigh the evidence in the record and reach a decision based on a preponderance of the evidence. [Citation]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact.

(Kostka & Zischke, *Practice Under the California Environmental Quality Act*, §6.37 (2d ed. Cal. CEB 2021).) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with *a preference for resolving doubts in favor of environmental review*." (*Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).)

For over forty years the courts have consistently held that an accurate and stable project description is a bedrock requirement of CEQA—the *sine qua non* (that without which there is nothing) of an adequate CEQA document:

> Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192–93.) CEQA therefore requires that an environmental review document provide an adequate description of the project to allow for the public and government agencies to participate in the review process through submitting public comments and making informed decisions.

Lastly, CEQA requires that an environmental document include a description of the project's environmental setting or "baseline." (CEQA Guidelines § 15063(d)(2).) The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*CBE v. SCAQMD*, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

> …must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(*See Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-25 ("*Save Our Peninsula*").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Id*. at 121-23.)

III. DISCUSSION

A. The IS/ND Fails to Adequately Mitigate the Potential Adverse Impacts of the Project on Wildlife.

Expert wildlife biologist Dr. Shawn Smallwood, Ph.D., reviewed the IS/ND and proposed Project and associated biological study report (i.e., the Habitat Assessment Report at Appendix B to the IS/ND). Dr. Smallwood's review of the impacts to wildlife from the Project concluded that the Project may have significant impacts on several special-status species. An EIR is required to analyze these impacts. Dr. Smallwood's comment and CV are attached as Exhibit A.

Dr. Smallwood visited the proposed Project site 15:42 to 17:52 hours on March 29, 2022. (*See* Ex. A, pp. 1-25.) Dr. Smallwood detected "38 species of vertebrate wildlife at the project site," during the nearly 2.5 hours he spent surveying the Project site. (*Id.*, pp. 1-9 & 3, Table 1.) Three of the species that he detected during his site visit were special-status species. (See, *id.*, pp. 2-3, Table 1.) Dr. Smallwood observed abundant wildlife, including many birds foraging on site. He observed American crows, which were nesting in trees just off site, foraging on the project site (Photo 3). (*Id.*, p. 3.) Dr. Smallwood saw that portions of the aerosphere over the project site serve the foraging, daily travel, courtship, and breeding needs of multiple species, including Canada goose (Photo 4), Mallard (Photo 5), great egret (Photos 6 and 7), cattle egret (Photo 8), great blue heron, and black-crowned night heron (Photos 9 and 10). (*Id.*) According to Dr. Smallwood, the IS/ND's biological study report incorrectly assumes "the site could not support

wildlife species in nesting, foraging, or escaping from predators as a result of the site's heavy alteration and lack of cover." (Ex. A, pp. 11-12 (citing IS/ND, Ex. B, p. 94).) However, Dr. Smallwood notes that:

> In fact, despite being disked, the site could support wildlife in all of these ways. Killdeer and savannah sparrows nested on site, despite the recent disking (Photos 12 and 13). Great-tailed grackles nested just off the site, but undoubtedly did so to benefit from the food resources available on the project site (Photo 14). American crows nested just off site, but supported their nest-attempt by repeatedly foraging on the project site (Photo 15). Mourning doves, which often nest on the ground, copulated on the east side of the project site (Photos 16 and 17). Canada goose used that portion of the aerosphere over the project site to sort out their breeding arrangements (Photos 18 and 19), as did multiple other species. Multiple species foraged amid the soil that was recently upturned by disking, including about 80 American pipits, which were themselves actively hunted by a merlin (Photos 20 and 21). The very reason a particular American pipit survived the merlin, which had targeted it for an attack, was because it found refuge amid vegetation that remained despite the disking (photo 22). (Ex. A, p. 12.)

Dr. Smallwood also identified 82 special-status species of wildlife as potentially occurring at the site based on his site visit and his own database review using eBird and iNaturalist. (Ex. A, p. 22.) According to Dr. Smallwood, "[o]f these, 7 (8.5%) were confirmed on or immediately adjacent to the site by survey visits or eBird records, 6 (7.3%) have been documented within 1.5 miles of the site ('Very close'), 41 (50%) within 1.5 and 3 miles ('Nearby'), and another 22 (26.8%) within 3 to 50 miles ('In region')." (Id.) Based on Dr. Smallwood's site visit and database assessment, "[t]he site holds much more potential for supporting special-status species of wildlife than has been determined in the IS/ND." (Id.)

Thus, Dr. Smallwood concludes:

> Listed species likely use the site, but documenting their use would take more survey effort to achieve a reasonable likelihood of detecting them. No reconnaissance-level survey is capable of detecting enough of the wildlife species that occur at a site to realistically characterize the site's wildlife community. ***A fair argument can be made for the need to prepare an EIR that is better informed by biological resources surveys and by appropriate interpretation of survey outcomes for the purpose of characterizing the wildlife community as part of the current environmental setting.*** (Ex. A, p. 21 (emphasis added).)

Moreover, Dr. Smallwood also found that the following factors necessitate the preparation of an EIR:

- The biological surveys at the Project site reveal an incomplete characterization of the environmental setting, and hence a misleading analysis of impacts from the Project. (Ex. A, pp. 10-25.)

- The IS/ND and the related biological survey report failed to address habitat loss and habitat fragmentation as a result of the Project, which would further permanently diminish the productive capacity of nesting birds in the area. (Ex. A, p. 26.) Specifically, Dr. Smallwood predicted that **the Project would deny California 21,500 birds over the next century due solely to loss of terrestrial habitat**. (*Id.*) According to Dr. Smallwood, "**[t]he project's denial to California of 215 birds per year is not been analyzed as a potential impact in the IS/ND, nor does the IS/ND provide any compensatory mitigation for this impact**." (*Id.* (emphasis added).)

- The IS/ND and the related biological survey report failed to consider impacts caused to wildlife movement in the region as a result of the proposed Project. (Ex. A, pp. 26-27.)

- The IS/ND and related biological survey report failed to consider impacts caused by project-generated traffic from the proposed Project, including the fact that "**[o]perations over 50 years would accumulate 198,100 wildlife fatalities**." (Ex. A, pp. 27-30 (emphasis in the original).)

- The IS/ND and related biological survey report fails to adequately address cumulative impacts to wildlife from the Project. (Ex. A, p. 30.)

Lastly, Dr. Smallwood notes that the mitigation measures for impacts to biological resources, including Mitigation Measure BIO-1.1a; BIO-1.1b; BIO-1.1c; BIO-1.2; BIO-1.6; BIO-1.8, are inadequate. (Ex. A, pp. 30-32.) Instead, Dr. Smallwood recommends several new mitigation measures, such as detection surveys for special-status species, compensatory measures for impacts to wildlife movement and road mortality, and funding wildlife rehabilitation facilities. (*Id.*, pp. 32-33.) An EIR is required to analyze these feasible mitigation measures.

B. The IS/ND's Analysis of Energy Impacts Is Conclusory and Fails to Provide Substantial Evidence that the Project's Energy Impacts are Less than Significant.

Contrary to IS/ND, the construction of the Project could potentially cause wasteful, inefficient, and unnecessary consumption of energy. (See, IS/ND, pp. 101-103.)

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake "an investigation into renewable energy options that might be available or appropriate for a project" violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.)

Energy conservation under CEQA is defined as the "wise and efficient use of energy." (CEQA Guidelines, app. F, § I.) The "wise and efficient use of energy" is achieved by "(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources." (*Id.*)

Noting compliance with the California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy. (Ukiah Citizens for Safety First v. City of Ukiah (2016) 248 Cal.App.4th 256, 264-65 (Ukiah Citizens).) Similarly, the court in *City of Woodland* held unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (City of Woodland, supra, 225 Cal.App.4th at pp. 209-13.) As such, the IS/ND's reliance on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project's energy impacts.

The IS/ND summarily concludes that the project would not result in the inefficient, wasteful and unnecessary consumption of energy. There is no discussion of the project's cost effectiveness in terms of energy requirements. There is no discussion of energy consuming equipment and processes that will be used during the construction or operation of the project, including the energy necessary to maintain freezer storage. The Project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the project on peak and base period demands for electricity has not been addressed. The greenhouse gas (GHG) discussion in the EIR addresses GHG emissions resulting from energy production and energy savings measures, but it does not analyze energy conservation. As such, the IS/ND conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

IV. CONCLUSION

For the foregoing reasons, the IS/ND is inadequate and an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. LIUNA reserves the right to supplement these comments in advance of and during public hearings concerning the Project. (*Galante Vineyards v. Monterey Peninsula Water Management Dist*., 60 Cal. App. 4th 1109, 1121 (1997).) Thank you for your attention to these comments.

Sincerely,

Victoria Yundt
Lozeau | Drury LLP

EXHIBIT A

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Will Tackett, Planning Manager
City of Fresno
Planning and Development Department
2600 Fresno Street, 3rd Floor
Fresno, CA 93721

1 April 2022

RE: Busseto Foods Processing Warehouse

Dear Mr. Tackett,

I write to comment on the Initial Study/ Negative Declaration (IS/ND) prepared for the Busseto Foods Processing Warehouse project (City of Fresno 2022), which would consist of warehousing with 477,470 square feet of floor space on 18.89 acres of agricultural land. I write to point out that the project would have significant impacts on biological resources that were not addressed in the IS/ND, and that mitigation is warranted to minimize and compensate for those impacts.

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 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, interactions between wildlife and human infrastructure and activities, conservation of rare and endangered species, and on the ecology of invading species. I authored numerous papers on special-status species issues. I served as Chair of the Conservation Affairs Committee for The Wildlife Society – Western Section. I am a member of The Wildlife Society and the Raptor Research Foundation, and I worked part-time as a lecturer 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 thirty-six years. My CV is attached.

SITE VISIT

I visited the proposed project site 15:42 to 17:52 hours on 29 March 2022. The site was recently disked (Photos 1 and 2). An industrial warehouse was attended by many workers just north of the site, and a stormwater retention basin bordered the site to the south. When I surveyed the site for the site's periphery, the sky was covered by a high fog, and temperatures ranged 48° F to 52° F. I used binoculars to scan for wildlife.

Photos 1 and 2. *Views of the project site from the north toward the southeast (top), and southwest (bottom), 29 March 2022.*

Over 2.55 hours, I detected 38 species of vertebrate wildlife at the project site, including 3 special-status species (Table 1). I saw American crows, which were nesting in trees just off site, foraging on the project site (Photo 3). I saw that portion of the aerosphere over the project site serve the foraging, daily travel, courtship, and breeding needs of multiple species, including Canada goose (Photo 4). Mallard (Photo 5), great egret (Photos 6 and 7), cattle egret (Photo 8), great blue heron and black-crowned night heron (Photos 9 and 10). The 5 species of herons I saw were flying singly and in groups between the stormwater retention basin and someplace unknown to the north. These flights were repeated throughout my 2.55 hours on site. They used the available airspace over the project site, and split their flight paths to pass over the open space on either side of the industrial warehouse on the north side of Church Ave. Many of the herons sported breeding plumage. Somewhere to the north must be a heron rookery, to which the intervening open space is vitally important.

Table 1. *Wildlife species I observed on site on 21* February 2022.

Species	**Scientific name**	**Status**[1]	**Note**
Canada goose	*Branta canadensis*		flyover
Mallard	*Anas platyrhynchos*		Flyover
American coot	*Fulica americana*		Water retention basin
Great egret	*Ardea alba*		Flyover
Great blue heron	*Ardea herodias*		flyover
Snowy egret	*Egretta thula*		flyover
Black-crowned night-heron	*Nycticorax nycticorax*		flyover
Cattle egret	*Bubulcus ibis*	Non-native	flyover
Killdeer	*Charadrius vociferus*		Nest on site
Black-necked stilt	*Himantopus mexicanus*		flyover
Least sandpiper	*Caladris minutilla*		Water retention basin
California gull	*Larus californicus*	BCC, TWL	flyover
Ring-billed gull	*Larus delawarensis*		flyover
Red-tailed hawk	*Buteo jamaicensis*	BOP	Nesting just offsite
Merlin	*Falco columbarius*	TWL, BOP	Hunting American pipits
Mourning dove	*Zenaida macroura*		Copulated on site
Rock pigeon	*Columba livia*	Non-native	
Eurasian collared-dove	*Streptopelia decaocto*	Non-native	At auto dismantling
Western kingbird	*Tyrannus verticalis*		Hunting along fence
European starling	*Sturnus vulgaris*	Non-native	
American pipit	*Anthus rubescens*		foraging in disked soil
Ruby-crowned kinglet	*Regulus calendula*		At food processing plant
Swallow spp.			
American robin	*Turdus migratorius*		foraging in disked soil
Common raven	*Corvus corax*		
American crow	*Corvus brachyrhynchos*		foraging in disked soil
California scrub-jay	*Aphelocoma californica*		At trees just NW of site
Savannah sparrow	*Passerculus sandwichensis*		Nesting on site
White-crowned Sparrow	*Zonotrichia leucophrys*		foraging in disked soil
House sparrow	*Passer domesticus*		At food processing plant
Western meadowlark	*Sturnella neglecta*		
Brewer's blackbird	*Euphagus cyanocephalus*		At food processing plant
Great-tailed grackle	*Quiscalus mexicanus*		Nesting at NE corner
House finch	*Haemorphous mexicanus*		
American goldfinch	*Carduelis tristis*		
California ground squirrel	*Otospermophilus beecheyi*		At pump, and east side
Botta's pocket gopher	*Thomomys bottae*		Burrows
California vole	*Microtis californicus*		Burrows

[1] BCC = US Fish and Wildlife Service's Bird Species of Conservation Concern, BOP = California Fish and Game Code 3503.5 (Birds of Prey), and TWL = Taxa to Watch List (Shuford and Gardali 2008).

Although the earlier disking of the site undoubtedly suppressed use of the site by wildlife, its suppression was less than thorough. So long as the soil lives, fossorial mammals and their burrows will persist and the soil's seed bank will sprout new growth of grassland species. The site is inherently rich in wildlife species, and it offers wildlife opportunities for forage, refugia, and breeding that are otherwise rapidly disappearing from the region.

Photo 3. *American crow returns to its nest site after making a foraging run to the project site, 29 March 2022.*

Photo 4. *Canada goose was hard to miss at the project site, 29 March 2022.*

Photo 5. *Mallards made multiple flights over the project site, with drakes chasing hens and hens chasing drakes, and sometimes drakes chasing drakes or hens after hens, 29 March 2022.*

Photo 6. *A steady stream of great egrets flew north and south across the project site, between the stormwater retention pond and what I assume must be a rookery north of Church Road, 29 March 2022.*

Photo 7. *A great egret in full breeding plumage on his way across the project site toward a site where the rookery must be located to the north, 29 March 2022.*

Photo 8. *Cattle egret in full breeding plumage over the project site, 29 March 2022.*

Photos 9 and 10. *Great blue heron (top) and black-crowned night-heron (bottom) at the project site, 29 March 2022.*

CURRENT ENVIRONMENTAL SETTING

The first step in analysis of potential project impacts to biological resources is to accurately characterize the existing environmental setting, including the species that use the site, their relative abundances, how they use the site, key ecological relationships, and known and ongoing threats to those species with special status. A reasonably accurate characterization of the environmental setting can provide the baseline against which to analyze project impacts. Methods to achieve this first step typically include surveys of the site for biological resources and reviews of literature, databases and local experts for documented occurrences of special-status species. In the case of this project, these essential steps remain grossly incomplete. Herein I provide some characterization of the wildlife community as a component of the current environmental setting, including the identification of special-status species likely to use the site at one time or another.

A biologist from Precision Civil Engineering performed a reconnaissance-level survey of the site of the proposed project on 17 December 2022 in an effort "to assess the biological resources located on and adjacent to the site" (p. 93), and "to search for special status species, and to determine the potential presence of suitable habitat for these species" (App. B:6). No report is provided of weather and temperature during the survey, nor the time of day when the survey began and how long the biologist surveyed the site. Although Precision Civil Engineering reports having surveyed the "project area," no explanation is provided of what composes this area; that is, the spatial scope of the survey is left undefined. These unreported elements of the survey would have been essential for interpretation of the reported findings. For example, they would have informed whether the survey was performed at a time when wildlife are more or less active and detectable, and whether observations from the adjacent stormwater retention basin were included. Knowing how long the biologist was at the project area would have informed of the likelihoods of species detections, and probably would have informed of why so few species of vertebrate wildlife were detected.

According to Table 2 of App. B, the biologist with Precision Civil Engineering reportedly detected 7 species of vertebrate wildlife, including American crow, Brewer's blackbird, American white pelican, great blue heron, American coot, and unidentified species of egret and gull. However, a ground squirrel burrow is clearly visible in the center of the upper left photo of Plate 5 of the Site Photographs in App. B. I also saw ground squirrels at that burrow system (Photo 11), as well as on the east side of the project site. Ground squirrel should be added to Table 2 of App. B as another species of wildlife detected on site. Ground squirrels are especially important to be noted because they are members of an ecological keystone species, serving as prey to special-status species of raptors (e.g., Swainson's hawk) and provisioners of burrows used by burrowing owls and others. Located next to a stormwater retention basin, their burrows can be used for egg-laying by western pond turtles and as dry-season refugia for herpetofauna. All of the species seen should be clearly reported. To aid with identification of large-bodied wildlife such as egrets and gulls, I suggest that the biologist carry a good camera with a sufficiently long lens to photo-capture animals for later examination.

Photo 11. *Ground squirrel atop a standpipe where the pumping infrastructure protected its burrow system from the recent disking at the project site, 29 March 2022.*

The biologist from Precision Civil Engineering detected only 18% of the species of vertebrate wildlife that I did. In my experience, the most likely reason(s) for the discrepancy in survey outcomes was that the consulting biologist visited the site very briefly or during a time of day least likely to detect wildlife. However, time of day would have been less of a factor in December. Nor can I explain the difference by time on site, because, after all, it only took me 2 the first 2 minutes of my survey to detect 7 species – the same number that was detected by the consulting biologist. I assume the consulting biologist was in the project area for longer than 2 minutes. If so, then I cannot posit a reasonable explanation for the difference in survey experience, except perhaps a difference in experience and skill-level. If experience explains the difference, then Precision Civil Engineering ought to pair the biologist with another who is sufficiently experienced to detect more of the site's wildlife.

The IS/ND mischaracterizes the current environmental setting in other ways, as well. For example, because the site is "highly disturbed due to grading and discing, having very little vegetation," Precision Civil Engineering (2022:94) assumes "the site could not

support wildlife species in nesting, foraging, or escaping from predators as a result of the site's heavy alteration and lack of cover." In fact, despite being disked, the site could support wildlife in all of these ways. Killdeer and savannah sparrows nested on site, despite the recent disking (Photos 12 and 13). Great-tailed grackles nested just off the site, but undoubtedly did so to benefit from the food resources available on the project site (Photo 14). American crows nested just off site, but supported their nest-attempt by repeatedly foraging on the project site (Photo 15). Mourning doves, which often nest on the ground, copulated on the east side of the project site (Photos 16 and 17). Canada goose used that portion of the aerosphere over the project site to sort out their breeding arrangements (Photos 18 and 19), as did multiple other species. Multiple species foraged amid the soil that was recently upturned by disking, including about 80 American pipits, which were themselves actively hunted by a merlin (Photos 20 and 21). The very reason a particular American pipit survived the merlin, which had targeted it for an attack, was because it found refuge amid vegetation that remained despite the disking (photo 22). The reconnaissance-level survey performed by Precision Civil Engineering was too cursory and its conclusions too quick to dismiss use of the site by wildlife. Undoubtedly, the disking degraded the site for most wildlife, but it also created opportunities for others. The site's highly disturbed condition did not preclude wildlife.

Photos 12 and 13. *Killdeer (left) attempted to draw me away from its nest on the disked soil of the project site, and savannah sparrows (right) expressed behaviors indicative of stress in reaction to my presence near their nest sites on the project site, 29 March 2022.*

Photo 14. *One of a pair of great-tailed grackles calls from over its nest site in a tree on the north side of Church Road next to the project site, 29 March 2022. This nest site is made possible by the forage available on the project site. Nearby was the nest site of a pair of red-tailed hawks, and additional nests were also visible in trees surrounding the project site.*

Photo 15. *American crow reporting back to its mate on the nearby nest while foraging on the upturned soils of the project site, 29 March 2022.*

Photos 16 and 17. *Above and below, a male mourning dove pursues a female for the purpose of copulation on the east side of the project site, 29 March 2022.*

Photos 18 and 19. *A fleeing Canada goose is "goosed" by its pursuer over the project site, 29 March 2022. The aerosphere over the project site is critical for the breeding behaviors of this and multiple other species.*

Photos 20 and 21. *A merlin zeroed in on an American pipit after dozens of other pipits flushed to evade the merlin on the project site, 29 March 2022.*

Photo 22. *The American pipit targeted by the merlin survived by freezing all motion amid a copse of fiddleneck, 29 March 2022. This vegetation might not look like much to the biologist from Precision Civil Engineering, but to the pipit, it meant life.*

Even with the addition of my survey outcome to that of Precision Civil Engineering, that portion of the current environmental setting composed of wildlife remains incompletely characterized. My detections of 38 species of vertebrate wildlife need to be interpreted within the context of the survey effort. As would be the case for any reconnaissance-level survey, the time I could commit to my survey was grossly short of the time needed to inventory all of the species that use the site. Observers are imperfect at detecting all species that occur within their surveyed space, and not all of the species that would occur in the surveyed space would occur there during the period of the observer's survey. One should not expect that the biologist who just completed a reconnaissance-level survey actually detected more than a fraction of the species that use the site, and neither should a biologist claim to have detected more than a fraction of the species composing the wildlife community.

A reconnaissance-level survey can be useful for confirming presence of the species that were detected, but it can also be useful for estimating the number of species that were

not detected. One can model the pattern in species detections during a survey as a means to estimate the number of species that used the site but were undetected during the survey. To support such a modeling effort, the observer needs to record the times into the survey when each species was first detected. The cumulative number of species' detections increases with increasing survey time, but eventually with diminishing returns (Figure 1). If survey time is represented by minutes into the survey, as it is in Figure 1, then minutes into the survey can also represent person-minutes. Person-minutes implies that >1 person can simultaneously survey a site, which is true, thereby allowing for the model to predict survey outcomes with more observers contributing more survey-minutes during the same survey period. This allowance can constrain model predictions to the environmental conditions experienced during the time period of the survey, thereby minimizing risk of model over-extension. In the case of my survey, the pattern in the data (Figure 1) predicts that had I more biologists to commit to my survey, we would have detected 99 species of vertebrate wildlife during the early morning of 29 March 2022. This modeling approach is useful for more realistically representing the species richness of the site at the time of a survey, but it cannot represent the species richness throughout the year or across multiple years because many species are seasonal or even multi-annual in their movement patterns and in their occupancy of habitat.

Figure 1. *Actual (red circles) and predicted (red line) relationships between the number of vertebrate wildlife species detected and the elapsed survey time based on my visual-scan survey on 29 March 2022, and compared to the mean and 95% CI of 120 other surveys I performed at proposed project sites. Note that the relationship would differ if the survey was based on another method or during another season.*

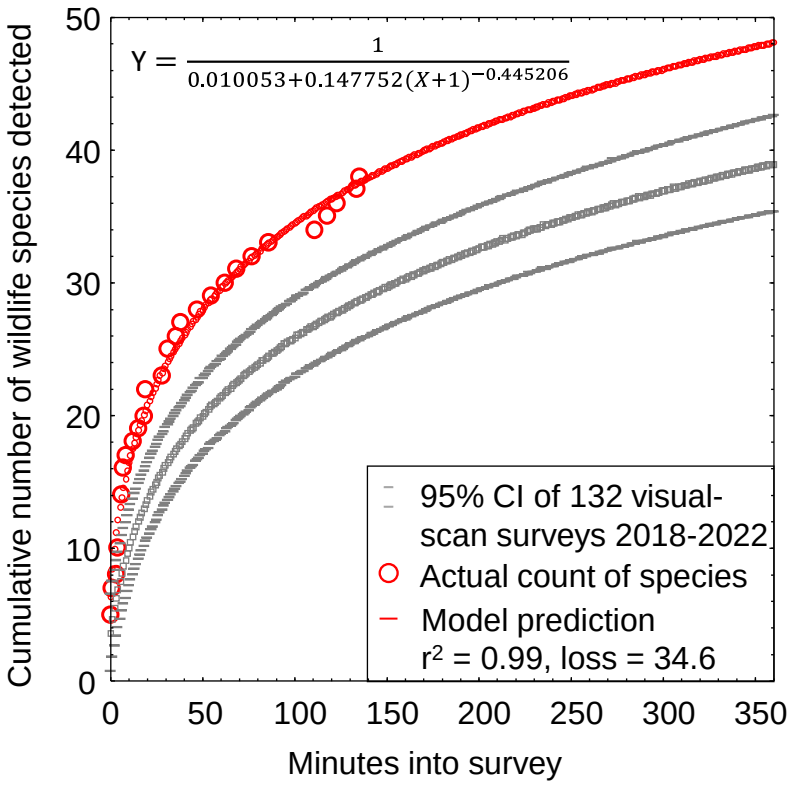

Figure 1 also reveals that the richness of the wildlife community at the project site is much higher than the average species richness at other proposed project sites I have visited across California over the past three years. Both the data and the best-fit model

continuously exceed the 95% upper bound of the confidence interval estimated from another 132 survey outcomes at other sites. Relative to other proposed project sites, the Busseto Foods site is exceptionally species-rich, despite the disking that undoubtedly suppressed the number of species occurring at the site.

The site is inherently richer in wildlife than nearly all of the other sites I have surveyed over the past several years, but I could have detected many more species than predicted had I also performed surveys at night to detect nocturnal and crepuscular species with appropriate methods and technology, or and conducting surveys in different seasons and years to detect migrants and species with multi-annual cycles of abundance. Nevertheless, based on the substantial evidence gathered during my reconnaissance-level survey, I conclude that the site is richer in wildlife than the 39 species documented there so far between the surveys of Precision Civil Engineering and my own (Precision Civil Engineering detected American white pelican, which I did not), but also that the environmental setting of the project remains insufficiently characterized as foundation for analysis of impacts to special-status species. There is no question that a larger survey effort would result in a longer list of species documented to use the project site, thereby improving our understanding of the current environmental setting. A more realistic representation of species richness at the site could be obtained by simply repeating visual-scan surveys on various dates through the year.

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 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 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. 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 detected 11.2 species over the first 2.5 hours of surveys in the Altamont Pass (2.5 hours to match the number of hours I surveyed at the project site), which composed 19.6% of the total predicted species I would detect with a much larger survey effort. Given the example illustrated in Figure 2, the 38 species I detected after my 2.5 hours of survey at the project site likely represented 19.6% 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, I would likely detect $^{38}/_{0.196} = 194$ species of vertebrate wildlife at the site.

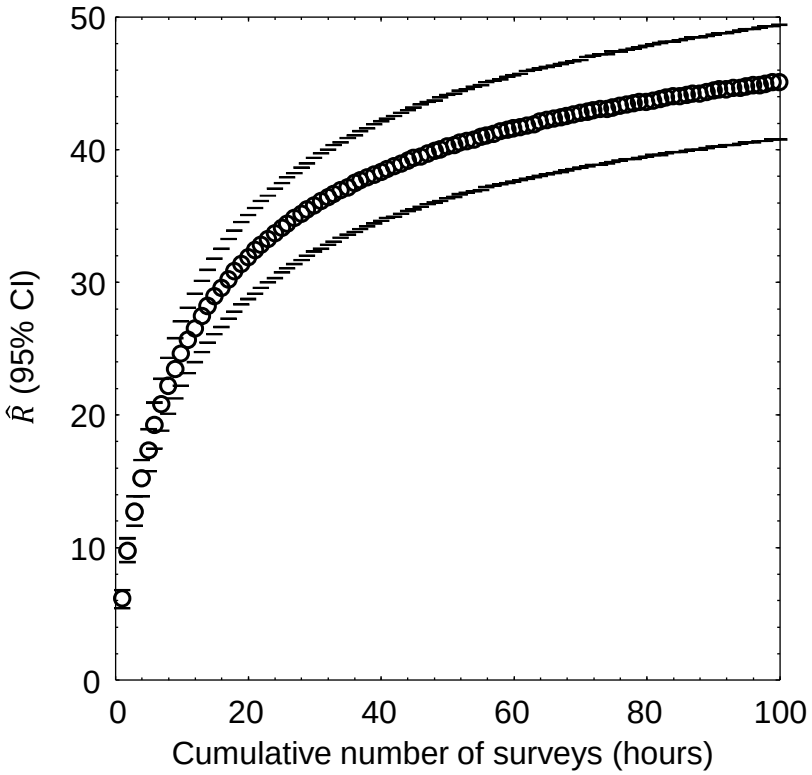

Figure 2. *Mean (95% CI) predicted wildlife species richness, $\hat{R}$, as a nonlinear function of hour-long survey increments across 46 visual-scan survey stations across the Altamont Pass Wind Resource Area, Alameda and Contra Costa Counties, 2015–2019.*

Again, however, my prediction of 149 species of vertebrate wildlife is derived from visual-scan surveys during the daytime, and would not detect nocturnal mammals. The true number of species composing the wildlife community of the site must be larger. A reconnaissance-level survey should serve only as a starting point toward characterization of a site's wildlife community, but it certainly cannot alone inform of the inventory of species that use the site. Without careful interpretation, the survey outcome of Precision Civil Engineering should not serve as the foundation for characterizing baseline conditions, because there were truly many more species that used the site at the time of the survey than were detected by Precision Civil Engineering. Precision Civil Engineering managed to detect but a very small fraction of the wildlife community that occurs at the site, having detected only 7 of ≥194, or 3.6%.

Additionally, the likelihood of detecting special-status species is typically lower than that of more common species. This difference can be explained by the fact that special-status species tend to be rarer and thus less detectable than common species. Special-status species also tend to be more cryptic, fossorial, or active during nocturnal periods when reconnaissance surveys are not performed. Another useful relationship from careful recording of species detections and subsequent comparative analysis is the probability of detection of listed species as a function of an increasing number of vertebrate wildlife species detected (Figure 3). (Note that listed species number fewer

than special-status species, which are inclusive of listed species. Also note that I include California Fully Protected species and federal Candidate species as "listed" species.)

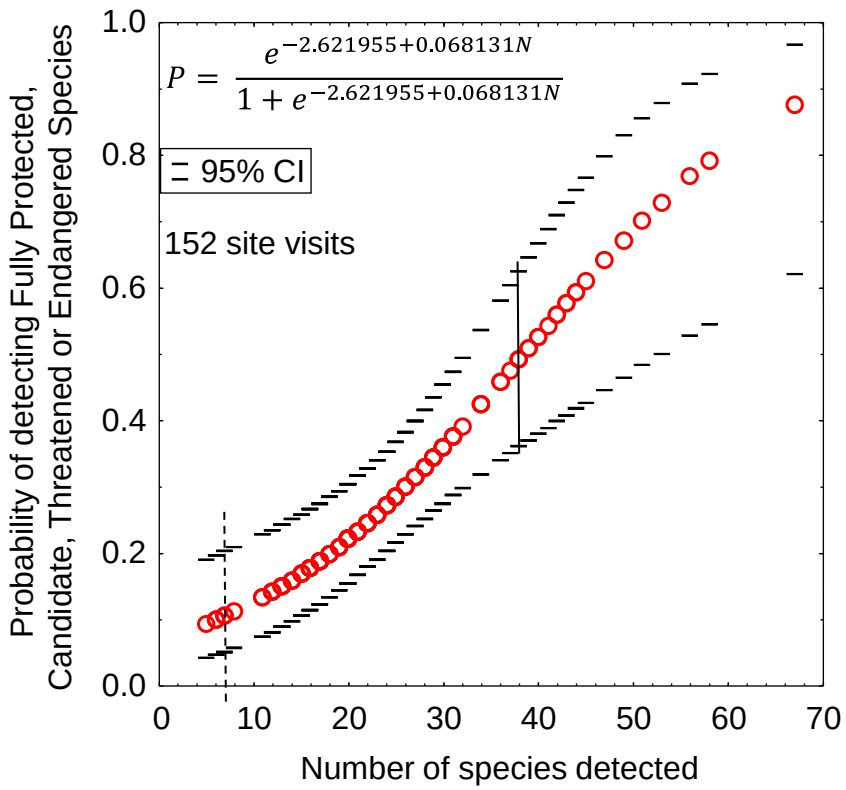

Figure 3. *Probability of detecting ≥1 Candidate, Threatened or Endangered Species of wildlife listed under California or federal Endangered Species Acts, based on survey outcomes logit-regressed on the number of wildlife species I detected during 152 site visits in California. The vertical line represents the number of species I detected.*

As demonstrated in Figures 1 and 2, the number of species detected is largely a function of survey effort. Greater survey effort also increases the likelihood that listed species will be detected (which is the first tenet of detection surveys for special-status species). Based on the outcomes of 152 previous surveys I completed at sites of proposed projects, my survey effort at the project site carried an 49% chance of detecting a listed species, whereas the survey effort of Precision Civil Engineering carried a 10.5% chance. Precision Civil Engineering did not detect a listed species, nor did I, but the odds are than I would have had I performed another survey of equal effort at the site, whereas Precision Civil Engineering would have done so after another 9 of their surveys. Listed species likely use the site, but documenting their use would take more survey effort to achieve a reasonable likelihood of detecting them. No reconnaissance-level survey is capable of detecting enough of the wildlife species that occur at a site to realistically characterize the site's wildlife community. A fair argument can be made for the need to prepare an EIR that is better informed by biological resources surveys and by appropriate interpretation of survey outcomes for the purpose of characterizing the wildlife community as part of the current environmental setting.

As I noted earlier, the other first step toward characterization of the wildlife community as part of the current environmental setting is to review literature, databases and local experts for documented occurrences of special-status species around the site. In

support of the IS/ND, Precision Civil Engineering reviewed U.S. Fish and Wildlife's Information for Planning and Consultation (IPaC) and the California Natural Diversity Data Base (CNDDB) to identify species for which to determine occurrence likelihoods. Had eBird and iNaturalist also been reviewed, determinations of occurrence likelihood would have been made for many additional species (Table 2). In my assessment based on data base reviews and my site visit, 82 special-status species of wildlife potentially use the site at one time or another. Of these, 7 (8.5%) were confirmed on or immediately adjacent to the site by survey visits or eBird records, 6 (7.3%) have been documented within 1.5 miles of the site ('Very close'), 41 (50%) within 1.5 and 3 miles ('Nearby'), and another 22 (26.8%) within 3 to 50 miles ('In region'). The site holds much more potential for supporting special-status species of wildlife than has been determined in the IS/ND.

Furthermore, the IS/ND misapplies CNDDB to screen out special-status species not reported within 5 miles of the site. Specifically, the IS/ND (p. 93) reports, "Of the 12 special-status species [reported in CNDDB within 5 miles of the project site], only four (4) species are listed with a known location and the remaining eight (8) are listed as located in Fresno." Whereas CNDDB can be helpful for confirming occurrences of special-status species where they have been reported, it cannot be relied upon for determining absences of species. Absence determinations can only be defended by the outcomes of protocol-level detection surveys. This is because CNDDB relies on volunteer reporting, and it is limited in its spatial coverage by the access of biologists to private properties. The findings reported to CNDDB are not from any sort of randomized or systematic sampling across California, nor does CNDDB collect reports of negative findings. Many survey findings are not reported to CNDDB because consulting biologists signed non-disclosure agreements with developers. Furthermore, most wildlife species in California are not reported to CNDDB, because CNDDB is uninterested in them and Scientific Collecting Permits do not require their reporting. Therefore, species recently assigned special status will be under-represented in CNDDB. In the absence of scientific sampling, absence determinations based on CNDDB reporting are vulnerable to multiple biases. The limitations of CNDDB are well-known, and summarized by CDFW in a warning presented on its CNDDB web site, https://wildlife.ca.gov/Data/CNDDB/About: "*We work very hard to keep the CNDDB and the Spotted Owl Database as current and up-to-date as possible given our capabilities and resources. However, we cannot and do not portray the CNDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide. Field verification for the presence or absence of sensitive species will always be an important obligation of our customers. Likewise, your contribution of data to the CNDDB is equally important to the maintenance of the CNDDB. …*" A fair argument can be made for the need to prepare an EIR to more appropriately analyze data base records to characterize the current environmental setting.

Table 2. Occurrence likelihoods of special-status species at the project site, based on records of sightings in eBird and iNaturalist and on my site visit.

Species	**Scientific name**	**Status[1]**	**Occurrence likelihood**	
			IS/ND	**Data bases, site visits**
Crotch's bumble bee	*Bombus crotchii*	CCE		In region
Monarch	*Danaus plexippus*	FC		In region
Aleutian cackling goose	*Branta hutchinsonii leucopareia*	WL		Nearby
Redhead	*Aythya americana*	SSC2		Nearby
Clark's grebe	*Aechmophorus clarki*	BCC		Nearby
Western grebe	*Aechmophorus occidentalis*	BCC		Nearby
American white pelican	*Pelecanus erythrorhynchos*	SSC1		**On site**
Double-crested cormorant	*Phalacrocorax auritus*	WL		Adjacent
White-faced ibis	*Plegadis chihi*	WL		Nearby
Greater sandhill crane	*Grus c. canadensis*	CT, CFP, SSC3		Nearby
Long-billed curlew	*Numenius americanus*	BCC, WL		Nearby
Whimbrel	*Numenius phaeopus*	BCC		Nearby
Marbled godwit	*Limosa fedua*	BCC		Nearby
Willet	*Tringa semipalmata*	BCC		Nearby
American avocet	*Recurvirostra americana*	BCC		Nearby
Snowy plover	*Charadrius alexandrinus nivosus*	FT, BCC		Nearby
Caspian tern	*Hydroprogne caspia*	BCC		Nearby
California gull	*Larus californicus*	BCC, WL		**On site**
Western gull	*Larus occidentalis*	BCC		In region
Turkey vulture	*Cathartes aura*	BOP		Adjacent
Osprey	*Pandion haliaetus*	WL, BOP		Nearby
Bald eagle	*Haliaeetus leucocephalus*	BGEPA, BCC, CFP		Nearby
Golden eagle	*Aquila chrysaetos*	BGEPA, BCC, CFP		Nearby
Red-tailed hawk	*Buteo jamaicensis*	BOP		**On site**
Ferruginous hawk	*Buteo regalis*	BCC, WL, BOP		Nearby
Swainson's hawk	*Buteo swainsoni*	BCC, CT	Low	Very close
Rough-legged hawk	*Buteo regalis*	BOP		Nearby
Red-shouldered hawk	*Buteo lineatus*	BOP		Nearby

Species	Scientific name	Status[1]	Occurrence likelihood	
			IS/ND	Data bases, site visits
Sharp-shinned hawk	*Accipiter striatus*	WL, BOP		Nearby
Cooper's hawk	*Accipiter cooperi*	WL, BOP		Very close
Northern harrier	*Circus cyaneus*	SSC3, BOP		Nearby
White-tailed kite	*Elanus leucurus*	CFP, BOP		Nearby
American kestrel	*Falco sparverius*	BOP		**On site**
Merlin	*Falco columbarius*	WL, BOP		**On site**
Prairie falcon	*Falco mexicanus*	BCC, WL, BOP		Nearby
Peregrine falcon	*Falco peregrinus*	BCC, CFP, BOP		Nearby
Burrowing owl	*Athene cunicularia*	BCC, SSC2, BOP		Nearby
Great-horned owl	*Bubo virginianus*	BOP		Very close
Short-eared owl	*Asio flammeus*	BCC, SSC3, BOP		In region
Barn owl	*Tyto alba*	BOP		Nearby
Western screech-owl	*Megascops kennicotti*	BCC, BOP		In region
Rufous hummingbird	*Selasphorus rufus*	BCC		Nearby
Costa's hummingbird	*Calypte costae*	BCC		Nearby
Nuttall's woodpecker	*Picoides nuttallii*	BCC		Nearby
Lewis's woodpecker	*Melanerpes lewis*	BCC		In region
Vaux's swift	*Chaetura vauxi*	SSC2		Nearby
Willow flycatcher	*Epidomax trailii*	CE, BCC		Nearby
Olive-sided flycatcher	*Contopus cooperi*	BCC, SSC2		Nearby
Oak titmouse	*Baeolophus inornatus*	BCC		In region
Horned lark	*Eremophila alpestris*	WL		Nearby
Purple martin	*Progne subis*	SSC2		Nearby
Bank swallow	*Riparia riparia*	CT		Nearby
Loggerhead shrike	*Lanius ludovicianus*	BCC, SSC2		Very close
California thrasher	*Toxostoma redivivum*	BCC		In region
Yellow-billed magpie	*Pica nuttalli*	BCC		Nearby
Yellow warbler	*Setophaga petechia*	BCC, SSC2		Nearby
Yellow-breasted chat	*Icteria virens*	SSC3		In region
Oregon vesper sparrow	*Pooecetes gramineus affinis*	BCC, SSC2		Nearby

Species	Scientific name	Status[1]	Occurrence likelihood	
			IS/ND	Data bases, site visits
Modesto song sparrow	*Melospiza melodia*	SSC3		Very close
Grasshopper sparrow	*Ammodramus savannarum*	SSC2		In region
Bullock's oriole	*Icterus bullockii*	BCC		Very close
Tricolored blackbird	*Agelaius tricolor*	CT, BCC		Nearby
Yellow-headed blackbird	*X. xanthocephalus*	SSC3		Nearby
Lawrence's goldfinch	*Spinus lawrencei*	BCC		Nearby
Pallid bat	*Antrozous pallidus*	SSC, WBWG H	Not expected	In region
Townsend's big-eared bat	*Plecotus t. townsendii*	SSC, WBWG H		In region
Western mastiff bat	*Eumops perotis*	SSC, WBWG H	Not expected	In range
Silver-haired bat	*Lasionycteris noctivagans*	WBWG:M		In range
Western red bat	*Lasiurus blossevillii*	SSC, WBWG H		In region
Little brown bat	*Myotis lucifugus*	WBWG:M		In range
Big brown bat	*Episticus fuscus*	WBWG:L		In region
California myotis	*Myotis californicus*	WBWG:L		In region
Canyon bat	*Parastrellus hesperus*	WBWG:M		In range
Small-footed myotis	*Myotis cililabrum*	WBWG M		In range
Miller's myotis	*Myotis evotis*	WBWG M		In range
Fringed myotis	*Myotis thysanodes*	WBWG H		In region
Long-legged myotis	*Myotis volans*	WBWG H		In region
Yuma myotis	*Myotis yumanensis*	WBWG LM		In region
Hoary bat	*Lasiurus cinereus*	WBWG LM	Not expected	In region
American badger	*Taxidea taxus*	SSC		In region
Western spadefoot	*Speas hmmondii*	SSC		In region
Western pond turtle	*Actinemys marmorata*	SSC		In region

[1] Listed as FT or FE of FC = federally Threatened or Endangered or Candidate for listing, BGEPA = Bald and Golden Eagle Protection Act, BCC = US Fish and Wildlife Service's Bird Species of Conservation Concern, CT or CE or CCE = California Threatened or Endangered or Candidate Endangered, CFP = California Fully Protected (CDFG Code 3511), BOP = California Fish and Game Code 3503.5 (Birds of Prey), and SSC1, SSC2 and SSC3 = California Bird Species of Special Concern priorities 1, 2 and 3 (Shuford and Gardali 2008), WL = Taxa to Watch List (Shuford and Gardali 2008), WBWG = Western Bat Working Group with low, medium and high conservation priorities.

BIOLOGICAL IMPACTS ASSESSMENT

Determination of occurrence likelihoods of special-status species is not, in and of itself, an analysis of potential project impacts. An impacts analysis should consider whether and how a proposed project would affect members of a species, larger demographic units of the species, or the whole of a species. In the following, I analyze several types of impacts likely to result from the project, and none of which are soundly analyzed in the IS/ND.

HABITAT LOSS

The IS/ND does not address potential impacts of habitat loss to breeding birds. Habitat loss has been recognized as the most likely leading cause of a documented 29% decline in overall bird abundance across North America over the last 48 years (Rosenberg et al. 2019). Habitat loss not only results in the immediate numerical decline of wildlife, but it also results in permanent loss of productive capacity. For example, a complex of grassland, wetland, and woodland at one study site had a total bird nesting density of 32.8 nests per acre (Young 1948). In another study on a similar complex of vegetation cover, the average annual nest density was 35.8 nests per acre (Yahner 1982). These densities averaged 34.3 nests per acre, but they were from study sites that were much less disturbed than the project site. Assuming the nest density of the project site is only a tenth of that documented by Young (1948) and Yahner (1982), an average nest density of 34.3 multiplied against 0.1 and the project's 18,89 acres would estimate a capacity of 65 bird nests annually.

The loss of 65 nest sites of birds would qualify as a significant project impact that has not been addressed in the IS/ND. But the impact does not end with the immediate loss of nest sites as the site is graded in preparation for impervious surfaces. The reproductive capacity of the site would be lost. The average number of fledglings per nest in Young's (1948) study was 2.9. Assuming Young's (1948) study site typifies bird productivity, the project would prevent the production of 189 fledglings per year. After 100 years and further assuming an average bird generation time of 5 years, the lost capacity of both breeders and annual fledgling production would total 21,500 birds {(nests/year × chicks/nest × number of years) + (2 adults/nest × nests/year) × (number of years ÷ years/generation)}. The project's denial to California of 215 birds per year is not been analyzed as a potential impact in the IS/ND, nor does the IS/ND provide any compensatory mitigation for this impact. A fair argument can be made for the need to prepare an EIR to appropriately analyze the project's impacts to wildlife caused by habitat loss and habitat fragmentation.

WILDLIFE MOVEMENT

The IS/ND focuses its analysis on whether the site occurs within a wildlife movement corridor. The implied premise is that only disruption of the function of a wildlife movement corridor can interfere with wildlife movement in the region. This premise, however, represents a false CEQA standard, and is therefore inappropriate to the

analysis. The primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor. A site such as the proposed project site is critically important for wildlife movement because it composes an increasingly diminishing area of open space within a growing expanse of anthropogenic uses, forcing more species of volant wildlife to use the site for stopover and staging during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stopover and staging opportunities, forcing volant wildlife to travel even farther between remaining stopover sites.

The IS/ND further claims that the site provides no habitat to wildlife, and therefore the project would not interfere with wildlife movement. However, the site does provide habitat to wildlife, as amply demonstrated by my survey results and the photos I collected of wildlife on the site. Birds nest on the site, and nesting birds in habitat surrounding the site are foraging on the site to support their nest-attempts. Herons are routinely flying through that portion of the aerosphere over the project site to get to and from one or more rookeries. The project would interfere with wildlife movement in the region. A fair argument can be made for the need to prepare an EIR to appropriately analyze the project's impacts to wildlife caused by the project's interference with wildlife movement in the region.

TRAFFIC IMPACTS TO WILDLIFE

The IS/ND neglects to address one of the project's most obvious, substantial impacts to 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 23-26). 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.

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 right next to Vasco Road (Brown et al. 2016). The Brown et al. (2016) adjustment factors were similar to those for carcass persistence of road fatalities (Santos et al. 2011). Applying searcher detection rates estimated from carcass detection trials performed at a

wind energy project immediately adjacent to this same stretch of road (Brown et al. 2016), the adjusted total number of fatalities was estimated at 12,187 animals killed by traffic on the road. This fatality number translates to a rate of 3,900 wild animals per mile per year killed along 2.5 miles of road in 1.25 years. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 243,740 animals killed per 100 km of road per year, or 29 times that of Loss et al.'s (2014) upper bound estimate and 68 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.

Photo 23. *A Gambel's quail dashes across a road* on *3 April 2021. Such road crossings are usually successful, but too often prove fatal to the animal. Photo by Noriko Smallwood.*

Photo 24. *Great-tailed grackle walks onto a rural road in Imperial County, 4 February 2022.*

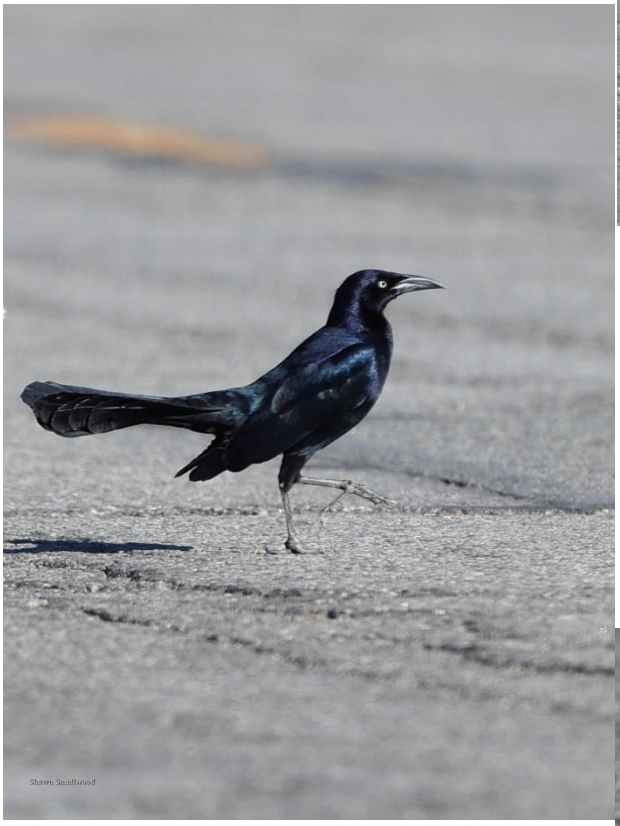

Photo 25. *A mourning dove killed by vehicle traffic on a California road. Photo by Noriko Smallwood, 21 June 2020.*

Photo 26. *Raccoon killed on Road 31 just east of Highway 505 in Solano County. Photo taken on 10 November 2018.*

Predicting project-generated traffic impacts to 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 3,900 animals killed per mile along a county road in Contra Costa County. Two percent of the estimated number of fatalities were birds, and the balance was composed of 34% mammals (many mice and pocket mice, but also ground squirrels, desert cottontails, striped skunks, American badgers, raccoons, and others), 52.3% 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 11.7% reptiles (many western fence lizards, but also skinks, alligator lizards, and snakes of various species).

During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road daily, so the vehicle miles that contributed to my estimate of non-volant fatalities was 19,500 cars and trucks × 2.5 miles × 365 days/year × 1.25 years = 22,242,187.5 vehicle miles per 12,187 wildlife fatalities, or 1,825 vehicle miles per fatality. This rate divided into the IS/ND's prediction of 7,230,768 annual vehicle miles traveled (VMT) due to the project, predicts 3,962 vertebrate wildlife fatalities per year. **Operations over 50 years would accumulate 198,100 wildlife fatalities**. It remains unknown whether and to what degree vehicle tires contribute to carcass removals from the roadway, thereby contributing a negative bias to the fatality estimates I made from the Mendelsohn et al. (2009) fatality counts.

Based on my assumptions and simple calculations, the project-generated traffic would cause substantial, significant impacts to wildlife. There is at least a fair argument that can be made for the need to prepare an EIR to analyze this impact. Mitigation measures

to improve wildlife safety along roads are available and are feasible, and they need exploration for their suitability with the proposed project.

CUMULATIVE IMPACTS

The IS/ND adopts a flawed approach to analysis of cumulative impacts. The IS/ND implies that cumulative impacts are really just residual impacts of incomplete mitigation. It concludes that the project would cause no significant impacts to wildlife, so there would be no impacts to mitigate and hence no cumulative impacts. If this was CEQA's standard – that cumulative impacts represent unmitigated project-specific impacts, then cumulative effects analysis would be merely an analysis of mitigation efficacy. The IS/ND's implied standard is not the standard of analysis of cumulative effects. CEQA defines cumulative impacts, and it outlines two general approaches for performing the analysis. Given that North America has lost nearly a third of its birds over the past half century (Rosenberg et al. 2019), and given that simple calculations reveal the project's impacts would deny Californians of many birds, an appropriate cumulative effects analysis is warranted. A fair argument can be made for the need to prepare an EIR to appropriately analyze cumulative effects.

MITIGATION MEASURES

The IS/ND reports that the mitigation measures of the Southwest Fresno Specific Plan EIR would be implemented. But the measures listed in the IS/ND would be inadequate. Explanations follow.

BIO-1.1a: "Construction of a proposed project should avoid, where possible, vegetation communities that provide suitable habitat for a special-status species known to occur within the Plan Area. If construction within potentially suitable habitat must occur, a qualified botanist should conduct botanical surveys to confirm the presence/absence of any special-status plant or wildlife species to determine if the habitat supports any special-status species. …"

The first problem with this measure is that the entire site, as well as that portion of the aerosphere above the site, serves as habitat to special-status species confirmed by surveys to occur there, including to merlin, California gull, red-tailed hawk, and American white pelican. Judging from occurrence records near the site, multiple additional species also likely occur on and above the entirety of the site, including Swainson's hawk, loggerhead shrike and many other species listed in Table 2. Mapping vegetation communities would be irrelevant to this project site.

The second problem with this measure is its reliance on botanists to perform wildlife surveys. Retaining botanists to survey for special-status species of wildlife would be inappropriate.

A third problem with this measure is its implication that the proposed surveys would be used to confirm presence/absence of species. Determinations of species' absence can

only be supported by protocol-level detection surveys, which I do not believe are the types of surveys proposed here. Such surveys are typically completed prior to public circulation of the CEQA review, and not afterwards.

BIO-1.1b: "Direct or incidental take of any State- or federally-listed species should be avoided to the greatest extent feasible. If construction of a proposed project will result in the direct or incidental take of a listed species, consultation with the resources agencies and/or additional permitting may be required. …"

To determine whether direct or incidental take is likely, protocol-level detection surveys need to be implemented by qualified biologists. As examples, detection surveys are needed for Swainson's hawk (CDFW 1994) and burrowing owls (CDFW 2012). No such surveys have been completed.

BIO-1.1c: "Development within the Plan Area should avoid, where possible, special-status natural communities and vegetation communities that provide suitable habitat for special-status species. If a proposed project will result in the loss of a special-status natural community or suitable habitat for special-status species, compensatory habitat-based mitigation is required under CEQA and CESA. …"

Again, and as already explained, determinations of such impacts can only be made from the outcomes of protocol-level detection surveys. No such surveys have been completed at the project site. The survey completed by Precision Civil Engineering did not come anywhere close to the standards of detection surveys.

BIO-1.2: "A qualified biologist knowledgeable of the species should conduct a Swainson's hawk survey of the project site and the surrounding 0.5-mile-radius area, in substantial compliance with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee 2000) during the normal bird breeding season (1 February through 15 September) prior to the start of any initial ground-disturbing activity or construction associated with each phase of project implementation, to the extent feasible. …"

No such survey has been completed. The IS/ND remains incomplete regarding the mitigation measures it says would be implemented. Detection surveys for Swainson's hawks need to be completed before the CEQA review is publicly circulated.

BIO-1.6: "Conduct a Preconstruction Survey for Burrowing Owl and Implement Avoidance Measures. A qualified biologist(s) knowledgeable of the species should conduct a focused, preconstruction survey during the peak breeding season for burrowing owls (15 April to 15 July) prior to the start of ground- disturbing activities for the project to determine if burrowing owls are present on the project site and within 250 feet where access allows. The survey should be conducted in substantial compliance with the California Burrowing Owl Consortium's *Survey Protocol and Mitigation*

Guidelines (CBOC, 1997), or other survey and mitigation protocols recommended by the CDFW, to the extent feasible. …"

The CBOC (1997) guidelines are obsolete. What needs to be implemented are the CDFW (2012) guidelines, which call for breeding-season detection surveys prior to preconstruction take-avoidance surveys. Because ground squirrels have been found on the project site, and because burrowing owls have been reportedly seen near the site (see Table 2), detection surveys for burrowing owl are warranted.

BIO-1.8: Construction Timing and Preconstruction survey for breeding birds

The IS/ND proposes preconstruction, take-avoidance surveys to minimize impacts to breeding birds. Whereas I agree that preconstruction surveys would be appropriate, it must be understood by decision-makers and the public that such surveys typically detect small fractions of the animals targeted. Nesting birds are highly adept at concealment to avoid predation. Over such a large area, the notion that more than a few animals would be detected would be fantasy. Furthermore, preconstruction, take-avoidance surveys ultimately fail to prevent the impacts of habitat loss, resulting in the loss of productive capacity of the site.

Preconstruction surveys should not be performed without first having performed detection surveys. Preconstruction surveys are no substitute for detection surveys. Species detection surveys are needed to (1) support negative findings of species when appropriate, (2) inform preconstruction surveys to improve their efficacy, (3) estimate project impacts, and (4) inform compensatory mitigation and other forms of mitigation. Detection survey protocols and guidelines are available from resource agencies for most special-status species. Otherwise, professional standards can be learned from the scientific literature and species' experts.

RECOMMENDED MEASURES

The IS/ND proposes only preconstruction surveys, and presents no specific details regarding compensatory mitigation for habitat loss. A fair argument can be made for the need to prepare an EIR to formulate appropriate measures to mitigate project impacts to wildlife. Below are few suggestions of measures that ought to be considered in an EIR.

Detection Surveys: Protocol-level detection surveys should be implemented for special-status species, and most especially for burrowing owl and Swainson's hawk.

Habitat Loss: If the project goes forward, compensatory mitigation would be warranted for habitat loss. An equal area of open space should be protected in perpetuity as close to the project site as possible.

Road Mortality: Compensatory mitigation is needed for the increased wildlife mortality that would be caused by the 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 ought also to 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 by collisions with automobiles.

Thank you for your attention,

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Shawn Smallwood, Ph.D.

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